PANORAMIC

CORPORATE REORGANISATIONS 2025

Contributing Editors

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DLA Piper

LEXOLOGY

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Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights, including into the legal and regulatory framework; rate of reorganisations; key preparatory, employment and financing and other issues; accounting and tax; necessary consents and approvals; treatment of assets; reorganisation formalities; and recent trends.

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Introduction

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Corporate reorganisations are still on the agenda of many global, multinational and national companies. The reasons for this are varied. The still challenging geopolitical situation and the ongoing recession in many countries certainly play a major role in the increasing frequency of corporate reorganisations.

Often, such measures are designed to make a company more competitive or to defend a particular market position. The measures range from per-acquisition structuring or post-acquisition integration measures to the complete reorganisation of individual divisions and core segments (eg, bundling them into individual companies in a separate strand of corporate groups).

The increasing competitive pressure between individual countries should not be underestimated. In the medium term, more and more countries will have to work on their attractiveness as a business location in order to attract companies or, to put it even more bluntly, to prevent them from relocating. Of course, this applies not only to countries but also to regions. Even though many regulatory issues have been harmonised within the European Union, purely national factors, such as the tax situation, ancillary wage costs and infrastructure, will continue to play a significant role when it comes to deciding for or against a location.

Once the decision to reorganise has been made, the work for the individual departments and consultants is just beginning. The meticulous preparation required should not be underestimated, and it is advisable to involve the key players at an early stage. Typically, all key divisions get involved at some point during the process – from legal, tax, employment, finance, to corporate strategy, procurement to PR and communication. A dedicated and experienced transaction lead is, in many cases, the key for a smoothly implementation of such corporate reorganisations.

The following country chapters should provide you with a kind of comparative guide on how a corporate reorganisation will look like in the respective country.

Enjoy reading the edition, and I would be happy if you reach out in the case of any questions or if support is needed.

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Austria

Elisabeth Stichmann, Dimitar Hristov, Stephan Nitzl, Jennifer Held
DLA Piper

Summary

LEGAL AND REGULATORY FRAMEWORK

Types of transaction

1 What types of transactions are classified as 'corporate reorganisations' in your jurisdiction?

Typically, corporate reorganisations comprise measures like mergers, spin-offs, demergers, share or asset sales and, partially, the conversion of the legal entity form. The EU mobility directive provides for some new cross-border measures, such as cross-border demerger for formation.

Law stated - 13 April 2025

Rate of reorganisations

2 Has the number of corporate reorganisations in your jurisdiction increased or decreased this year compared with previous years? If so, what are the key drivers for such change in the number?

There has been an increase in corporate reorganisations.However, the main drivers did not change and are still global structures wishing to increase profits and satisfy stakeholders, and global entities wanting to segregate their assets in core and non-core business. We have also seen an increase in M&A activities regarding the sale of non-core business segments, which can be seen as one driver for corporate reorganisations, alongside significant investments in new segments leading to pre- and post-closing reorganisations. Companies are generally also faced with corporate reorganisations in the pre-acquisition or pre-sales phase, as an integration process (post-acquisition), for entity rationalisation and when dealing with cash movements or liquidity topics.

Law stated - 13 April 2025

Jurisdiction-specific drivers

3 Are there any jurisdiction-specific drivers for undertaking a corporate reorganisation?

The concept of universal succession that applies in certain corporate measures and that is not known to all jurisdictions can be seen as supportive.

Works councils can generally not block any reorganisation but have merely a consultation right only.

Further, Austria has a variety of legal forms that can be tailor-made for specific transactions.

Many Austrian corporate reorganisations are, however, part of an entire-group reorganisation involving several jurisdictions.

The main tax driver is the availability of Austrian group taxation for corporate tax purposes, allowing especially for the utilisation of foreign non-Austrian losses. In general, utilisation of domestic and foreign non-Austrian losses is always one of the key tax drivers for reorganisations. In addition, the establishment of a tax group for VAT purposes, interest-deduction possibilities, withholding-tax-planning strategies and the optimisation of loss-carry-forward utilisation are also core drivers. Furthermore, recent amendments such as the intensification of Austrian exit taxation and other amendments, such as, for example, the implementation of the EU Anti-Tax Avoidance Directives I and II, implementing rules for controlled foreign companies and anti-hybrid structuring are, of course, drivers for reorganisations. Finally, foreign tax reforms (eg, the US tax reforms in recent years) could give reason for corporate reorganisation, as well as the implementation of Pillar II.

Law stated - 13 April 2025

Structure

4 | How are corporate reorganisations typically structured in your jurisdiction?

There is no one-size-fits-all solution and the first step in defining how to reshape a business is to define the underlying drivers and business objectives.

Typically, corporate reorganisations start with an overall macro plan outlining the current and intended future structure. Based on the macro plan, micro plans for each involved jurisdiction are established, covering all concerned areas such as corporate, employment, tax and IP.

The step plan phase supports the (overall) structure and, in particular, the timing of corporate reorganisations as most corporate reorganisations have a long implementation phase. It is not uncommon that in this phase the macro plan changes due to the discovery of local implementation steps that do not fit in the global timeline (eg, requirement of accounts of a particular entity at a certain point in time). Legal tech is getting more and more important to efficiently structure big reorganisations. In particular, tools like HighQ, tailor-made for each project and firm, are commonly seen and we are using them for the benefit of all involved.

In many cases, Austrian corporate reorganisations are part of a bigger international reorganisation. In particular for such types, it is key to be precise in the timeline and structuring phase to meet overall expectations. A delay of a single step can lead to major impacts for other steps as, in many cases, certain steps have dependencies.

Once the structure is agreed, the implementation phase starts, which consists of the drafting and execution steps.

Law stated - 13 April 2025

Laws and regulations

5 | What are the key laws and regulations to consider when undertaking a corporate reorganisation?

Depending on the transaction structure, a variety of Austrian laws may become relevant. In most of the Austrian corporate reorganisations, one or more of the following laws applies: Reorganisation Tax Act, Commercial Code, Act on Limited Liabilities Companies, Stock Corporation Act, Demerger Act, EU-Reorganisation Act (implementation of the EU Mobility Directive), Takeover Act, Private Foundation Act, Investment Control Act, Austrian Labour Contract Law Amendment Act as well as Labour Constitution Act, Antitrust Law and public law provisions in relation to applicable licences and permits. As post-closing (and ongoing) items, the disclosure and confirmation requirements on (changed) ultimate beneficial owners should be kept on the radar.

The omnipresent topic is FDI regulations all over Europe. Austria applies a rather strict regime and there are no explicit exemptions for intra-group reorganisations. Hence, it is always a case-by-case analysis and many transactions end up with an approval requirement.

Law stated - 13 April 2025

National authorities

6 | What are the key national authorities to be conscious of when undertaking a corporate reorganisation and what role does each authority play?

Basically, all corporate reorganisations involve the Commercial Court, Commercial Register and Business Law Authority and have a tax effect so that the tax authorities will become involved. Merger clearance may become relevant depending on the affected business or nature and size of the transaction. The Investment Control Act became increasingly important for corporate reorganisations and, depending on the circumstances, the Austrian Labour Market Service gets involved.

Law stated - 13 April 2025

KEY ISSUES

Preparation

7 | What measures should be taken to best prepare for a corporate reorganisation?

A corporate reorganisation can be challenging for companies, their stakeholders, investors, employees and customers when not prepared and executed in an effective and coordinated way.

The planning phase and engagement of a well-experienced advisory team is vital for the success of a corporate reorganisation. This applies to both pure local and international reorganisations. In international and global transactions, a well-coordinated and well-experienced team working seamlessly together is a huge advantage for a client. Legal tech tools are increasingly used to accelerate internal coordination processes, as well as for document and project management.

The involvement of all involved advisers (including legal and tax advisers and auditors, as applicable) at an early stage is advisable to ensure alignment and determine dependencies and a feasible timeline.

A well-experienced advisory team can support in identifying business and commercial topics that may lead to a bottleneck for a successful implantation. A corporate reorganisation is more than the implementation of the corporate structure and may have heavy impact on the operational side (eg, transferring or implementing an IT finance system to another entity).

There are similarities but also differences between intra-group transactions and third-party transactions. Whereas in intra-group transactions, due diligences mainly serve the purpose of ensuring business continuity in third-party transactions, risk assessment is a key driver.

Law stated - 13 April 2025

Key departments and operational issues

8 What departments of the concerned companies are most involved in corporate reorganisations and what are the most challenging operational issues?

In corporate reorganisation transactions many departments are involved – from tax, corporate strategy, procurement, employment, finance to regulatory departments. One of the challenges is certainly to reconcile the interests of the individual departments, which do not always coincide. For example, there may be a blackout period from an accounting point of view, but for the commercial team, market supply issues are challenging and must be communicated and managed at an early stage, both internally and externally to customers and/or suppliers. These processes are also not always easy to reconcile with regulatory timelines. IT separation processes are a recurring topic. Excellent transaction management with extensive experience in comparable processes is often crucial to ensuring that things proceed as smoothly as possible.

Law stated - 13 April 2025

Employment issues

9 What are the main issues relating to employees and employment contracts to consider in a corporate reorganisation?

Whether a corporate reorganisation has a material impact from an employment law perspective mainly depends on whether the reorganisation shall be conducted by way of a share deal or an asset deal. In the case of a share deal there are no material issues, as only the ownership of the shares changes but the employing entity remains the same.

If the transaction includes a transfer of a business or a part of a business to another legal entity (an asset deal, but also in cases of a merger, conversionand demerger), section 3 of the Austrian Labour Contract Law Amendment Act (AVRAG) applies. This provision determines that in the case of a business transfer the acquiring entity automatically enters into all existing employment relationships of the acquired business or part of a business as employer with all rights and obligations arising from the employment relationships. The existing terms and conditions (including length of service) remain unchanged. In addition, all terminations on the grounds of the transfer of the business are deemed null and void and the employees may successfully contest the terminations in court.

A transfer of business within the meaning of AVRAG is triggered if an economic unit is transferred to another owner and if the economic unit continues its activity with the other employer. The following criteria must be largely met: acquisition of tangible or intangible assets (eg, licences, real estate); and acquisition of customers and the majority of the workforce (in particular key employees).

Unlike other European countries, employees can only object to the transfer of their employment relationships in very limited, exceptional cases. The employees have this right of objection, in particular, if the acquiring entity refuses to take over the company pension commitment. In the case of a universal succession (eg, merger), the acquirer is not entitled to object against the transfer.

Generally speaking, the seller and the acquirer are jointly liable regarding those obligations, which arose prior to the transfer date. The liability of the seller for claims arising after the transfer of business is quite restricted, as the seller is liable only for the amount corresponding to the fictitious claim at the time of the transfer and only for a period of five years.

The seller must inform the works council in due time on the intended transfer date, the reason(s) for the transfer, the new employer, any impact the transfer might have on the employees and any intended measures regarding the employees. The works council may demand consultation in case the transfer is considered as a significant change to the business. Such consultation must take place, but – generally speaking – the works council may not delay or stop the reorganisation process. If no works council is established, concerned employees need to be informed on an individual basis. In addition, employees must be issued a service certificate (Dienstzettel) within one month of the employment relationships being transferred.

In the case that the seller did not provide sufficient information to the works council or the individual employees, they may be responsible for any disadvantages suffered by employees due to failing to provide the information (for instance, the time period during which employees may assert their right to object against the transfer (if any), is not triggered). In addition, the works council may take legal steps against the seller. If the employees are not issued with a new service certificate, all disadvantages arising from this should be the responsibility of the acquirer.

Law stated - 13 April 2025

10 What are the main issues relating to pensions and other benefits to consider in a corporate reorganisation?

Generally speaking, corporate reorganisations have a limited impact on pensions or other benefits. However, the fate of company pensions and any other benefits must be assessed considering the legal nature of the respective agreement they are based on (eg, individual employment contract, works council agreement or collective bargaining agreement).

The employer is only permitted to discontinue or revoke the current contribution payments if this is provided for in the applicable collective bargaining agreement, the works council agreement or the economic situation of the company deteriorates in such a way that any further contributions or benefits would jeopardise the continued existence of this company (in companies where a works council is established, consultation with the works council must have taken place at least three months before the cessation of any contribution payments).

In the case of a business transfer, the acquirer automatically enters into all existing employment relationships and the existing employment terms and conditions remain in place. The acquiring company may be entitled to refuse to take over the company pension commitment in the case of a singular succession (ie, in the case of an asset deal). Furthermore, if the company pension is based on a works council agreement, the acquirer may have a preferential termination option, whereby the agreement would still be effective for at least one further year.

Law stated - 13 April 2025

Financial assistance

11 | Is financial assistance prohibited or restricted in your jurisdiction?

Financial assistance is not per se prohibited but needs to be aligned with applicable legal provisions. For example, direct or indirect upstream financial assistance is limited to a great extent due to Austrian capital maintenance rules. This applies, inter alia, to granting funds and providing securities, but also to cash pool structures and a detailed assessment and documentation is advisable . The Austrian capital maintenance provisions are very strict compared to other European (but also global) jurisdictions. Austrian case law provides a variety of cases; for example, legal relations between the company and the shareholders must be structured in the same way as they would have been with an outside third party. Any transfer of assets from the company to the shareholder or transfer of risk from the shareholder to the company may entail a violation of the prohibition of capital maintenance rules, which qualifies the measures as null and void and may lead to personal liability of the involved persons (eg, managing directors).

Also, from a tax perspective, financial assistance is not per se prohibited but may – if not properly done and not at arm’s length – trigger hidden dividend distributions and contributions with potentially adverse tax effects.

Law stated - 13 April 2025

Common problems

12 | What are the most commonly overlooked issues or frequently asked questions in a corporate reorganisation?

One of the most frequently asked questions relates to the time requirement to implement a particular structure and whether financial statements (in which form, for example, audited and as to which date) are required. In addition, quite often questions relate to the requirement of works council involvement and co-determination rights.

The Austrian Investment Control Act may also apply for corporate reorganisations within a company group. It is advisable to have a close look into the entire structure and to consider the (current) strict interpretation of the Austrian Investment Control Act by the competent ministry.

In many cases, the Austrian Industrial Code is overseen when structuring a corporate reorganisation as almost every case concerns the Industrial Code. In international transactions in particular, there is a requirement for a detailed explanation as the concept is rather uncommon outside of Austria. An eye should also be kept on subsidies and tender agreements as, for example, regulations in relation to guarantees covering the location, number of employees, etc, may be included.

Although awareness has already risen, the Austrian Ultimate Beneficial Owner Register Act is still something that is not always on the radar in such transactions and timelines (eg, four weeks' deadline to upload all required data or documents) might easily be overseen. Respectively, the Austrian regime that listed companies are not exempt from the registration and disclosure obligations leads to some additional explanatory work in the international context.

Attention should be given to the DAC6 (in the EU Mandatory Disclosure Act). It was enacted to prevent aggressive tax planning by strengthening the control of the activities of tax intermediaries. These intermediaries, such as tax advisers, accountants and lawyers who design or offer tax planning models, are obliged to report models that are considered potentially aggressive. By means of defined hallmarks, models are to be identified that must be reported to the tax authorities. The fact that a model must be notified does not mean per se that it is harmful, but only that it may be of interest to the tax authorities to examine it more closely. While some models have perfectly legitimate purposes, the aim is to identify those where this is not the case.

Law stated - 13 April 2025

ACCOUNTING AND TAX

Accounting and valuation

13 How will the corporate reorganisation be treated from an accounting perspective? How are target assets and businesses valued?

The target assets and transferred businesses are optionally valued at fair market value or book value for accounting purposes at the level of the receiving and the transferring entity. However, if the choice is made to use book values, it is also possible under specific circumstances at the level of the receiving entity to value some of the transferred assets at fair market value and to realise potential hidden reserves and good will. If a valuation at fair market values takes place, the realised amounts are blocked for dividend distribution purposes.

From a formal perspective, in the case of reorganisations, a closing balance sheet and a transfer balance sheet of the transferring company (containing the transferred assets) must be prepared. In some cases (eg, spin-off), a remaining assets and liabilities balance sheet is also required.

From an accounting perspective, the transaction can be made retroactively for up to nine months before signing of the reorganisation documents; this means that the receiving company takes over the assets and liabilities of the transferring entity and the connected profits and losses retroactively.

Law stated - 13 April 2025

Tax issues

14 What tax issues need to be considered? What are the tax implications of carrying out a corporate reorganisation?

According to the Austrian Reorganisation Tax Act, reorganisations (mergers, demergers, contributions in kind and exchanges of shares) are, in general, wholly or partially tax neutral. The key idea of the Reorganisation Tax Act is to change the legal structure of a company and to transfer the assets – which usually consist of the business or a part of it – tax-free at book value. However, in some cases, the option is available to structure a reorganisation in a tax-effective manner, namely, at fair market values and to realise latent capital gains.

Thus, if a reorganisation fulfils the formal and material requirements of the Reorganisation Tax Act, it is enacted under continuance of the book values and, thus, exempt from (corporate) income tax. Furthermore, under the Reorganisation Tax Act, losses can also be transferred and used by the receiving entity.

Reorganisations under the Reorganisation Tax Act are VAT-exempt. In addition, transfers of contracts that become effective in the course of reorganisations are, in general, exempt from stamp duty and legal fees. The transfer of real estate (or of shares in companies holding real estate), however, triggers in most cases land transfer tax (0.5 per cent) and a registration fee (1.1 per cent) must be paid.

A special feature is that a transfer of assets covered by the Reorganisation Tax Act can be referred back to a date in the past (up to nine months). The tax authorities have to be informed in proper time (nine months after the effective date of the reorganisation) about the reorganisation and have to be provided with the required balance sheets, adapted for tax purposes.

In general, reorganisations are tax neutral at the level of the shareholders. However, some reorganisation types may trigger a taxable deemed realisation (or dividend distribution) at the level of the shareholders.

Law stated - 13 April 2025

CONSENT AND APPROVALS

External consent and approvals

15 What external consent and approvals will be required for the corporate reorganisation?

This clearly depends on the transaction structure as there can be huge differences in whether third-party consent needs to be obtained upfront (eg, universal succession versus singular succession). Whereas, for example, a merger or demerger leads to universal succession of contracts, a simple asset sale leads does not. In addition, transfer of going concern (TOGC) structures lead to a different approval requirement or objection right. Irrespective of that, change of control clauses may require that in any case consent is obtained to, for example, avoid extraordinary termination rights. Typically, this applies in a demerger of a business segment to a group company that is subsequently sold directly or indirectly to a third party.

Whether public permissions or licences can be transferred upon a simple notification or whether a new licence or permission needs to be applied for depends on the respective permission or licence and the precise structure.

In most intra-group transactions, no real-estate transfer approvals are required. The omnipresent foreign direct investment regulation (the FDI Regulation) can apply in intra-group transactions as well, irrespective of whether the reorganisation is ahead of a third-party transaction. Hence, the FDI Regulation, based on the Austrian Investment Control Act, should always be kept in mind and considered from a timing perspective as it could delay the closing significantly.

Law stated - 13 April 2025

Internal consent and approvals

16 What internal corporate consent and approvals will be required for the corporate reorganisation?

Basically, in all corporate reorganisations, shareholders' approvals are obtained either because it is required mandatorily or for good corporate governance practice. The same applies to board consent. Form requirements such as notarial minutes may apply.

Law stated - 13 April 2025

ASSETS

Shared assets

17 How are shared assets and services used by the target company or business typically treated?

Shared assets and shared services should be identified at an early stage to determine required measures. Typically for an interim period service, agreements are agreed between the parties to ensure business continuity as, in most cases, not all required assets and services are available as of day one in all companies involved.

Law stated - 13 April 2025

Transferring assets

18 | Are there any restrictions on transferring assets to related companies? If not, are there measures that can be taken to allow such a transfer?

The key rule is that the arm's-length principle needs to be complied with. A violation of the arm's-length principle may have, inter alia, the following consequences: transactions being qualified as null and void; tax impacts; and (personal) liability issues including criminal law aspects.

In the case of transfer of assets to foreign entities in particular, exit taxation might be triggered.

Law stated - 13 April 2025

19 | Can assets be transferred for less than their market value?

Compliance with arm's-length principles is key in such transactions.

Law stated - 13 April 2025

FORMALITIES

Date of reorganisation

20 | Can a corporate reorganisation be backdated or deemed to have already taken place, for example, from the start of the financial year?

Various corporate measures allow for a (tax) retroactive effect (eg, merger or demerger) back to a maximum of nine months. To use this effect, a precise timing and alignment between business, legal, tax and auditor is required as for such transactions several balance sheets and financial statements are required. The nine-month deadline is the filing deadline with the competent commercial court and not the actual signing date of an agreement. Hence, the signing date of the agreement needs to be well timed in advance as those agreements are commonly required to be in the form of an Austrian notarial deed and the filing with the commercial register needs be legalised (and, if applicable, apostilled if legalisation takes place abroad).

Law stated - 13 April 2025

Documentation

21 | What documentation is required or advisable in a corporate reorganisation?

For most transactions, it is advisable to work with the power of attorneys allowing the legal adviser or any member of the local team of the client to execute documents on short notice and that last-minute changes are allowed and doable. The transactional documentation depends on the nature of the transaction and may include several notarial deeds (eg, for a merger, demerger or share purchase in a limited liability company), amended articles of association, notarial minutes, legalised documents (eg, shareholders' resolutions or powers of attorney), several internal and third-party approvals and documentation of signing authorities (eg, corporate secretarial certificates or foreign commercial register excerpts).

Law stated - 13 April 2025

Representations, warranties and indemnities

22 | Should representations, warranties or indemnities be given by the parties in a corporate reorganisation? If so, which are most common?

In intra-group transactions, the representation and warranties clauses and indemnities are typically less regulated compared to third-party transactions and it is not uncommon that only very limited guarantees such as a title guarantee, compliance with accounting standards and proper tax filings are included. This may be different if the corporate reorganisation is carried out as a pre-sales process to set up the structure for the sale. However, also in such scenarios, it is quite common that the commercial terms are included in a master framework or umbrella agreement and that local transfers are deemed as pure implementation measures. As always, arm's-length principles need to be complied with.

Law stated - 13 April 2025

Assets versus going concern

23 | Does it make any difference whether assets or a business as a going concern are transferred?

Yes, there are differences from a taxation standpoint, liability issues, consent requirements and formal requirements. These topics are also relevant in relation to business continuity and for the structuring phase.

Whereas in the case of transfer of going concerns, concerned agreements, assets and employment relationships transfer automatically (certain objection rights remain possible). However, for each transfer in a pure asset sale individual consent needs to be obtained, unless a pre-consent is included in the concerned agreement.

From a tax perspective, a pure asset does not, in general (with the exception of shares in a corporate entity amounting to more than 25 per cent), qualify for the beneficial regime of the Austrian Reorganisation Tax Act, whereas in the case of a transfer of business or shares in an operative partnership this beneficial regime applies. Thus, if a single asset is transferred, (corporate) income taxes on latent capital gains, stamp duties, VAT, etc, may be triggered. However, there are some cases where an asset transfer is preferable (eg, if the transferor has sufficient loss carry-forwards to avoid the taxation of latent capital gains and, thus, to achieve an effectively tax-exempt step-up in the value of the assets).

In some cases, it is difficult to determine whether the group of assets are qualified as a (partial) business unit transfer and it may make sense to obtain a tax ruling prior to the sale to get clarity on the tax exemption of such transfers.

Law stated - 13 April 2025

Types of entity

24 Explain the key differences between public, private, government or non-profit entities to consider when undertaking a corporate reorganisation.

The corporate steps are basically similar. In the case of listed companies, different notification requirements, takeover issues, press releases, etc, may become relevant.

Law stated - 13 April 2025

Post-reorganisation steps

25 Do any filings or other post-reorganisation steps need to be taken after the corporate reorganisation?

Depending on the precise corporate measures certain filings and registrations may be required either as action item prior the closing or as a post-closing measure. For example, a share transfer needs to be registered with the commercial register but the registration only has a declaratory effect whereas, for example, a merger or demerger only becomes effective upon registration in the Austrian commercial register.

Depending on the deal structure, customer or vendor notifications might be required to ensure compliance with formalities.

Certain filings may also be required to update the business licence register, transfer of real estate property, IP transfer, etc. Under certain conditions, the reorganisation must also be reported to the tax authorities and the concerned employees must be issued with a new service certificate.

Since the implementation of the ultimate beneficial owner register, many corporate reorganisation measures lead to an update requirement in the ultimate beneficial owner register.

Law stated - 13 April 2025

UPDATE AND TRENDS

Hot topics

26 What are your predictions for next year and how will these impact corporate reorganisations in your jurisdiction (for example, expected trends or pending legislation)?

The still difficult geopolitical situation and the ongoing recession in many countries are likely to lead to further extensive corporate reorganisations in order to maintain or improve competitiveness. In the authors' opinion, the competition between individual countries will also intensify, because countries will increasingly have to and will focus on their own economic growth and prosperity. The attractiveness of a location will become massively more important in the coming years.

In this context, also the FDI Regulation (Austrian Investment Control Act) will remain a hot topic and from the advisory side, we hope that, at least for intra-group transactions, clear exceptions will be implemented in the Regulation. The (current) strict interpretation is not increasing Austria's attractiveness as a business location for international companies.

We believe that corporate reorganisations will remain a strong field as stakeholder expectations will not decrease and there is quite a pressure on profitable business operations. The global economy, including the still high interest rates for lending, and the difficult geopolitical situation are likely to increase the number of insolvencies that will force the sale of assets or business segments on the one hand but allow investors with full pockets of money to increase their portfolio on the other hand.

In addition, the practical impact of the implementation of EU Anti-Tax Avoidance Directives will remain a hot topic.

Law stated - 13 April 2025

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Summary

UPDATE AND TRENDS

Hot topics

LEGAL AND REGULATORY FRAMEWORK

Types of transaction

1 What types of transactions are classified as 'corporate reorganisations' in your jurisdiction?

A corporate reorganisation can take a variety of forms. From a Belgian law perspective, a corporate reorganisation typically refers to transfers of shares, the sale of assets, the sale of part of a (or the entire) business (contribution of business branch), mergers and (partial) demergers, within the same corporate group to strive for more efficiency and less (structural) complexity within the corporate group.

Some of these corporate reorganisations are statutory (eg, merger, (partial) demerger and contribution of a business branch) and require a specific legal procedure to be complied with, while others (eg, transfers of shares and sale of assets) can be more tailored and are thus less stringent.

A corporate reorganisation can be implemented either on the national level (eg, merger between two Belgian group entities) or cross-border (eg, cross-border merger or relocation of head office by incorporating a new company).

Law stated - 8 April 2024

Rate of reorganisations

2 Has the number of corporate reorganisations in your jurisdiction increased or decreased this year compared with previous years? If so, what are the key drivers for such change in the number?

Although there is little data available on the evolution of the number of reorganisations over the years, it is safe to say that in 2023 there were at least as many corporate reorganisations as in previous years and there was even a slight increase. Given that the M&A environment experienced a decrease in activity, it gave corporate groups the opportunity to redirect focus on other planning opportunities, such as reorganisations and legal entity rationalisation.

Law stated - 8 April 2024

Jurisdiction-specific drivers

3 Are there any jurisdiction-specific drivers for undertaking a corporate reorganisation?

From a tax perspective, the implementations of the Base Erosion and Profit Shifting rules and EU Anti-Tax Avoidance Directive give rise to certain internal reorganisations within international groups because of the enhanced focus on economic substance. In this regard, reference can be made to one proposal for a Directive published by the European

Commission. This proposal lays down the rules to prevent the misuse of shell entities for improper tax purposes. Further, reference can also be made to the fact that Belgium has introduced stricter Controlled Foreign Company rules as of 1 January 2024.

Finally, as of 1 January 2024, Belgium has introduced national rules to ensure a global minimum level of taxation for multinational groups in the EU. This is the implementation of the EU Minimum Tax Directive (Council Directive (EU) 2022/2523), which in its turn is the EU translation of the global minimum tax rules agreed upon on OECD level (pillar II). The introduction of these rules also give rise to certain international reorganisations.

Law stated - 8 April 2024

Structure

4 | How are corporate reorganisations typically structured in your jurisdiction?

The structuring of a corporate reorganisation depends on the desired outcome. Common reasons for group reorganisations are, however, the simplification of the corporate structure of the group (with reduced complexity, lower compliance costs and simplified reporting) and preparation in anticipation of an acquisition (or a divestment) so that the target group or business can properly fit into the purchaser's structure. Most commonly used transactions to achieve these goals are: (simplified) merger; (partial) division; transfer of assets; sale or exchange of shares; and, although less common, (simplified) liquidation.

Law stated - 8 April 2024

Laws and regulations

5 | What are the key laws and regulations to consider when undertaking a corporate reorganisation?

The key laws and regulations to consider when undertaking a corporate reorganisation will depend on which type of corporate reorganisation is concerned:

- A share deal is very flexible in Belgium and does not require any government authorisations and the permits will, in principle, continue to be in effect.
- The sale of assets and liabilities can be achieved by either: (1) the sale of the assets and liabilities *ut singuli*; or (2) the sale of the assets and liabilities under the continuity regime (a merger-like procedure).
- The transfer of assets and liabilities *ut singuli* will, for each asset or liability, require compliance with civil law transfer formalities (eg, the transfer of an agreement will, in principle, require the approval of the counterparty to such agreement). The sale of the assets and liabilities *ut singuli* also does not require any government authorisations. However, the sale will have to be notified to the competent authorities to allow the permits to transfer to the purchaser. In the case of the transfer of risk soils (ie, soils potentially polluted as a result of hazardous activities), additional formalities

apply, which can differ according to the region in which the asset is located (Flemish region, Walloon region or Brussels).

- The sale of the assets and liabilities under the continuity regime requires a specific procedure to be complied with, the details of which are set out in the Belgian Companies and Associations Code (eg, drafting and filing of a private sales proposal and passing of an authentic sales deed). Like the share deal and the sale of assets and liabilities *ut singuli*, the sale of assets and liabilities under the continuity regime also does not require any government authorisations. However, in some cases the sale will have to be notified to the competent authorities to allow the permits to transfer to the purchaser. When real estate assets are included in the sale, the formalities of (1) apply with regard to soil. Contrary to the sale *ut singuli*, the civil law formalities required to render the transfer of the assets and liabilities opposable do not have to be complied with (ie, a mere notification suffices), unless explicitly otherwise agreed upon.
- Merger and (partial) demerger require a specific procedure to be complied with, the details of which are set out in the Belgian Companies and Associations Code (eg, drafting and filing of the (de)merger proposal and passing, at least six weeks after the filing of the (de)merger proposal, of the authentic deed). By operation of law, the (de)merger entails the universal transfer of assets, liabilities, rights and obligations, this transfer being effective between the companies, as well as with regard to third parties, without any further formalities.

Furthermore, every corporate restructuring must take into account the tax implications in Belgium relating to income tax and indirect taxes (VAT and registration duties, etc) at a federal level, but also at the level of the regions (Brussels, Flemish and Walloon). The various tax codes contain specific rules relating to tax exemption in the event of a corporate reorganisation (mostly related to real estate taxes).

From an employment law perspective, the following laws need to be taken into account:

- National collective bargaining agreement (CBA) No. 32-bis, regarding the preservation of rights of employees affected by a transfer of business as defined in the aforementioned CBA, implementing the European TUPE directive into Belgian law;
- National CBA No. 9, setting out the terms and conditions relating to information and consultation of works councils;
- Some specific collective bargaining agreements of the National Labour Council have implemented the information and consultation aspects of European Directives, for instance the Collective Bargaining Agreement No. 94 on employee participation and cross-border transactions; and
- some preliminary legal information and consultation requirements will apply if the corporate reorganisation entails either a collective dismissal or a plant closure or both.

Law stated - 8 April 2024

National authorities

6 | What are the key national authorities to be conscious of when undertaking a corporate reorganisation and what role does each authority play?

To render a transfer of a business (consisting of assets and liabilities) opposable to the tax and social security authorities, a copy of the asset purchase agreement needs to be filed with these authorities, as well as (specific) tax and social security certificates confirming that the seller does not have any tax or social security debts.

Moreover, it is possible to request a ruling on the expected tax consequences of the envisaged reorganisation from the 'ruling committee' (Office for Advance Rulings in Tax Matters), which is an autonomous division within the federal tax administration. This is useful, especially if the interpretation of certain tax rules or the application thereof on the envisaged transaction is not totally clear.

Regulated companies (operating, for example, in the banking and insurance or pharmaceutical sectors) can be subject to certain information obligations towards the regulating authorities when undertaking a corporate reorganisation.

Finally, listed companies should inform the Financial Services and Markets Authority (FSMA) in advance of any planned reorganisation that could give rise to conflicts of interest on the part of the persons initiating the operation. Doing so enables the FSMA to convey any comments it may have on the draft documents to the listed company before the latter publishes them. If the FSMA is not consulted prior to the reorganisation, it may publish, at its sole discretion, a warning after the publication of the legally required reports if it is of the opinion that the information that the listed company has made available is inadequate or misleading, or that there could be a threat to the equal treatment of securities holders.

Law stated - 8 April 2024

KEY ISSUES

Preparation

7 | What measures should be taken to best prepare for a corporate reorganisation?

In a first step, a macro action plan should be drawn up, setting out the general principles of the reorganisation. Subsequently, this macro action plan should be validated from legal, tax, financial, social, regulatory, accounting and operational points of view. In this phase it is important to undertake a thorough due diligence of the entities involved in the reorganisation to identify those matters that will require specific attention.

Once the due diligence has been completed and the macro action plan has been validated and finalised, a micro action plan should be prepared, detailing all specific actions that need to be taken to implement the reorganisation (including allocation of responsibility and setting of deadlines).

Belgian labour laws provide for an extensive set of regulations in terms of information and consultation, which will depend on the type of corporate reorganisation and on the impact of the reorganisation on the employees. The timing and content of the information and consultation requirements will vary depending on myriad circumstances, for example, the type of reorganisation, the employee headcount of the concerned company, the presence of an employee representative body, the number of employees affected by the reorganisation and the sector of industry to which the concerned entity pertains. Most legal information and consultation requirements regarding employee representatives or employees (or both) must, moreover, be completed before a final decision is taken concerning the reorganisation. A particular point of attention will, therefore, be the content of the communications on the intention to proceed to the reorganisation, both internally and externally, to avoid triggering the information and consultation requirements at too early a stage.

Law stated - 8 April 2024

Key departments and operational issues

8 What departments of the concerned companies are most involved in corporate reorganisations and what are the most challenging operational issues?

Answer pending.

Law stated - 8 April 2024

Employment issues

9 What are the main issues relating to employees and employment contracts to consider in a corporate reorganisation?

Most issues are, of course, related to reorganisations that have a significant impact on the terms of employment of (some) employees. Whether or not this will be the case from an employment law perspective mainly depends on the structure of the reorganisation; namely, whether it is a share deal or an asset deal and whether it entails a collective dismissal or a plant closure (or both) as defined in the law.

Mostly, no material issues arise in the event of a mere share deal, as such a transaction would, in principle, have no impact on the terms of employment of the employees, as the identity of the employer would remain the same.

However, particular rules apply if a business or parts of a business are transferred to another entity by way of an asset deal. If such a deal entails the transfer of a 'going concern', in other words, the operations of the business involved in the reorganisation would effectively be continued or resumed post-completion by the acquirer with primarily the same or similar activities and the new employer has the possibility of continuing its operation in a sustainable way after the completion of the reorganisation, all rights and obligations resulting from the existing employment contracts at the date of completion of the reorganisation will automatically be transferred to the acquirer, with the exception of the employees' rights to benefits under complementary pension, life, death or invalidity schemes outside the statutory Belgian social security schemes. These rights will, however, still automatically transfer: (1) in the event of a transfer of all assets and liabilities of the business concerned in the reorganisation; or (2) if the concerned complementary schemes were formalised in a collective bargaining agreement.

Changes to the key employment conditions of the concerned employees are legally restricted and employees affected by a transfer of business in the sense of national collective bargaining agreement (CBA) No. 32-bis can only be dismissed for organisational, technical or economic reasons. Preliminary information and consultation obligations will, however, be triggered regarding employee representative bodies as soon as the local management of the concerned entity is aware of the pending reorganisation. These obligations should, moreover, be completed as soon as possible – in any event prior to any definitive decision being taken (or made public) in relation to the reorganisation.

If the corporate reorganisation will entail a collective dismissal or a plant closure (or both), a specific set of laws must be complied with, including but not limited to information and consultation obligations, which can be triggered as soon as it becomes apparent that the business concerned has an intention to proceed to a collective dismissal. Mostly, employee representatives will insist on negotiating a social plan setting out the terms of dismissal of the concerned employees, even though this is not always legally mandatory.

Law stated - 8 April 2024

10 What are the main issues relating to pensions and other benefits to consider in a corporate reorganisation?

Corporate reorganisations typically have no material impact on pensions or other benefits from a legal perspective. Nonetheless, any such benefits should be assessed with a view to the legal nature of the particular agreement they are based on (eg, collective bargaining agreement or individual employment agreement, as well as the respective scope of application).

In the case of a transfer of business in the sense of CBA No. 32-bis, the rights and obligations resulting from the employment relationships of the employees are automatically transferred to the acquirer. The CBA No. 32-bis stipulates that it does not apply to complementary pension scheme. However, a complementary pension scheme is part of the remuneration package and the remuneration package will transfer in application of CBA No. 32-bis, hence the transferee will in any event have to offer an equivalent benefit in order to maintain the remuneration package.

There are two cases where exactly the same pension scheme has to be offered after the transfer and not only an equivalent benefit. The first one concerns a corporate transaction *ut universalis*, as all rights and duties are then automatically transferred in application of corporate law, including the pension scheme. A second case is when a pension scheme is confirmed into a collective bargaining agreement at company level, as this collective bargaining agreement transfers under the Act of 5 December 1968 on joint committees and collective bargaining agreements.

If the group insurance benefits do not transfer by operation of law in application of CBA No. 32-bis, the acquirer will, however, still need to grant the concerned employee a benefit in kind with at least similar value to the one linked to participation in the group insurance scheme set up by the transferor prior to the transfer, but – in theory, anyway – this new benefit in kind could take another form.

The possibility of a one-to-one transfer of complementary pension or other group insurance benefits is, however, not always possible and sometimes entails the acquirer setting up a 'mirror plan', which put simply is a new group plan copying the terms and conditions of the plan to which the transferring employees were affiliated on the date of completion of the reorganisation.

Particular attention should be given to the mandatory average return on contributions in a pension scheme. The employer should indeed guarantee a return (currently equaling 1.75 per cent per year) on contributions in a pension scheme, whereby this average is only triggered in a number of cases, notably if the employee stops being affiliated to the pension scheme involved. As long as none of these cases takes place, the employer can thus merely wait and hope that the return on investments in the future is sufficient for obtaining the required minimum average. It is therefore strongly recommendable to request an actuarial audit when an acquisition or reorganisation takes place, as even if all contributions legally due are paid, it could be that at some point in the future extra contributions are necessary to cover the minimum average for the period prior to the reorganisation if the minimum average would be triggered.

Law stated - 8 April 2024

Financial assistance

11 | Is financial assistance prohibited or restricted in your jurisdiction?

Financial aid is permitted under Belgian law under certain conditions:

- the management body is responsible for the transactions and if the company is a public limited company, the transaction needs to be done at arm's length;
- the financial aid is subject to the prior approval of the shareholders' meeting, deciding with a three-quarters majority;
- the management body needs to draft a special report;
- the amount of financial aid needs to be available for distribution; and
- the amount of financial aid needs to be entered into the balance sheet as an unavailable reserve.

Law stated - 8 April 2024

Common problems

12 | What are the most commonly overlooked issues or frequently asked questions in a corporate reorganisation?

An important point of attention is whether a business (to be divested or otherwise transferred for simplification purposes) qualifies as an actual 'branch of activities', as this may have important consequences for the corporate structuration of the reorganisation process. The question of whether the assets characterise a branch of activities or a mere collection of assets depends mainly on whether the entity is technically and administratively independent and is capable of functioning on a stand-alone basis. For instance, if the assets are legally characterised as a branch of activities or a universality of assets, the group has the option of choosing between two different types of asset deals: transfer under the Belgian Companies and Associations Code; or transfer under general Belgian civil law concerning the transfer of assets.

The price at which simplification transfers take place is also a common focus point, notably to avoid any transfer pricing issues and advice is often taken as to what value should be used for each transfer.

Moreover, directors should consistently monitor their fiduciary duties towards the group but also towards each individual company involved in the process (as these interests are not always fully aligned) at all stages of the project.

Finally, due diligence investigations often show that the target companies have not accurately complied with their withholding tax obligations and this issue needs to be addressed with proper measures in the framework of a reorganisation.

Law stated - 8 April 2024

ACCOUNTING AND TAX

Accounting and valuation

13 | How will the corporate reorganisation be treated from an accounting perspective? How are target assets and businesses valued?

If all the relevant conditions and requirements in the Belgian Companies and Associations Code are respected (in the case of a merger, demerger or another form of reorganisation under the continuity regime as provided for in the Code), the principle of neutrality can apply to mergers, demergers and spin-offs for accounting purposes, meaning that all assets and liabilities will keep their book value when being transferred to the acquiring company (no step-up). The same principle applies for corporate income tax purposes if all conditions for a tax-free reorganisation are fulfilled. If the above principle of neutrality does not apply, assets must in general be valued on the basis of their fair market value. There are no valuation methods that are prescribed in the accounting or tax legislation. However, the tax authorities will accept valuations on the basis of generally accepted valuation methods in the market. These methods may differ depending on the kind of assets to be valued.

Law stated - 8 April 2024

Tax issues

14 |

What tax issues need to be considered? What are the tax implications of carrying out a corporate reorganisation?

The concrete tax consequences of a reorganisation depend on the type of restructuring and on the underlying facts and circumstances. This operation must, therefore, always be carefully planned.

There are specific rules providing for tax neutrality for certain types of corporate reorganisation: mergers, demergers, spin-offs and contribution of separate business unit. The list of potential tax-neutral reorganisations has been extended following the implementation of the EU Mobility Directive. To benefit from this tax neutrality, the main purpose (or one of the main purposes) may not be tax avoidance. It is therefore important to demonstrate and to document in a proper manner that the reorganisation is mainly driven by legitimate (non-tax) business motives. It is possible to obtain a ruling decision relating thereto. Subject to certain additional conditions, this tax neutrality could also apply to cross-border corporate reorganisations.

If a reorganisation (eg, a carve-out) occurs to facilitate a subsequent sale of shares, special attention must also be given to the general anti-abuse provision in Belgian tax law that could be invoked by the tax authorities to re-characterise this combination of transactions into a (taxable) straightforward sale of the assets ('step-by-step' doctrine).

Further, the following elements should also be considered: (1) the consequences of the restructuring for the shareholders (eg, possible application of withholding tax or taxation of capital gains (sales or transfers of shares in companies holding excess cash should be assessed carefully)); and (2) a tax-neutral reorganisation will affect the carried-forward tax losses and other tax deductions that are available to the companies involved.

Special attention should be given to the indirect tax aspects (VAT and registration duties, etc) if the reorganisation includes the transfer of real estate in Belgium.

Law stated - 8 April 2024

CONSENT AND APPROVALS

External consent and approvals

15 What external consent and approvals will be required for the corporate reorganisation?

A sale *ut singuli* requires compliance with the civil law transfer formalities. This implies that the transfer of the assets and liabilities and of the rights and obligations will not be automatic (contrary to what is the case for the sale under the continuity regime) but will, inter alia, require the following:

- the transfer of an agreement will require the approval of such transfer by the co-contracting party;
- the transfer of the receivables will require the notification of the transfer to the debtors;

- the transfer of the debts will require the approval of such transfer by the creditor;
- tangible assets will, in principle, be transferred without any additional formality;
- the transfer of intellectual property will require notification or registration, or both;
- the transfer of authorisations, permits, licences and subsidies will require approval, plus notification or registration, or both (by the public authorities); and
- to continue pending legal procedures, the purchaser will have to file a voluntary intervention.

In the case of a sale under the continuity regime, on the other hand, the agreements, receivables, debts and tangible assets will be transferred without approval of the co-contracting party, the debtor and the creditor (unless there would be any specific contradictory contractual clauses). The sale will, in principle, be opposable towards third parties without any additional formalities being complied with.

By operation of law, the (de)merger entails the universal transfer of the assets, liabilities, rights and obligations, this transfer being effective between the companies, as well as with regard to third parties, without any further formalities. However, it is good practice to notify the transaction to any co-contracting parties of the involved (de)merged entities.

Law stated - 8 April 2024

Internal consent and approvals

16 What internal corporate consent and approvals will be required for the corporate reorganisation?

The internal corporate consents and approvals required depend on the type of corporate reorganisation and the type of corporate entities involved. The constitutional documents or a shareholders' agreement (if any) should be reviewed to determine the specific corporate approvals that are required.

Most corporate reorganisations (involving limited liability companies) are initiated by the relevant management body and generally require the consent of the general meeting of shareholders (eg, in the case of a (de)merger or contribution of business branch). The consent of the shareholders may also be required in the case of existing share transfer restrictions.

Notwithstanding the information and consultation procedures in this respect, no approval for the reorganisation from the employee representatives is (in principle) required. However, in the event of a collective dismissal or a plant closure (or both), approval from the employee representatives to close off the mandatory information and consultation process is in any event strongly recommended for evidence purposes, even when there would be no explicit legal requirement in this regard.

Employees who are subject to an automatic transfer of employment as a result of a transfer of business in the sense of the national collective bargaining agreement No. 32-bis do not need to consent to their transfer of employment.

Law stated - 8 April 2024

ASSETS

Shared assets

17 How are shared assets and services used by the target company or business typically treated?

Before implementing a corporate reorganisation, any shared assets and services should be identified and an assessment should be made as to the impact the reorganisation may have.

Assets exclusively owned, as well as services exclusively rendered within a corporate group, typically do not result in specific challenges in light of a corporate reorganisation as internal agreements for assets or services are usually drafted in such a way as to allow flexible corporate reorganisations without significant formalities. Any such agreements should, however, be reviewed to determine whether any amendments or updates are required because of the reorganisation, or if any formalities should be executed before implementing the reorganisation.

Where a participating entity holds contracts with third parties on behalf of the group, the terms of the underlying third-party contract must be checked to ensure that the services may continue to be provided following the implementation of the reorganisation.

Any contracts covering shared assets and services should also be reviewed from a tax and transfer pricing perspective.

Law stated - 8 April 2024

Transferring assets

18 Are there any restrictions on transferring assets to related companies? If not, are there measures that can be taken to allow such a transfer?

Intra-group transactions are in principle allowed under Belgian law. The main condition is that the intra-group transfer of assets takes place at arm's length. In the same sense, financial support by one group entity to another is in principle allowed but subject to a number of conditions developed by case law: (1) the financial support must be proportionate to the financial capacity of the supporting company; and (2) the supporting company must enjoy a proportionate benefit by granting the financial support. Specific rules for intra-group transfers are foreseen by Belgian company law in relation to listed companies.

Law stated - 8 April 2024

19 Can assets be transferred for less than their market value?

From a tax perspective, it is advisable to transfer assets at their fair market value. Indeed, the transfer of assets at a value that is inferior to their market value may generate adverse tax consequences for the transferor and the transferee. That said, this transfer may be defendable before the tax authorities, depending on the concrete circumstances. A case-by-case analysis is therefore always recommended. There are several valuation methods that are generally accepted by the market and by the tax authorities. These methods may differ depending on the kind of assets to be valued.

Law stated - 8 April 2024

FORMALITIES

Date of reorganisation

20 | Can a corporate reorganisation be backdated or deemed to have already taken place, for example, from the start of the financial year?

Backdating legal effects is not authorised under Belgian law. However, certain corporate restructurings, such as mergers and (partial) demergers, are typically performed with a retroactive effect from an accounting perspective. This means that the restructuring will be deemed to have taken place on an anterior date in the accounts of the relevant entities. That date will generally be the date of the financial statements that are used for the restructuring.

This retroactivity is, in principle, not accepted for income tax purposes. Still, in practice the tax authorities will accept the retroactivity of the restructuring provided that the retroactivity clause does not go back more than seven months and that it does not hamper the proper application of the tax provisions. There have been cases where an accounting retroactivity in excess of seven months was accepted in light of the specific circumstances of the restructuring.

Law stated - 8 April 2024

Documentation

21 | What documentation is required or advisable in a corporate reorganisation?

The documentation that is required depends on the type of corporate reorganisation.

In general, corporate reorganisations require (besides the actual agreements) the drafting of minutes of the meetings of the executive body of the involved entities regarding approval of the transaction and the agreements.

Moreover, for the sale of the assets and liabilities under the continuity regime, the necessary corporate approvals as set out in the Belgian Companies and Associations Code will also need to be obtained (eg, approval by the board of directors of the private sales proposal and approval by the shareholders' meeting of the sale).

As for (de)mergers, the necessary documentation is specified in the Belgian Companies and Associations Code and includes, among others, special reporting of the executive bodies of the involved entities, special reporting of the statutory auditor and intermediary statement of assets and liabilities not older than three months, if the last annual accounts predate the (de)merger proposal by more than six months.

It may be advised for some documentation of the restructuring to clearly contain the specific (business) motives of the companies for performing certain operations to safeguard the tax neutrality of the reorganisation.

In the event of a transfer of business in the sense of national collective bargaining agreement No. 32-bis, the employees affected by the reorganisation must, before the completion of the transfer, receive a written transfer letter containing legally prescribed information with regard to the reorganisation. Specific written notifications and documents must be issued and signed in the event of a collective dismissal or a plant closure, or both.

Law stated - 8 April 2024

Representations, warranties and indemnities

22 Should representations, warranties or indemnities be given by the parties in a corporate reorganisation? If so, which are most common?

Parties in a corporate reorganisation are free to determine the scope of any representations, warranties or indemnities. The exact scope depends, to a large extent, on the type of corporate reorganisation and the relevant sector or industry in which the relevant parties are active.

It is, however, not common practice for the parties to an internal corporate reorganisation to include extensive representations and warranties in reorganisation documentation. Indeed, transfers are often made with very limited warranties covering, for example, capacity of the parties, internal corporate authorisations and title to shares or assets.

This may, under specific circumstances, be different in scenarios where the reorganisation measure is implemented as part of a presale structuring process.

Law stated - 8 April 2024

Assets versus going concern

23 Does it make any difference whether assets or a business as a going concern are transferred?

Under general civil law, for each asset transferred belonging to the business, there must be verification that all asset-specific requirements are being complied with. Some of these requirements can be avoided by opting for a specific procedure in Belgian company law, which allows a branch of activities or a universality of goods to be transferred under the continuity regime (merger-like procedure).

Moreover, the transfer of assets is as a general rule subject to VAT. Such transfer will, however, not be subject to VAT if these assets constitute a going concern in the sense of the VAT Code and the following conditions are met:

- both parties to the transaction are VAT registered;
- the purchaser can autonomously continue a business with the transferred assets; and
- the purchaser would have been able to deduct (part of) the VAT charged by the seller if the transfer had been subject to VAT.

The notion of going concern may also be crucial in the event the assets encompass real estate. The transfer of real estate generally triggers a registration duty of 12.5 per cent (12 per cent in the Flanders region). That duty may not be due if the assets are transferred as a branch of activity by means of certain restructuring operations that meet certain conditions.

Law stated - 8 April 2024

Types of entity

24 Explain the key differences between public, private, government or non-profit entities to consider when undertaking a corporate reorganisation.

Corporate law, in principle, does not differentiate between publicly and privately held companies in a reorganisation. Publicly held companies should, however, when performing a reorganisation, take into account all laws, regulations and requirements that apply only to publicly held companies (eg, disclosure and stock exchange requirements). Additionally, the decision-making process in publicly held companies is more burdensome than that in privately held companies.

With the introduction of the new Code of Companies and Associations, a number of new legal restructuring options have been foreseen that can now also be used in the restructuring of non-profit organisations.

With regard to government entities, these are regulated by additional laws that do not apply to companies, so any reorganisation project would also require an examination of such laws.

Law stated - 8 April 2024

Post-reorganisation steps

25 Do any filings or other post-reorganisation steps need to be taken after the corporate reorganisation?

From a corporate perspective, the following post-reorganisation steps could be applicable, depending on the nature of the transaction:

- update of the share register;

- issuance of share certificates;
- publication of the transaction in the annexes to the Belgian State Gazette;
- amendment of the registration with the Crossroads Bank for Enterprises and the VAT authorities;
- filing of asset purchase agreements and certificates with (in)direct tax and social security authorities;
- filing of a notarial certificate to release blocked funds; and
- update of the ultimate beneficial ownership register.

Law stated - 8 April 2024

UPDATE AND TRENDS

Hot topics

26 What are your predictions for next year and how will these impact corporate reorganisations in your jurisdiction (for example, expected trends or pending legislation)?

On 16 June 2023, the Belgian Law transposing the Mobility Directive entered into force. The Mobility Directive is a European directive with an aim to facilitate cross-border reorganisations, such as cross-border mergers, divisions and conversions. As a result of the transposition, a more uniform and harmonised European framework has been created with the intention to simplify administrative requirements and facilitate smoother transitions for companies expanding their operations across borders.

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This chapter was first published in 2024. Be aware that some content may no longer apply.

Law stated - 8 April 2024

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Summary

LEGAL AND REGULATORY FRAMEWORK

Types of transaction

1 What types of transactions are classified as 'corporate reorganisations' in your jurisdiction?

Egyptian law does not define, per se, the term 'corporate reorganisation' in relation to solvent companies, as such companies do not necessarily suffer financial difficulties that justify their reorganisation.

However, corporate reorganisation typically indicates substantial changes to a company's structure.

Certain legal actions may be deemed an act of corporate reorganisation in accordance with the provisions of the Egyptian Companies Law No. 159 of 1981 (the Companies Law) and its Executive Regulation, including, inter alia, the following legal actions:

- the increase or decrease of authorised capital;
- the amendment of rights, privileges or restrictions in relation to types of shares or quotas;
- the amendment of a company's purpose, its shareholding structure, its board of directors' composition or its legal form;
- spin-offs and split-offs within the same group of companies related to the same parent company;
- mergers within the same group of related companies;
- the acquisition of assets; and
- the transfer of assets between related companies; and.
- Changing the company's legal form (eg, from a joint stock company to a limited liability company).

Furthermore, as per the Executive Regulation of Capital Market Law No. 95 of 1992 (the CM Law), certain legal transactions may be deemed as corporate reorganisations in accordance with the CM Law. This may require notification and/or approval of the Financial Regulatory Authority (FRA) and its approval thereof, including, inter alia:

- acquisition of company shares or voting rights through open market operations, not exceeding one-third of the voting rights or capital;
- acquisition of company shares or voting rights through open market operations by non-employees or members of the board of directors;
- capital restructuring among related companies or a group of related companies; and
- cases of purchase of treasury shares, reduction of capital by execution of treasury shares or distribution of treasury shares as bonus shares.

Law stated - 27 February 2025

Rate of reorganisations

2 Has the number of corporate reorganisations in your jurisdiction increased or decreased this year compared with previous years? If so, what are the key drivers for such change in the number?

In Egypt, there are currently no publicly available official reports reflecting the actual volume of legal transactions deemed as corporate reorganisations. In practice, companies in Egypt may consider corporate reorganisations to avoid certain legal obligations or restrictions (eg, avoiding higher taxation rates), and to comply with new laws and regulations issued regulating certain sector (eg, technological, industrial, commercial or trading). However, there has been a recent increase regarding the acquisition or sale of assets, stemming from the financial challenges of the new economic landscape, due to the rise of disruptive global events such as the rising tensions in the Middle East whereby affected companies may be forced to consider corporate reorganisation.

Law stated - 27 February 2025

Jurisdiction-specific drivers

3 Are there any jurisdiction-specific drivers for undertaking a corporate reorganisation?

There are certain legislative restrictions regarding foreign nationals investing in: (1) certain sectors in Egypt, including commercial agency, real estate brokerage and importation for the purpose of trade; and (2) geographical zones, such as investing in the region of the Sinai Peninsula.

Many companies may be eligible to benefit from the exceptions provided by the Executive Regulation of the CM Law, as amended by Ministerial Decree No. 3045 of 2023, from the submission of a mandatory public tender offer to the FRA, in the event that a company acquires whether directly or indirectly, by itself or through its related parties, more than one-third of the capital in a target company. The CM Law Executive Regulation provides many exceptions that may be deemed as corporate reorganisations including, inter alia:

- the implementation of mergers between related parties;
- capital restructuring among related persons or a group of related companies;
- cases of purchase of treasury shares, reduction of capital by execution of treasury shares or distribution of treasury shares as bonus shares;
- in the event of a capital increase, if it is not the result of purchasing subscription rights during the process of the capital increase;
- cases that result in the ownership by a person alone or with their related persons of part or all of the shares or voting rights owned by a major shareholder alone or with their related persons in accordance with economic considerations or necessities approved by the Council of Ministers, up to a maximum of 50 per cent of the shares or voting rights of the company; and
- a capital increase resulting from a debt-to-equity swap.

Furthermore, companies may revert to corporate reorganisation to avoid tax implications, since Income Tax Law No. 91 of 2005 (the Income Tax Law) stipulates that distributed dividends by Egyptian companies to their resident or non-resident shareholders, except for distributions made in the form of bonus shares, shall be subject to a taxable rate of 10 per cent (withholding tax rate).

Accordingly, corporate reorganisation may be initiated by a group of related companies to avoid payment of the withholding tax rate in each level of a group of companies' structure.

Law stated - 27 February 2025

Structure

4 | How are corporate reorganisations typically structured in your jurisdiction?

The structuring plan of a corporate reorganisation depends on the chosen method of corporate reorganisation, whether it is a transfer of assets (shares or quotas, or both), merger, acquisition or amendment of the legal status of an entity.

In general, corporate reorganisations are approved by the concerned companies' General Assembly meetings, then certified by the General Authority for Investment and Free Zones (GAFI).

Furthermore, Egyptian Antitrust Law No. 3 of 2005, as amended by Law No. 175 of 2022, has exempted corporate reorganisations such as mergers and acquisitions between related companies from the pre-notification of the Egyptian Competition Authority (ECA) unless the reorganisation process results – directly or indirectly – in a change in control or material influence.

Law stated - 27 February 2025

Laws and regulations

5 | What are the key laws and regulations to consider when undertaking a corporate reorganisation?

Key laws and regulations to consider when undertaking a corporate reorganisation include, inter alia, the following:

- Companies Law No. 159 of 1981 and its Executive Regulation;
- Capital Market Law No. 95 of 1992 and its Executive Regulation;
- Income Tax Law No. 91 of 2005 and its Executive Regulation;
- Egyptian Antitrust Law No. 3 of 2005 (the Antitrust Law);
- Financial Regulatory Authority Resolution No. 11 of 2014 on the rules of Listing and Delisting of Securities on the Egyptian Stock Exchange (EGX);
- Investment Law No. 72 of 2017 (the Investment Law) and its Executive Regulation;

- Ministerial Decree No. 547 of 2018 on Egyptian Transfer Pricing Guidelines (the Transfer Pricing Decree); and
- Unified Tax Procedures Law No. 206 of 2020 (the Tax Procedures Law) and its Executive Regulation.

Law stated - 27 February 2025

National authorities

6 What are the key national authorities to be conscious of when undertaking a corporate reorganisation and what role does each authority play?

Various national governmental authorities should be contacted for approvals, certification or inspections during every step of the process of corporate reorganisation.

Procedures to be carried out and documents required for submission in the event of a corporate reorganisation differ depending on the special requirements of each chosen corporate reorganisation method, by which the operation shall be achieved based on the speciality of each corporate reorganisation, taking into account the tax implications.

However, there are key national authorities to be taken into consideration when undertaking most corporate reorganisations:

- the GAFI;
- the FRA;
- the Misr for Central Clearing, Depository and Registry;
- the EGX;
- the ECA;
- the Egyptian Tax Authority;
- General Organisation for Export and Import Control; and
- Commercial Registrar.

Law stated - 27 February 2025

KEY ISSUES

Preparation

7 What measures should be taken to best prepare for a corporate reorganisation?

To ensure the best outcomes while carrying out corporate reorganisation procedures, regardless of the chosen type of corporate reorganisation, a full legal, financial and tax due diligence should be conducted to ensure a better position for the company and to anticipate all possible risks that may arise from the corporate reorganisation.

In practice, an initial action plan should be prepared thoroughly by a legal counsel to include all actions to be taken and their duration, to avoid negative results obstructing the desired reorganisation, while having full knowledge of the laws and regulations in application of such laws. The plan should be validated by a tax consultant regarding the efficiency and risk probabilities of a corporate reorganisation.

Furthermore, said initial action plan should include the governmental authorities to be notified, the initial required documents and the expected time period during which the prerequisite action shall be carried out. It is important to note that corporate reorganisations require internal declarations of all assets (whether subject to the reorganisation or not) and the legal forms of the entities involved in a corporate reorganisation.

Law stated - 27 February 2025

Key departments and operational issues

8 What departments of the concerned companies are most involved in corporate reorganisations and what are the most challenging operational issues?

The following departments are deemed to be of importance in the process of corporate reorganisations:

- legal department;
- compliance department; and
- finance department.

Law stated - 27 February 2025

Employment issues

9 What are the main issues relating to employees and employment contracts to consider in a corporate reorganisation?

All employment-related matters when undertaking a corporate reorganisation should be treated differently depending on the chosen method of corporate reorganisation. More specifically, a distinction should be made between a merger and an acquisition between related companies, as follows.

- A merger between related companies shall result in the termination of the employment contracts of employees in the merged companies that shall not survive the merger. Therefore, new employment contracts should be drafted for the transferred employees to the new surviving company in a merger, taking into consideration that the old and the new employers (ie, the surviving company in a corporate reorganisation) should be jointly liable in satisfying employees' rights and benefits that were accrued prior to the merging or restructuring of the business, as well as all the obligations arising from the new employment contracts, which may include (1) the seniority benefits attributable to senior employees under the merging companies and (2) the social insurance and pensions benefits not to be interrupted.

- An acquisition between related companies should not result in the termination of employment contracts of employees under the company subject to the acquisition. However, companies facing financial difficulties have the right to completely or partially shut down the entity or reduce its size by terminating the employment contracts of a number of its employees if (1) a downsizing request is submitted to the competent authority for approval and (2) the competent syndication and the employees are notified of both the downsizing request and approval, once issued in accordance with the Labour Law. Accordingly, the dismissed employee or employees are entitled to an indemnity equivalent to one month of their salary for the first five years and equivalent to one and a half months of their salary for the remaining period.
- In the event that the downsizing request is rejected by the competent authority, a company may still choose to terminate the employment contracts, which shall be deemed as an arbitral dismissal, and from which shall arise a right of indemnification as per the provisions of the Labour Law, taking into consideration the seniority of each employee and their financial benefits as stipulated in their individual employment contracts.

Law stated - 27 February 2025

10 | What are the main issues relating to pensions and other benefits to consider in a corporate reorganisation?

With regard to a merger between related companies, new employment contracts may be drafted for the transferred employees to the new surviving company in a merger, taking into consideration (1) seniority benefits such as annual leave, financial entitlements and the conditions of terminating the employment contract and (2) the pensions benefit under the social insurance.

Law stated - 27 February 2025

Financial assistance

11 | Is financial assistance prohibited or restricted in your jurisdiction?

The provision of financial assistance by a private company to fund the acquisition of shares in another company and, in particular, a subsidiary company is not a restricted practice under Egyptian law, and is commonly concluded by virtue of a shareholders' loan agreement or current account.

Furthermore, in accordance with the Executive Regulation of the Companies Law, a company may acquire its treasury shares in one of the following cases:

- in the event of capital reduction;

- if the acquisition is for the purpose of implementing a system of rewarding or motivating employees or managers; and
- if a company's articles of association or articles of incorporation require the company's approval for the transfer of ownership of shares and the company does not grant said approval and acquires these shares.

Law stated - 27 February 2025

Common problems

12 What are the most commonly overlooked issues or frequently asked questions in a corporate reorganisation?

In practice, there are common issues considered by a company involved in the process of corporate reorganisation:

- the tax implications of a corporate reorganisation, such as the transfer pricing in the event of transactions made between related companies (eg, the acquisition of cross-border securities);
- the debt-to-equity swap, with a possibility of providing additional rights and management control to one shareholder by virtue of equity;
- the transfer or termination of employees and their indemnification thereto, whereas the old and new employers (surviving company) shall be jointly liable in satisfying employees' rights that were accrued before the transfer or restructuring of the business as well as all the obligations arising from the transferred employment contracts;
- the assets and business evaluation by the Economic Performance Sector of the General Authority for Investment and Free Zones prior to any corporate reorganisation, for which approval shall be required to undertake the corporate reorganisation; and
- the total cost of a corporate reorganisation, which should be necessarily expected as per the tax consultant's report and advice.

Law stated - 27 February 2025

ACCOUNTING AND TAX

Accounting and valuation

13 How will the corporate reorganisation be treated from an accounting perspective? How are target assets and businesses valued?

In a corporate reorganisation, all assets or businesses under consideration are required to be valued by the Economic Performance Sector of the General Authority for Investment and Free Zones.

In the event where a listed company wishes to sell or purchase shares exceeding 10 per cent of the equity of the listed company, an independent financial adviser registered with the Financial Regulatory Authority, shall issue a fair value study in this regard.

Essentially, all corporate reorganisation methods require the company auditor to be involved in a corporate reorganisation to diligently and efficiently prepare all documents to be requested by authorities from an accounting perspective, as per the Egyptian Accounting Standards, issued by virtue of Decision of the Central Auditing Organisation No. 732 of 2020, including bank transfer statements (of the movement resulting from loan agreements between related parties, of related cash deposits, of company distributed and non-distributed profits and of recent approved capital increase or decrease) and the audited financial statements related to a financial year or several financial years.

Law stated - 27 February 2025

Tax issues

14 What tax issues need to be considered? What are the tax implications of carrying out a corporate reorganisation?

As a general rule, the tax implication varies depending on the chosen corporate reorganisation, the implications of which shall be necessarily covered or anticipated by the company's tax consultants, prior to initiating the corporate reorganisation procedures.

Moreover, under the Income Tax Law, if related companies place conditions in their commercial or financial transactions that differ from those between unrelated companies, which shall reduce the tax base or transfer its burden from one taxable company to another exempt or non-taxable company, the Egyptian Tax Authority shall determine the taxable profit on the basis of the neutral price.

Therefore, the Transfer Pricing Decree was adopted in 2018 to provide new tax guidelines when a cross-border transaction between related companies is to be concluded, triggering the submission of specific documents by the concerned companies. According to the Executive Regulation of the Income Tax Law, the neutral price may be determined by virtue of one of the following methods:

- the comparative free price method;
- the total cost added to the profit margin method;
- the resale price method;
- the profit distribution method; or
- the net transaction profit margin.

Aside from the above, the Income Tax Law also stipulates that the capital gains resulting from revaluation shall be taxed in the event of a change in the legal form of a company, including, inter alia, a merger of two related companies, dividing a resident company into two or more resident companies, changing the legal form of a limited liability company to a joint-stock company or vice versa. In this regard, the concerned company may postpone its taxation if the assets and liabilities are recognised at their book value on the date of the change of legal form for the purposes of calculating tax, and if the depreciation of the assets and the carryover of provisions and reserves are calculated in accordance with the rules established before such change.

Law stated - 27 February 2025

CONSENT AND APPROVALS

External consent and approvals

15 What external consent and approvals will be required for the corporate reorganisation?

Depending on the chosen method of corporate reorganisation, the following external approvals or consents, or both, may be required:

- the General Authority for Investment and Free Zones' certification and approval of related company resolutions in relation to the corporate reorganisation;
- the Financial Regulatory Authority's approval on the exemption from providing a mandatory public tender offer in the case of a corporate restructuring between related companies, if applicable;
- Misr for Central Clearing, Depository and Registry approval on the transfer of shares;
- the Egyptian Stock Exchange declarations and final approval for the execution of the transfer of shares in a joint-stock company, if applicable; and
- In the event of a pledge, the right to sell the pledged securities and financial instruments shall be subject to the bank or financial institution's approval.

Law stated - 27 February 2025

Internal consent and approvals

16 What internal corporate consent and approvals will be required for the corporate reorganisation?

As a general rule, corporate reorganisation shall be approved by the shareholders of the concerned company by virtue of a General Assembly meeting.

Moreover, in the event of capital increase, a pre-emptive right of the old shareholders in subscribing to the shares of the capital increase with nominal cash shares can be mandatory.

Aside from the above, the concerned companies' articles of incorporation may stipulate additional required internal corporate consents and approvals.

Law stated - 27 February 2025

ASSETS

Shared assets

17 How are shared assets and services used by the target company or business typically treated?

All shared assets and services by a company involved in a corporate reorganisation shall be necessarily subject to the prior evaluation of the whole business in the event of a corporate reorganisation, which is to be concluded by the Economic Performance Sector of the General Authority for Investment and Free Zones. Therefore, it is worth noting that the shared assets and services shall be taken into consideration during the planning process of the reorganisation by the tax experts, legal counsels and auditors to determine their viability.

Egyptian civil law provides that a company involved in a corporate reorganisation, and in particular a merger, may demand the division of shared assets. The agreement governing the shared assets may not prohibit the division for a period exceeding five years. If the term does not exceed said period, the agreement shall be executed in the right of the partner and successor.

Law stated - 27 February 2025

Transferring assets

18 Are there any restrictions on transferring assets to related companies? If not, are there measures that can be taken to allow such a transfer?

There are restrictions on commercial transactions made by and between related companies if related companies implement conditions in their commercial or financial transactions that differ from those between unrelated companies, with an objective to reduce the tax base or transfer its burden from one taxable company to another exempt or non-taxable company. Therefore, the Egyptian Tax Authority (ETA) shall be entitled to determine the taxable profit based on the neutral price of the relevant transaction, which shall be deemed as transfer pricing of transactions concluded between related companies under common ownership or control.

The ETA shall verify the proper application of the fair market value by related persons in their transactions with respect to the exchange of goods, services, raw materials, capital equipment, the distribution of shared expenses, royalty returns and other commercial or financial transactions that are carried out.

The Transfer Pricing Decree No.78 of 2023 issued by the ETA provides that the transfer pricing guidelines shall be the main reference when testing the application of the arm's-length principle in relation to the commercial and financial transactions between related parties. The guidelines shall be applicable to all related companies' transactions.

Law stated - 27 February 2025

19 | Can assets be transferred for less than their market value?

As a general rule, the valuation of assets depends primarily on two main elements, which are: (1) the fair market value to be determined by the auditor at the planning process of a corporate reorganisation; and (2) the outcome of the due diligence carried out by the financial and legal experts in the event of valuation of a business as a whole involved in a corporate reorganisation.

Specifically, Financial Regulatory Authority (FRA) Resolution No. 11 of 2014 on the rules of Listing and Delisting of Securities on the Egyptian Stock Exchange (EGX) as amended by Resolution No. 46 of 2025 provides that a listed company intending to purchase or sell shares of an unlisted company, any real estate, or other fixed assets whose value represents 10 per cent or more of the equity of the listed company in the unlisted company, is required to submit a study to the EGX at the fair market value of the assets or shares subject to the acquisition, prepared by an FRA– registered independent financial adviser. In the case of sale of assets, the evaluation of the assets shall be made by an independent financial adviser, real estate appraiser, machinery and equipment appraiser, as the case may be.

In addition, listed companies are entitled to acquire shares of unlisted companies if their fair market value is equal to or exceeds 100 per cent of the fair market value of the listed company on the effective date of acquisition.

Law stated - 27 February 2025

FORMALITIES

Date of reorganisation

20 | Can a corporate reorganisation be backdated or deemed to have already taken place, for example, from the start of the financial year?

Under Egyptian law, a corporate reorganisation may not be backdated or have taken place retroactively, as its procedures shall start on the effective date of the first action taken for the submission of any documentation and may not differ from its actual execution date. In addition, certain competent authorities may consider any act related to a backdated corporate reorganisation as an act of intentional fraud or providing misleading information, which may result in the payment of fines or the non-implementation of the corporate reorganisation, or both.

Law stated - 27 February 2025

Documentation

21 | What documentation is required or advisable in a corporate reorganisation?

As a general rule, it has been established that the documentation required in a corporate reorganisation varies based on the purpose of the reorganisation and the type of reorganisation chosen to fulfil its desired outcomes and intended purposes. Therefore, the documents required shall be fundamentally distinguished on the basis of (1) the intended purpose, (2) the desired outcomes, (3) the approvals and permits to be obtained and (4) the governmental authorities to be informed, taking into account that even though the same authority may be notified for completion and to satisfy different methods of corporate reorganisation, the same authority may request the submission of different documents or data, or both.

However, it is worth noting that the following documents are commonly requested in all corporate reorganisations, by most of the governmental authorities and their internal committees responsible for providing approval:

- the company's articles of association or articles of incorporation and its subsequent certified amendments;
- the company's commercial register;
- the company's financial statements for the financial years based upon which the corporate reorganisation shall be made, with the company auditor's reports attached to it; and
- all related agreements upon which the corporate reorganisation is based.

Law stated - 27 February 2025

Representations, warranties and indemnities

22 Should representations, warranties or indemnities be given by the parties in a corporate reorganisation? If so, which are most common?

Corporate reorganisations are mainly concluded between related companies or a group of related companies and their subsidiaries across multiple levels. Therefore, the parties involved in a corporate reorganisation shall not be legally required to give representation, warranties or indemnities. However, these may be presented and provided as an option, depending on internal discussions at high levels of senior management.

Law stated - 27 February 2025

Assets versus going concern

23 Does it make any difference whether assets or a business as a going concern are transferred?

If assets are the subject of a transfer between related companies in a corporate reorganisation, it shall be deemed as an asset deal whereby the related companies shall continue to exist and operate fully and independently, and such transfer shall require very few procedures and approvals.

In particular, the purchase of securities in a company shall require approvals, such as Misr for Central Clearing, Depository and Registry approval, Egyptian Stock Exchange declaration and approval, and Financial Regulatory Authority approval if applicable, and shareholders' approval by virtue of a General Assembly Meeting.

Assets that may be subject to a sale or purchase deal may include, inter alia:

- equipment;
- machinery;
- securities;
- intellectual property;
- real estate; and
- services.

If a business is the subject of a transfer between related companies in a corporate reorganisation deemed as a corporate deal, a company shall transfer its whole business.

Therefore, it constitutes a transfer of all assets and liabilities of a company entailing the transfer of licences, capital, assets, real estate, intellectual property, machinery, equipment and liabilities. Accordingly, a company shall be transferred in its integrity to another related company through (1) a merger (the merged company shall be dissolved and transferred in whole to the surviving company), or (2) shall be acquired by another related company through an acquisition by a related company. The planning process includes a number of different procedures for the transfer of the whole business and its licences thereof with a higher cost than the transfer of an asset.

The distinction between transfer of assets and transfer business shall be reflected in the tax implications as per the Income Tax Law, the amount of procedures to be achieved through multiple competent authorities and the satisfaction of approvals requirements.

Law stated - 27 February 2025

Types of entity

24 Explain the key differences between public, private, government or non-profit entities to consider when undertaking a corporate reorganisation.

All private entities are governed by a specific set of rules and provisions, in particular in accordance with the Companies Law or the Investment Law, whereas the General Authority for Investment and Free Zones is the main governmental authority charged with all corporate governance requirements of such private companies, including, inter alia, corporate reorganisations and their approvals.

Public entities (ie, governmental authorities, public sector companies owned wholly or partially by the state or one of its authorities) are governed by Public Sector Companies Law No. 203 of 1991 (the Public Sector Law) and its Executive Regulation. Holding companies may be divided and merged by virtue of a decision issued by the prime minister, based on the proposal of the competent minister, and their subsidiaries may be divided and merged by a decision of the board of directors of the company or holding companies and the general assemblies of merged, merging or divided companies, as the case may be. In addition to the Public Sector Law, the provisions of the Companies Law regarding mergers applies to merger cases for public entities.

Non-profit entities are subject to the provisions of Civil Work Law No. 149 of 2019 and its Executive Regulation, which stipulates that all corporate reorganisation requests shall be presented to the ministry concerned with the affairs of associations and civil work, the fund to support the projects of associations and civil institutions, the Central Unit for Associations and Civil Work and its sub-units.

Law stated - 27 February 2025

Post-reorganisation steps

25 Do any filings or other post-reorganisation steps need to be taken after the corporate reorganisation?

Generally, the involvement and the notification of governmental authorities is required to be made prior to and during the corporate reorganisation, to satisfy the necessary approvals and requirements of the corporate reorganisation.

However, Egyptian Antitrust Law No. 3 of 2005, as amended by Law No. 175 of 2022, has exempted corporate reorganisations such as mergers and acquisitions between related companies from the pre-notification of the Egyptian Competition Authority unless the reorganisation process results – directly or indirectly – in a change in the control or material influence.

Furthermore, certain reorganisations require post-reorganisation procedures. More specifically, in the event where a joint stock company is increasing its authorised capital and issuing new shares, the company shall be required to reflect its newly issued shares in the Misr for Central Clearing, Depository and Registry.

Law stated - 27 February 2025

UPDATE AND TRENDS

Hot topics

26 What are your predictions for next year and how will these impact corporate reorganisations in your jurisdiction (for example, expected trends or pending legislation)?

New Laws and resolutions have been issued recently that are relevant to the reorganisation of companies that include, inter alia:

- A new Law No. 6 of 2025 with regard to providing tax incentives for companies generating a turnover not exceeding E£20 million. However, these incentives shall not be applicable with regards to companies intending to falsely fall under the umbrella of this law (eg, dividing the existing activity with no economic justification to reflect its reduced annual turnover) with the sole purpose of profiting from these incentives.

- The Financial Regulatory Authority (FRA) has adopted a new resolution, No. 46 of 2025, which amends the listing rules issued by Resolution No.11 of 2014. The New Resolution has brought amendments to FRA Resolution No.11 of 2014 provisions relating to:
    - the voluntary delisting of shares on the Egyptian Stock Exchange (EGX);
    - Stock option plans for members of the board of directors and employees of companies listed on the EGX;
    - listing and trading conditions for special purpose acquisition companies;
    - conditions for the sale of assets of a listed company and the purchase of assets by a listed company; and
    - conditions for the adjustment of nominal value of shares of listed companies.

Law stated - 27 February 2025

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Summary

LEGAL AND REGULATORY FRAMEWORK

Types of transaction

1 What types of transactions are classified as 'corporate reorganisations' in your jurisdiction?

Greek law does not provide a legal definition of the term 'corporate reorganisation' and any attempts by legal professionals to provide such a definition tend to focus either on the result or the process followed and the actions undertaken by the companies involved in the relevant transaction. However, it is generally accepted that a corporate reorganisation may encompass various types of transactions occurring within the same corporate group, in particular:

- a merger;
- a demerger (including a spin-off); and
- a transfer of shares, whole businesses or particular assets, either through a sale or via contribution in kind to the share capital of another company within the same group.

The particular type of corporate reorganisation to be followed depends on the circumstances of each case. The most common drivers are: (1) the need for structural simplification of the corporate group; (2) the improvement of operational efficiency; and (3) the internal preparation for a future M&A transaction.

The above apply to corporate reorganisations taking place both on a national as well as on a cross-border basis.

Law stated - 27 February 2025

Rate of reorganisations

2 Has the number of corporate reorganisations in your jurisdiction increased or decreased this year compared with previous years? If so, what are the key drivers for such change in the number?

There is limited available information on intra-group reorganisations in Greece. Notwithstanding the lack of data, the clear tendency is for corporate reorganisations to be interlinked with any newly introduced tax, corporate and labour legislation, as well as with the volume of the general M&A activity on a national and international level. It is particularly observed that the granting of tax incentives and the simplification of the corporate processes in conjunction with digital transformation lead to an increased number of corporate reorganisations completed within a short period of time.

Furthermore, in periods of financial uncertainty or business disruptive circumstances (eg, pandemics and political instability), a corporate reorganisation offers the opportunity to improve the capital structure of a company and to optimise the operation activities of the business through the reduction of costs and mitigation of risks. Such reorganisations are implemented especially within multinational corporate groups where flexibility and efficiency are constantly considered due to the global nature of their activities and the need to monitor and safeguard the group interests across multiple jurisdictions.

Law stated - 27 February 2025

Jurisdiction-specific drivers

3 | Are there any jurisdiction-specific drivers for undertaking a corporate reorganisation?

One of the main drivers for corporate reorganisations is the various existing tax incentives currently set forth in the recently passed Law 5162/2024, as well as Law 4935/2022.

Moreover, the implementation of Law 4601/2019 achieved the consolidation of the Greek legal framework on corporate transformations (mergers, demergers and conversions) for all types of companies. The process for corporate transformations under Law 4601/2019 is relatively straightforward and simplified while considering the interests of the shareholders and the creditors, and maintaining any tax incentives provided by the applicable tax legislation.

An additional and important advantage under Law 4601/2019 is that the transfer of the assets of the entities takes place automatically by operation of law through universal succession, therefore avoiding the burdensome and long process of transferring each asset separately (with the exception of certain assets whose transfer requires specific formalities, such as real estate).

Furthermore, pursuant to Law 5055/2023, the Greek legal framework on cross-border transformations was amended through the transposition of Directive (EU) 2019/2121 and the repeal of previously applicable regime of Law 3777/2009. Pursuant to this legislative initiative, the applicable legal framework was updated in line with EU standards, thereby facilitating the implementation of cross-border mergers and demergers involving Greek companies.

Law stated - 27 February 2025

Structure

4 | How are corporate reorganisations typically structured in your jurisdiction?

The structure of a corporate reorganisation is normally determined on a case-by-case basis and by taking into account the purpose of the reorganisation, the particular circumstances and the purposed timing for its completion. Especially within large corporate groups, mergers are the most common route towards the simplification of the group structure and the creation of more resilient and robust corporate entities. Another element to be considered when selecting the most efficient structure of the reorganisation is compliance with any legal barriers as well as restrictions imposed by the articles of association or material contracts with business partners and creditors. Specifically, prior consents of other shareholders or third parties and processes included in the articles of association are factors that will determine the optimum structure.

Law stated - 27 February 2025

Laws and regulations

5 What are the key laws and regulations to consider when undertaking a corporate reorganisation?

The legal framework for the structuring of a corporate reorganisation is set out in the following Greek laws:

- the Greek Civil Code;
- Law 4548/2018 on Sociétés Anonymes;
- Law 4072/2012 on General Partnerships, Limited Partnerships and Private Companies;
- Law 3190/1955 on Limited Liability Companies;
- Law 4601/2019 on Corporate Transformations, regulating the process of a corporate transformation through a merger, demerger (common demerger and spin-off, either through partial demerger or hive-down) and conversion of an entity to another company type;
- Law 5162/2024 and Law 4935/2022 providing tax incentives for corporate transformations; and
- article 16 of Law 2515/1997 on corporate transformations of credit institutions and other financial institutions.

Law stated - 27 February 2025

National authorities

6 What are the key national authorities to be conscious of when undertaking a corporate reorganisation and what role does each authority play?

The Greek national authorities and regulatory bodies involved during the implementation of a corporate reorganisation depend on the structure of the reorganisation and the business sector of the companies under reorganisation.

The main regulatory bodies involved in Greek corporate reorganisations are:

- the General Commercial Registry, where all commercial legal entities are registered and corporate filings are made to meet any publicity requirements;
- the Ministry of Development, which is responsible for the supervision of the corporate and statutory functions of listed and other regulated companies;
-

the Hellenic Capital Market Commission, which is responsible for the supervision of listed entities;
- the Bank of Greece, which is responsible for the supervision of the regulatory compliance of banking, insurance and other financial institutions; and
- the tax authorities, which are responsible for the assessment of the application of any tax incentives law in connection with the reorganisation.

In the case of companies operating in regulated markets (such as energy, mass media or gaming) additional regulatory bodies (such as the Regulatory Authority for Energy, Waste & Water, the National Council for Radio and Television or the Gaming Commission) may need to be notified or provide their approval for the reorganisation.

Law stated - 27 February 2025

KEY ISSUES

Preparation

7 | What measures should be taken to best prepare for a corporate reorganisation?

The action that should be conducted from the beginning is the drafting of a detailed step plan. This will include the actions and the necessary corporate documentation to be prepared as well as any required filings. It is critical to engage the various stakeholders and professional advisors (technical, tax and legal) from the outset and request their input for the drafting of the step plan. Through such collaboration, the companies will be able to ensure that there is no material aspect that has been overlooked and may subsequently create difficulties or delays to the implementation of the reorganisation. Consultation with the relevant regulatory bodies may also be sought to confirm that the timing set in the step plan is feasible.

In intra-group transactions, the due diligence process is usually focused on identifying any issues or restrictions included in the statutory documents and the agreements with business partners and creditors. It is not uncommon for commercial agreements with either customers or suppliers to include provisions requiring the consent of (or notification to) the counterparty before proceeding to corporate reorganisations of any type. Similar restrictions are inserted in the agreements between the companies and their creditors, which require the notification to or even the waiver by the creditor for changes in the shareholding structure of the company or for any planned reorganisation (even an intra-group one).

In addition, the nature of specific assets to be transferred (eg, real estate and trademarks) requires longer preparation and additional formalities that should be brought to the parties' attention from the beginning in order to avoid delays.

During the planning of the corporate reorganisation, labour law and data protection considerations tend to come forward and require consultation and communication with the employees and the data subjects to provide them with a clear view of the proposed transaction and how their position and rights may be affected.

Law stated - 27 February 2025

Key departments and operational issues

8 What departments of the concerned companies are most involved in corporate reorganisations and what are the most challenging operational issues?

Key departments for the design and implementation of corporate reorganisations include accounting/financial, legal, IT and HR . The overarching challenge is to ensure the smooth transfer of the relevant business without any disturbance in its operation. The main issue is that on the completion date of the reorganisation the transfer is in general effected automatically and immediately. Therefore, the recipient entity should have all necessary functions in place ahead of completion, which, in turn, requires the efficient cooperation with the transferring entity.

Law stated - 27 February 2025

Employment issues

9 What are the main issues relating to employees and employment contracts to consider in a corporate reorganisation?

The main legislation in relation to employment law issues arising under a corporate reorganisation are Presidential Decree 178/2002 and Directive 2001/23/EC (Transfer of Undertakings (Protection of Employment)). According to the above legislation, a business transfer is defined as any transfer of a business activity or part of it. The Greek Supreme Court has set the following criteria to determine whether a transfer of business takes place:

- if tangible assets of the business are transferred or not;
- if non-material assets are transferred along with their value;
- whether or not the majority of the employees are taken over by the new employer;
- whether or not clientele are transferred;
- the degree of similarity between the activities carried on before and after the transfer; and
- the duration of any pause of such activities.

In the event of a transfer of a business, certain information and consultation obligations arise. Specifically, both the acquirer and the transferor of the business must inform in writing all affected employees of the intended transfer, the timing and rationale of the transfer, any legal, economic and social implications of the transfer to the employees as well as any measures to be taken by either the acquirer or the transferor in relation to the employees under transfer. In the event that the transferor or the acquirer intends to take measures that may change employees' employment status, they are also obliged to proceed to consultations with the employees' representatives. In practice, the parties consult with the most representative business trade union.

In the event of a transfer of a business, the transfer of the employees and the consequences of such transfer occur automatically, regardless of the will of the parties. The consequences cannot be excluded or modified to the employee's detriment, even by an agreement between the transferor and an employee under transfer. Among other things, the transfer of employees means, essentially, that the acquirer is obliged by law to receive the employees working in the transferred business (which means dedicating at least 50 per cent or more of their time to the business that is being transferred) and employ them under the same terms and conditions, which were agreed with the transferor (either in individual employment agreements or in any collective agreement, including business practices). Such an automatic transfer refers only to employees who provide their services under an employment agreement, for definite or indefinite duration, on a full- or part-time basis, at the time of transfer. Finally, the law provides that the transfer may not constitute a valid reason for dismissals.

Law stated - 27 February 2025

10 | What are the main issues relating to pensions and other benefits to consider in a corporate reorganisation?

Presidential Decree 178/2002 provides that the automatic transfer does not apply to the provisions of a group insurance plan related to any benefit. Thus, all insurance benefits are excluded from the automatic transfer. As a result, the acquirer of the business is entitled to: (1) either accept any existing pension plan under the same terms; (2) accept the continuation of the pension plan under different terms; or (3) refuse to continue the pension plan. In the last case, the pension plan must be liquidated, as far as the employees under transfer are concerned (but potentially only for the non-transferred benefits).

Law stated - 27 February 2025

Financial assistance

11 | Is financial assistance prohibited or restricted in your jurisdiction?

Pursuant to Law 4548/2018, a Greek corporation (SA) may provide loans or guarantees (including securities) to third parties wishing to acquire its own shares subject to the following conditions: (1) the relevant transaction is conducted at fair market conditions; (2) the transaction is approved in advance by the general assembly with an increased quorum and majority, based on the proposal of the board of directors, which is published in the Commercial Registry; and (3) the aggregate financial assistance granted to third parties shall under no circumstances result in the reduction of the equity below a specific threshold. The above requirements apply also in cases of loans or guarantees granted by subsidiaries for the acquisition of the parent company's shares by third parties, as well as by general or limited partnerships, in which the SA is a general partner. Transactions concluded by credit or financial institutions in the ordinary course of business, and transactions effected for the acquisition of shares from or for the personnel of the company or an affiliate, are out of the above rule's scope, save for the requirement to maintain the equity above the specified threshold.

Law stated - 27 February 2025

Common problems

12 What are the most commonly overlooked issues or frequently asked questions in a corporate reorganisation?

An issue that is frequently encountered in market practice arises in cases of corporate reorganisations effected by way of spin-off, which entails the transfer of a sector. Despite the fact that Law 4601/2019 provides a clear definition of what constitutes a 'sector', difficulties occur in practice in the exact identification of the assets that, when considered altogether, constitute a sector capable of operating independently and, therefore, whether a spin-off is an option for the reorganisation. In addition, when the valuation of the assets or company shares being transferred is required under applicable law, tax-related issues often arise. In this instance, a detailed description of the tax implications of each reorganisation structure is prepared by the tax advisors and auditors in order to select the most appropriate and cost-efficient scenario.

Another area that is commonly overlooked is compliance with the data protection and the intellectual property legislation. Specifically, there is often ambiguity when it comes to the actions and notices, as well as the necessary notifications and filings to the competent authorities and the fulfilment of all formalities required for the transfer of each type of asset or data.

In some cases, questions may also arise with regards to the conditions, or any exceptions provided by law for the legitimate conduct of transactions with related parties.

Law stated - 27 February 2025

ACCOUNTING AND TAX

Accounting and valuation

13 How will the corporate reorganisation be treated from an accounting perspective? How are target assets and businesses valued?

The treatment of the corporate reorganisation from an accounting perspective will depend on the specific tax incentives law that will be used.

Law stated - 27 February 2025

Tax issues

14 What tax issues need to be considered? What are the tax implications of carrying out a corporate reorganisation?

A corporate reorganisation can be effected either without the use or using one of the tax incentives laws (Law 4935/2022 or the recently passed Law 5162/2024). The issues to be considered and the tax implications of a corporate reorganisation will depend on the selection of the tax law to be used.

Key issues to consider include:

- carrying forward tax losses;
- transfer of tax-free reserves;
- exemption of real estate transfer tax, stamp duties and other duties;
- tax depreciation;
- treatment of transactions carried out during the interim period until completion of the reorganisation; and
- risk of triggering anti-avoidance provisions.

The recently enacted Law 5162/2024 introduced a new comprehensive framework on tax incentives for corporate transformations replacing tax provisions under four previously concurrent tax laws, namely Law 1297/1972, Law 2166/1993, Law 2578/1998 and Law 4172/2013. The new legislation applies to various corporate transformations, including domestic and cross-border mergers, demergers, conversions and share exchanges. The relevant tax provisions regulate the valuation of assets and shareholdings, the taxation of capital gain, and the depreciation and transfer of losses, reserves and provisions in respect of the recipient company. The law also sets forth the tax implications for contributions from a sole proprietorship or a joint venture to another entity, as well as the tax treatment for Greek shareholders involved in transformations or share exchanges of foreign tax-transparent entities. Furthermore, several tax and procedural incentives are provided in the context of corporate transformations, including tax exemptions and simplified processes on the transfer of real estate properties. The new tax regime is applicable to corporate transformations where the associated draft merger/division deed or corporate resolution for conversion or acquisition of shares is published on or after 5 December 2024. It is also noted that specific tax frameworks remain in effect, namely Law 4935/2022, which continues to provide incentives mainly for transformations involving SMEs, and the special regime under Law 2515/1997 applicable to credit and other financial institutions.

Law stated - 27 February 2025

CONSENT AND APPROVALS

External consent and approvals

15 What external consent and approvals will be required for the corporate reorganisation?

The external notifications, consents and approvals required for a corporate reorganisation are determined by various factors, such as the structuring of the reorganisation, the specific business sector and the agreements in place with third parties. Where the applicable legislation requires a consent by a regulatory body, this should normally be obtained prior to the implementation of the reorganisation. For companies operating in regulated sectors, it is critical to seek all the necessary approvals to ensure the legitimate continuity of operations and maintain the validity of all licences in place following the reorganisation.

Apart from the government bodies, consent by counterparties may be required under the existing contractual arrangements. Agreements with credit institutions, suppliers and customers tend to include provisions pertaining to corporate reorganisations while granting (but not always) some exceptions for intra-group transactions.

Law stated - 27 February 2025

Internal consent and approvals

16 What internal corporate consent and approvals will be required for the corporate reorganisation?

The obligation to acquire an internal consent in view of a corporate reorganisation stems from the applicable legislation, the corporate documents of the companies involved or even the provisions of a shareholder agreement (if third parties hold minority stakes in one of the relevant companies). More specifically:

- Law 4601/2019 and Law 4548/2018 set in detail the corporate actions and decisions necessary to initiate and subsequently implement a corporate reorganisation. The general rule is for the board of directors to authorise certain transactions and prepare the relevant reports and draft deeds since these activities fall within its legal responsibility to determine the management of the company. Following the board of directors' actions and in any case before the reorganisation is legally effected, the approval of the contemplated transaction by the general assembly is required. The process may be significantly simplified in particular cases without the need for shareholder consent, namely, when a subsidiary is absorbed by the parent company holding 100 per cent of the subsidiary's shares.
- The articles of the association and the shareholders books of each company involved in the transaction should always be reviewed to determine the quorum and majority necessary to decide on the particular transaction. The percentages may deviate from the ones specified in the legislation, and decisions on several matters related to the company structure and its way of conducting business may require the prior approval of the company's shareholders.
- Shareholder agreements tend to include provisions regulating the process to be followed in cases where a shareholder intends to transfer all or a portion of its shares in the company to a third party.

Law stated - 27 February 2025

ASSETS

Shared assets

17 | How are shared assets and services used by the target company or business typically treated?

In terms of assets belonging to the group and utilised by the group companies, as well as for services internally provided, no significant challenges are likely to arise. On the other hand, in a scenario where the group has entered into contracts with third parties for the provision of assets and services at a group level, a review of the relevant agreement has to take place. In such cases, the prior consent of the counterparty, and potentially an amendment to the agreement to accurately reflect the new situation and address any issues that occurred due to the reorganisation, may be required. Further actions may be deemed necessary for licences granted for the use of a proprietary product developed by a third party, such as the need to acquire additional separate licences to govern the use of the licensed products by the new companies formed following the completion of the reorganisation.

Law stated - 27 February 2025

Transferring assets

18 | Are there any restrictions on transferring assets to related companies? If not, are there measures that can be taken to allow such a transfer?

Law 4548/2018 requires a prior special authorisation granted by the board of directors or the general assembly for the legitimate conclusion of any contracts between related companies, as well as the observance of relevant publication formalities on the key terms of the contemplated transaction. The law provides certain exemptions whereby the above process does not apply, including transactions between a company and its 100 per cent subsidiary and transactions falling within the boundaries of the company's current transactions.

In addition, within the first two years from the incorporation of a Greek corporation (SA), the acquisition of any asset for a consideration exceeding one-tenth of its paid-up capital is prohibited, if the sellers are founders, shareholders exceeding 5 per cent of the share capital, members of the board of directors or affiliates of such persons. The same shall apply if the seller has acquired the asset transferred by any of the above persons within a 12-month period prior to the signature of the SA's articles of association. Such acquisitions shall be considered valid if the prior approval of the general assembly has been granted based on a valuation of the assets meeting certain conditions.

Law stated - 27 February 2025

19 | Can assets be transferred for less than their market value?

Transactions between related parties (including transfer of assets) should be made in market terms.

Law stated - 27 February 2025

FORMALITIES

Date of reorganisation

20 Can a corporate reorganisation be backdated or deemed to have already taken place, for example, from the start of the financial year?

In principle, the effective date of a corporate reorganisation is the date of its actual completion. However, in cases of corporate transformations by way of merger or demerger, the parties may stipulate a prior date from which the transactions of the company being acquired or demerged shall be treated for accounting purposes as being those of the acquiring or recipient company. This option also depends on the tax incentives law that will be used while the parties should also consider any relevant accounting implications.

Law stated - 27 February 2025

Documentation

21 What documentation is required or advisable in a corporate reorganisation?

The type of the corporate reorganisation is the determining factor for the documentation that shall be prepared and put in place for the reorganisation to take effect. The first document drafted for the majority of reorganisations is a legal step plan detailing the actions to be carried out and their timing.

The competent corporate bodies shall adopt the decisions needed for the implementation of the transaction. Depending on the reorganisation type, an auditor's report may be legally required to be submitted to the corporate bodies and the General Commercial Registry. Moreover, an agreement shall be prepared that, depending on the particular circumstances, will be in the form of an asset transfer agreement, a share purchase agreement, a merger or demerger notarial deed. If the corporate reorganisation entails a corporate action of a listed entity, an information document must also be prepared and published pursuant to the applicable law and the Athens Exchange regulations.

In corporate transformations, the law also requires the preparation of supporting documentation mainly for the purpose of providing the necessary information to the shareholders of the companies involved. These include:

- a detailed written report of the companies' board of directors or other competent management body explaining the terms of the contemplated transformation and setting out its legal and economic grounds;
- an expert report on the terms of the transformation and on the fairness of the proposed share exchange ratio; and
- the annual accounts and annual reports of the companies for the preceding three financial years and, where applicable, an accounting statement of each company.

Any of the above documentation may be omitted if all the shareholders of each of the companies involved have so agreed.

Additional documents may also be necessary depending on the commercial relationships in place and the specific business sector. Typically, such ancillary documentation refers to submissions, notifications to and approvals for the transaction by government authorities and regulatory bodies, consent letters by the companies' creditors, assignments or novations of agreements and notices both to employees and the competent authorities.

Law stated - 27 February 2025

Representations, warranties and indemnities

22 Should representations, warranties or indemnities be given by the parties in a corporate reorganisation? If so, which are most common?

The market practice is for representations, warranties and indemnities to be quite limited in intra-group transactions. The transactions between group companies are typically conducted on an arm's-length basis and taking into account the interests of not only each company but also the group in total. As a result, any relevant clauses tend to focus merely on the legal ownership of assets and shares to be transferred as well as the existence of any encumbrances. Undertakings with respect to the conduct of business prior to the reorganisation as well as indemnities are not common in intra-group reorganisations.

Law stated - 27 February 2025

Assets versus going concern

23 Does it make any difference whether assets or a business as a going concern are transferred?

Under Greek law, a business as a going concern is defined as the sum of all rights and liabilities, relationships, reputation, clientele and all tangible and intangible assets forming an autonomous organised branch of activity. In practice, a corporate transformation is favoured against the transfer of assets or a business as a going concern. A reorganisation aiming for the transfer of a business may be carried out through (1) a spin-off of the business to another corporate entity or (2) a share deal. The main advantage of such a structure is that it entails the universal succession of the transferor by the transferee by operation of law. The alternative option is the transfer of business according to the provisions of the Greek Civil Code. This option is typically considered as burdensome, lengthy and less cost-efficient since the parties need to complete all formalities and registrations for each asset separately to give legal effect to the transfer.

Law stated - 27 February 2025

Types of entity

24 Explain the key differences between public, private, government or non-profit entities to consider when undertaking a corporate reorganisation.

The legal type of each company participating in a corporate reorganisation may entail additional restrictions and may require a more stringent process to be followed. For reorganisations involving public listed companies, apart from the steps followed for other company types, the parties need to observe requirements set by the exchange where the company is listed as well as comply with broader disclosure obligations imposed for the investors' protection.

With regard to reorganisations of government and non-profit entities, there is very limited data available since they are rarely engaged in such internal transformation processes. Where such changes are indeed required, they normally take place through specific legislation.

Law stated - 27 February 2025

Post-reorganisation steps

25 Do any filings or other post-reorganisation steps need to be taken after the corporate reorganisation?

The most common actions and formalities following a corporate reorganisation are the following:

- recording the effected changes to the company books (shareholders registry) and updating the competent authorities on any changes in the corporate structure;
- filling out tax documentation and completion of any tax registrations;
- updating and submitting to the labour authorities the documentation necessary to complete the transfer of the employees and to reflect the new pension, payroll and insurance arrangements;
- coordination with the banks for the opening of new bank accounts, the closing of existing redundant accounts or the updating of the account beneficiaries data;
- notifications to the competent regulatory bodies of the completion of the corporate reorganisation; and
- completion of any registrations towards the competent land registry offices and the intellectual property offices.

Law stated - 27 February 2025

UPDATE AND TRENDS

Hot topics

26 What are your predictions for next year and how will these impact corporate reorganisations in your jurisdiction (for example, expected trends or pending legislation)?

At present, the companies in Greece are required to conduct business in a fast-changing political and financial environment while attempting to maintain a strong and competitive presence in the global markets. The comprehensive law on corporate transformations (including the recent reform of the framework on cross-border mergers and demergers) in conjunction with the newly introduced tax incentives law has set a solid foundation for more corporate reorganisations to take place in the years to come. Our prediction is that the number of intra-group reorganisations, caused or followed by an M&A transaction, will increase rapidly during the following year and will substantially contribute to the overall operational efficiency of multinational groups of companies.

Law stated - 27 February 2025

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Summary

LEGAL AND REGULATORY FRAMEWORK

Types of transaction

1 What types of transactions are classified as 'corporate reorganisations' in your jurisdiction?

Share purchase is a typical method for corporate reorganisations, but other methods can be utilised. The following types of transactions can be classified as corporate reorganisations under Japanese law:

- mergers;
- company splits;
- share exchanges and share transfers;
- partial share exchanges;
- business transfers; and
- entity conversions.

A merger involves the act of two or more companies entering into a merger agreement, where either all of the subject companies are dissolved to form a new company (referred to as consolidation-type merger), or some of the companies are absorbed into another existing company (referred to as an absorption-type merger). In both cases, all rights and obligations of the dissolving companies are effectively transferred to the newly formed company or the surviving company.

A company split is the act of a company transferring all or part of its rights and obligations related to its business to an existing company (referred to as 'absorption-type company split') or to a newly established company (referred to as 'incorporation-type company split'). The determination of which rights and obligations related to the business are transferred is specified by the absorption-type company split agreement or the incorporation-type company split plan.

Share exchange and share transfer are acts aimed at making a company a wholly owned subsidiary of another company. In a share exchange, all shares of a company are transferred to another existing company, making the former company a wholly owned subsidiary of the latter. Consideration is allotted to the shareholders of the subsidiary by the parent company. In a share transfer, all shares of a company are transferred to a newly established company, making the former company a wholly owned subsidiary of the latter. Consideration is allotted to the shareholders of the subsidiary by the newly established parent company.

Share exchange is commonly seen in corporate acquisitions, while share transfer can be utilised when multiple companies wish to establish a new holding company for business integration purposes.

A partial share exchange is when a company acquires shares of another company in return for its own shares to make the latter company a subsidiary. This is based on individual agreements between the to-be-parent company and shareholders of the to-be-subsidiary company. While a share exchange can only be used to establish a wholly owned parent-subsidiary relationship, a partial share exchange can make a company a non-wholly owned subsidiary.

A business transfer is the act of a company transferring specific business operations to another entity. Since the scope of the transfer can be determined flexibly within the business transfer agreement, it is a commonly used method for corporate reorganisations. A business transfer differs from a merger or company split in that individual consent from the other party is necessary for the transfer of contractual rights and obligations included in the transferred business.

An entity conversion refers to either: (1) a stock company maintaining its legal personality while converting to a general partnership company, a limited partnership company, or a limited liability company (collectively 'membership companies'); or (2) a membership company converting to a stock company.

When certain conditions are met, simplified or short form proceedings are available for mergers, company splits, share exchanges, partial share exchanges and business transfers.

Law stated - 28 February 2025

Rate of reorganisations

2 Has the number of corporate reorganisations in your jurisdiction increased or decreased this year compared with previous years? If so, what are the key drivers for such change in the number?

There is currently no unified official data on the number of corporate reorganisations in Japan. However, M&A transaction data provides some insight into corporate reorganisation trends in Japan.

It was reported that the number of M&A transactions involving Japanese companies in 2024 reached a record high of 4700, increasing by 17 per cent from 2023, while the transaction value also grew to approximately ¥19.6 trillion. A key driver of this rise is thought to be the tendency of companies to divest unprofitable or non-core businesses, which investment funds and other buyers have acquired. Some anticipate that this tendency will continue in 2025.

Law stated - 28 February 2025

Jurisdiction-specific drivers

3 Are there any jurisdiction-specific drivers for undertaking a corporate reorganisation?

It has long been pointed out that Japanese companies have poor capital efficiency and profitability compared to those in the United States and other countries. To address this issue, on 31 March 2023, the Tokyo Stock Exchange published a document titled 'Action to Implement Management that is Conscious of Cost of Capital and Stock Price' addressed to all listed companies on the Prime Market and Standard Market. The document urged companies to present their analyses and assessments of their profitability and market valuation in a form that is easy for investors to understand, to disclose targets, plans and initiatives for improvement, and to promote management that is conscious of cost of capital and stock price. Notably, the document highlighted that a Price-to-Book Ratio (PBR) below 1 is an indicator that a company is not achieving profitability exceeding its cost of capital or that investors are not seeing enough growth potential. Since the publishing of this document, the Tokyo Stock Exchange has been monitoring and encouraging companies' efforts, including by disclosing a list of companies that have made disclosures in accordance with the document, best practices, and cases where companies are not aligned with investors' perspectives.

In this context, corporate reorganisations may be used by companies to invest in growth areas or to carve out low-profit businesses, thereby contributing to the improvement of PBR.

Law stated - 28 February 2025

Structure

4 | How are corporate reorganisations typically structured in your jurisdiction?

The structure of a corporate reorganisation would depend on its particular circumstances including, most importantly, the desired outcome of the reorganisation. Whether the reorganisation qualifies for tax merits also significantly influences the choice of method.

Mergers are used to fully integrate the businesses of two or more companies. In a consolidation-type merger, shareholders of the original companies essentially become shareholders of the newly established company. However, in an absorption-type merger, shareholders of the dissolving company may be allocated shares, bonds or share options of the surviving company, or they may receive cash only. Cash-out mergers are particularly common in mergers involving private companies, where the surviving company wishes to maintain its existing shareholder composition. In practice, absorption-type mergers are more commonly used than consolidation-type mergers.

Company splits can be utilised within a corporate group to either establish a new subsidiary or to carve out a business division of one group company and integrate it into another group company engaged in similar business activities. It can also be used to transfer part of a business outside of the corporate group.

Share exchanges are utilised when existing companies wish to establish a wholly owned parent-subsidiary relationship. The company becoming the parent can achieve this goal without the preparation of acquisition funds as it can issue new shares as consideration. If a share exchange results in an excessive increase of minority shareholders in the parent company, the parent company can implement a share consolidation to reduce the minority shareholders’ holdings to less than one share, thereby achieving a squeeze-out. It is also possible to use cash instead of the parent’s shares as consideration, in which case the subsidiary’s shareholders shall be excluded from the outset.

Share transfers are commonly used to establish a holding company between an existing company and its shareholders, making the existing company a wholly owned subsidiary of the newly established company.

Partial share exchanges can establish non-wholly owned parent-subsidiary relationships, whereas share exchanges and share transfers can only establish wholly owned parent-subsidiary relationships.

Law stated - 28 February 2025

Laws and regulations

5 What are the key laws and regulations to consider when undertaking a corporate reorganisation?

Key laws and regulations to consider when undertaking a corporate reorganisation include the following:

- Law No.86 of 2005, as amended (the Companies Act);
- Law No.25 of 1948, as amended (the Financial Instruments and Exchange Act);
- Law No.54 of 1947, as amended (the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade;
- Law No.26 of 2018, as amended (the Act on Strengthening Industrial Competitiveness);
- Law No.228 of 1949, as amended (the Foreign Exchange and Foreign Trade Act) and related orders;
- various tax laws; and
- rules of relevant stock exchanges.

The Companies Act establishes the fundamentals of various corporate reorganisation methods. It outlines the procedures required for corporate reorganisations, including resolutions by the board of directors and shareholders' meetings.

The Financial Instruments and Exchange Act requires attention when the company involved is a listed company or a company under certain obligations to disclose securities reports. The act includes regulations on tender offers, insider trading and timely disclosure.

The Act on Prohibition of Private Monopolization and Maintenance of Fair Trade prohibits corporate reorganisations such as the acquisition of shares, mergers, company splits and business transfers if they substantially restrict competition in certain fields. Additionally, it mandates prior notification for certain corporate reorganisations that are likely to impact the market.

The Act on Strengthening Industrial Competitiveness allows competent authorities to approve initiatives aimed at improving productivity through business reorganisation as certified business reorganisation plans. Initiatives that receive certification are eligible for benefits such as tax incentives, financial support and simplification of reorganisation procedures.

The Foreign Exchange and Foreign Trade Act regulates capital transactions and other activities with foreign companies or individuals. When foreign investors seek to acquire Japanese companies engaged in certain businesses through methods such as share purchases or business transfers, prior notification to the competent authority is required. The specified industries include a wide range of sectors, such as the manufacturing of weapons and aircraft, general-purpose products with potential military applications, and the semiconductor manufacturing industry.

Tax law is revised annually across various tax-related statutes such as the Corporation Tax Act, the Act on Special Measures concerning Taxation and Income Tax Act to facilitate the smooth implementation of corporate reorganisations.

Rules of stock exchanges provide various disclosure requirements for listed companies.

Law stated - 28 February 2025

National authorities

6 What are the key national authorities to be conscious of when undertaking a corporate reorganisation and what role does each authority play?

The main national authorities to be conscious of when undertaking a corporate reorganisation are:

- The Ministry of Legal Affairs of Japan;
- The Financial Services Agency of Japan;
- The Japan Fair Trade Commission;
- The National Tax Agency of Japan;
- The Ministry of Economy, Trade and Industry; and
- The Ministry of Finance of Japan.

If a listed company is involved in the reorganisation, the Tokyo Stock Exchange and any other relevant stock exchange are also relevant.

Law stated - 28 February 2025

KEY ISSUES

Preparation

7 What measures should be taken to best prepare for a corporate reorganisation?

First, it is essential to envisage the structure of the corporate group after the corporate reorganisation and consider which method is suitable for the desired structure. During planning, it is essential to consider the tax implications arising from the use of the corporate reorganisation method selected.

Second, as a prerequisite for implementing the corporate reorganisation, it is necessary to assess the business value of the target companies. From this perspective, it is often crucial to conduct due diligence in different areas. However, due diligence is often conducted in a simplified manner in intra-group corporate reorganisations.

Law stated - 28 February 2025

Key departments and operational issues

8 What departments of the concerned companies are most involved in corporate reorganisations and what are the most challenging operational issues?

Corporate reorganisations in Japan typically involve multiple departments, but the most critical ones are corporate strategy or business planning, legal, finance and accounting, human resources, investor relations and any business units that are directly affected by the corporate reorganisation.

While there could be many challenging operational issues in corporate reorganisations, stakeholder management is one of the most significant ones. Effective communication with key stakeholders – including employees, customers and suppliers – is critical to ensuring a smooth transition. Given Japan's strong labour protections, reducing the workforce often requires voluntary retirement programs or reassignment efforts to comply with the Labour Standards Act and other employment laws. Another consideration is the potential impact on supplier and customer relationships. For example, many contracts contain change of control provisions, which may require consent or renegotiation when a corporate reorganisation occurs. To avoid disruptions to key supply or customer agreements that could diminish the value of the relevant entities, companies undergoing reorganisations should thoroughly review their contractual obligations and plan ahead how to engage with counterparties to ensure a seamless transition.

Law stated - 28 February 2025

Employment issues

9 What are the main issues relating to employees and employment contracts to consider in a corporate reorganisation?

Mergers and corporate splits result in comprehensive succession of rights and obligations; therefore, existing employment contracts are maintained as they are.

In the case of a company split, the split agreement or split plan, depending on the type of company split, specifies which employees are transferred to the other company. However, since the identity of the employer has a significant impact on the employees, various protections are in place for the employees. The Act on the Succession of Labour Contracts upon Company Split (Law No. 103 of 2000) and its related rules and guidelines stipulate that prior notification to employees and labour unions is required for a company split. Also, employees who are not transferred despite being engaged in the business to be transferred have the right to lodge an objection.

In the case of a business transfer, the individual consent of employees is required to transfer employment contracts to the other company. The Ministry of Health, Labour and Welfare instructs companies in its guidelines to obtain individual consent from employees after sufficient consultation.

If companies wish to lay off employees or change terms of employment as part of a corporate reorganisation, they should be aware that there are strict requirements for employee dismissals under the Labour Standards Act (including judicial precedents based on the Act), which apply in the case of corporate reorganisations including mergers and company splits.

Law stated - 28 February 2025

10 | What are the main issues relating to pensions and other benefits to consider in a corporate reorganisation?

In mergers and company splits, the terms of employment (including pensions and other welfare benefits) are transferred without change.

If the welfare benefits of the transferor are more comprehensive than those of the transferee, in theory, they are transferred as they are. However, it is customary for the transferee to seek standardisation of welfare benefits. Typically, negotiations are conducted with the affected employees to align the level of welfare benefits with those of the transferee.

In the case of business transfers, employment contracts between the transferor and its employees are not automatically transferred to the transferee.

To transfer an employee, the transferee may either: (1) obtain the individual consent of the employee after offering the same employment terms (including pension) as the transferor; or (2) enter into a new employment contract with the employee.

Law stated - 28 February 2025

Financial assistance

11 | Is financial assistance prohibited or restricted in your jurisdiction?

In Japan, there is no equivalent concept of financial assistance in the context of corporate reorganisations.

Nonetheless, when a company considers providing financial assistance without consideration as part of its activities, it is imperative for its directors to act in accordance with their duties of care and loyalty and carefully assess whether such decision is reasonable. Moreover, if a company provides financial assistance without consideration, there is a risk of it being recognised as a taxable donation.

Law stated - 28 February 2025

Common problems

12 What are the most commonly overlooked issues or frequently asked questions in a corporate reorganisation?

The involvement of companies in financial distress in corporate reorganisations may often become an issue.

First, regarding mergers, it is possible for an insolvent company to be the dissolving company in an absorption-type merger. For example, a parent company may decide to absorb a wholly owned subsidiary that is insolvent. However, in such case, the surviving company must explain the situation and obtain approval from its shareholders at a shareholders' meeting.

Next, regarding company splits, an insolvent company may decide to transfer certain business divisions to another company or a newly established company through a company split. To protect the creditors of the splitting company, the Companies Act stipulates that if the splitting company conducts a company split knowing that it will harm remaining creditors, those creditors can demand the successor or newly established company to fulfil obligations up to the value of the transferred assets. Additionally, legal precedent has established that if the consideration for the company split is not reasonable, the creditors remaining with the splitting company can nullify the split to the extent necessary to secure their claims. Furthermore, if the remaining splitting company enters proceedings such as bankruptcy, the bankruptcy trustee has the right to exercise avoidance powers if the consideration for the company split is deemed unreasonable. Therefore, when an insolvent company undertakes a company split, it is crucial to ensure that the consideration is fair and reasonable.

Finally, when an insolvent company attempts to carve out its profitable business segment through a business transfer, similar risks arise as with a company split. Unless careful attention is paid to the fairness of the consideration, there is a risk that creditors may partially rescind the business transfer, or that the bankruptcy trustee may exercise avoidance powers if the insolvent company declares bankruptcy after the transfer.

If an insolvent company is undergoing formal rehabilitation proceedings such as civil rehabilitation proceedings or corporate reorganisation proceedings, it is possible to implement corporate reorganisation measures during these respective procedures.

Law stated - 28 February 2025

ACCOUNTING AND TAX

Accounting and valuation

13 How will the corporate reorganisation be treated from an accounting perspective? How are target assets and businesses valued?

The accounting treatment of corporate reorganisations is governed by the Accounting Rule for Corporate Combination.

Under the rules, the accounting treatment of corporate reorganisations does not vary according to each reorganisation method, but rather depends on how the control relationship changed before and after the corporate reorganisation. It is classified into the following three categories:

- acquisition;
- transactions under common control; and
- formation of joint ventures.

First, 'acquisition' refers to when one company gains control over another company or businesses that constitute the company. The accounting treatment for acquisitions follows the purchase method, where the acquiring company evaluates the fair market value of the acquired company or business at the time of acquisition for accounting purposes.

Next, 'transactions under common control' refer to corporate reorganisations where all the entities involved, before and after the reorganisation, are ultimately controlled by the same shareholders and this control is not temporary. As the control relationship remains unchanged, the acquired company or business is generally accounted for at the appropriate book value immediately before the transfer.

Lastly, 'formation of joint ventures' entails the creation of an enterprise jointly controlled by multiple independent companies through contracts or other means. To qualify as a joint venture formation, there must be multiple independent companies controlling the business before and after the corporate reorganisation, and specific requirements such as joint control agreements must be met. The accounting treatment for the formation of joint ventures involves accounting procedures for both the controlling companies and the controlled companies. The controlling companies account for the assets and liabilities acquired by the joint venture at their fair book values before the transfer.

Law stated - 28 February 2025

Tax issues

14 What tax issues need to be considered? What are the tax implications of carrying out a corporate reorganisation?

Whether a corporate reorganisation is tax qualified is a significant factor in choosing the reorganisation method. Therefore, companies should carefully consider the tax treatment of a corporate reorganisation with assistance from tax professionals.

The general rule under the Corporate Tax Act is that, when a company transfers assets or liabilities to another company, such assets or liabilities are assessed at fair market value. Also, gains or losses on the transfer of assets or liabilities should be recognised at the time of transfer.

However, if the requirements for a qualified reorganisation are met (ie, the corporate reorganisation is tax-qualified), assets and liabilities transferred due to the corporate reorganisation can be transferred at book value. This means that the transferee can defer the recognition of these assets and liabilities until they are subsequently disposed of. Additionally, latent gains and losses do not need to be recognised immediately.

The requirements for a tax-qualified reorganisation vary depending on the relationship between the companies involved in the reorganisation. The following table provides a simplified overview of the requirements.

—	Undertaken between companies with 100% control	Undertaken between companies with controlling relationship (more than 50% and less than 100%)	Undertaken to jointly engage in business
Assets other than shares are not allotted as consideration		Requirements for tax qualification	
100% control is expected to continue	Approximately 80% or more of employees are transferred	Same as left	
—	Transferring business is expected to continue after reorganisation	Same as left	
—	Major assets and liabilities are transferred	Same as left	
—	Controlling relationship is expected to continue	Scale of business is generally within five times that of the other business, or certain officers are transferred	
—	—	Businesses are related	
—	—	Controlling shareholder continues to hold shares that are consideration for the corporate reorganisation	

These requirements for tax qualification are not always clear cut; thus, it is important to obtain advice from tax professionals.

Law stated - 28 February 2025

CONSENT AND APPROVALS

External consent and approvals

15 What external consent and approvals will be required for the corporate reorganisation?

First, there are restrictions on the implementation of corporate reorganisations in certain industries. For example, mergers involving banks require approval from the Prime Minister to be effective. The same applies to insurance companies.

Next, when companies involved in company splits are engaged in businesses that require permits or approvals from competent authorities, it is necessary to determine the impact of the company split on such permits or approvals, including:

- whether such permits or approvals are automatically transferred and only post-notification is required;
- whether prior approval from the authorities is required;
- the permits or approvals are a condition for the effectiveness of the merger or company split; and
- whether new registrations or permits need to be obtained, because the system may vary for each permit or approval.

In some cases, an agreement with a third party may: (1) require prior approval by the third party of a corporate reorganisation; or (2) give the third party a termination right in the case of a corporate reorganisation. If the company involved has entered into a loan agreement, there may be covenants requiring prior consent of the lenders when undergoing corporate reorganisation.

Additionally, there may be change-of-control provisions in agreements, under which corporate reorganisations that result in change of control of a party trigger termination rights and other effects.

Law stated - 28 February 2025

Internal consent and approvals

16 What internal corporate consent and approvals will be required for the corporate reorganisation?

Generally, when implementing corporate reorganisations, approval by the board of directors is required.

In addition, in the case of a merger, company split, share exchange, share transfer or partial share exchange, approval by a special resolution of the shareholders' meeting is required at one or more of the companies involved. However, when conditions for simplified proceedings (in principle, when one company is considerably smaller than the other company) or short form proceedings (when one company owns 90 per cent or more of the voting rights of the other company) are met, approval by a shareholders' meeting may not be required. Simplified proceedings are available for mergers, company splits, share exchanges and partial share exchanges, whereas short-form proceedings are available for mergers, company splits and share exchanges.

In the case of a business transfer where the subject of transfer constitutes all or a significant part of a company's business, approval by a special resolution of the shareholders' meeting is required at the transferor company. In general, a shareholder resolution is not required at the transferee company; however, if all of a company's business is being transferred, a special resolution of the shareholders' meeting becomes necessary at the transferee company. Even in such cases, when conditions for simplified proceedings or short form proceedings are met, a shareholder resolution is not required at either one or both of the companies involved.

A special resolution requires the presence of shareholders holding a majority of the voting rights and the approval of at least two-thirds of the voting rights of the shareholders present.

Law stated - 28 February 2025

ASSETS

Shared assets

17 How are shared assets and services used by the target company or business typically treated?

If assets or services are used based on an agreement, the impact of a corporate reorganisation on such use depends on the terms of the agreement.

Especially with regard to assets and services that are crucial for business operations, companies should thoroughly consider the impact of corporate reorganisation on their use before implementation. In cases where a business is being separated or carved out as part of a corporate reorganisation, it may be necessary for the parties to enter into a transition services agreement to allow the separated entity to continue using certain assets or services for a transitional period. This ensures operational continuity while the new entity establishes independent systems and resources.

Law stated - 28 February 2025

Transferring assets

18 Are there any restrictions on transferring assets to related companies? If not, are there measures that can be taken to allow such a transfer?

There are no specific restrictions on transferring assets to related companies; however generally, when a company sells significant assets, approval from the board of directors is required under the Companies Act. Additionally, if the directors of the seller and the buyer are the same individuals, the transfer of assets may constitute a conflict-of-interest transaction and require approval from the board of directors.

Law stated - 28 February 2025

19 | Can assets be transferred for less than their market value?

It is legally possible to transfer assets for less than market value; however, when a stock company sells its assets below market price, it may raise issues concerning the directors' duty of care.

Additionally, if the buyer is an individual, gift tax may apply, and if the buyer is a company, the difference between the market price and the sale price may be considered a gain from donation and subject to corporate tax.

Law stated - 28 February 2025

FORMALITIES

Date of reorganisation

20 | Can a corporate reorganisation be backdated or deemed to have already taken place, for example, from the start of the financial year?

A corporate reorganisation cannot be backdated or deemed to have already taken place as the Companies Act mandates various procedures (such as shareholder resolutions, board resolutions, registration, etc) for corporate reorganisations to become effective.

Law stated - 28 February 2025

Documentation

21 | What documentation is required or advisable in a corporate reorganisation?

Mergers are contractual agreements between the parties involved; therefore, the execution of a merger agreement specifying matters such as the merger conditions, the structure of the surviving company or newly established company and the progress of the merger proceedings, is required for both absorption-type mergers and consolidation-type mergers.

Absorption-type company splits are, similar to mergers, contractual agreements between the parties involved. The companies involved in an absorption-type company split must conclude a company split agreement specifying the conditions of the split (such as the rights and obligations to be absorbed, the absorption split price, etc) and other matters such as the effective date of the company split. In the case of an incorporation-type company split, the splitting company must prepare an incorporation-type company split plan, which specifies the rights and obligations to be transferred to the newly established company, and other conditions of the company split.

In the case of a share exchange, the parties involved must conclude a share exchange agreement specifying the conditions of the share exchange. In the case of a share transfer, the company becoming the wholly owned subsidiary through the share transfer must prepare a share transfer plan, which must specify matters such as the conditions of the share transfer.

In the case of a partial share exchange, the to-be-parent company must prepare a partial share exchange plan, which must indicate the company to be its subsidiary, the minimum number of shares to be acquired by the to-be-parent company, and the conditions of the partial share exchange, etc.

In the case of an entity conversion (ie, when a stock company converts to a membership company, such as a limited liability company, or when a membership company converts to a stock company), the preparation of an entity conversion plan is required. Such a plan must specify matters including the post-conversion structure and framework of the company.

Law stated - 28 February 2025

Representations, warranties and indemnities

22 Should representations, warranties or indemnities be given by the parties in a corporate reorganisation? If so, which are most common?

While statutes do not require representations, warranties or indemnities to be given in corporate reorganisations, contracts among involved parties often include representations and warranties clauses and indemnification clauses. Such clauses are less common in intra-group corporate reorganisations.

Law stated - 28 February 2025

Assets versus going concern

23 Does it make any difference whether assets or a business as a going concern are transferred?

The treatment of asset transfers and business transfers differs in the context of tax law.

The tax treatment of an asset transfer is decided based on the fair market value at the time of transfer.

In the case of a business transfer (ie, when business is transferred as a going concern), the subject of transfer includes not only the assets constituting the business but also liabilities and other elements such as know-how. Therefore, there is often a difference between the purchase price of the business and the fair market value of the assets constituting the business. This difference is recognised as goodwill and is amortised over five years in accordance with tax law.

Law stated - 28 February 2025

Types of entity

24 Explain the key differences between public, private, government or non-profit entities to consider when undertaking a corporate reorganisation.

Non-profit organisations such as general incorporated associations, general incorporated foundations and corporations engaging in specified non-profit activities cannot undergo entity conversions to become for-profit organisations such as stock companies or membership companies.

Furthermore, the following conversions are not allowed: a general incorporated association to become a general incorporated foundation or a corporation engaging in specified non-profit activities; a general incorporated foundation to become a general incorporated association or a corporation engaging in specified non-profit activities; a corporation engaging in specified non-profit activities to become a general incorporated association or a general incorporated foundation.

Possible reorganisation options include: a general incorporated association to undergo absorption-type merger or consolidation-type merger with another general incorporated association, a public interest incorporated association, general incorporated foundation or public interest incorporated foundation; and a general incorporated foundation to undergo absorption-type merger or consolidation-type merger with another general incorporated foundation, a general incorporated association, public interest incorporated foundation or general incorporated foundation.

General incorporated associations, general incorporated foundations and public interest corporations (public interest incorporated associations and public interest incorporated foundations) may implement business transfers, but in the case of public interest corporations, prior notification to the relevant administrative agency is required.

Law stated - 28 February 2025

Post-reorganisation steps

25 Do any filings or other post-reorganisation steps need to be taken after the corporate reorganisation?

Under the Companies Act, some corporate reorganisations require registration after their effects take place. In the case of absorption-type mergers and absorption-type company splits, registration must be completed within two weeks of the effective date at the location of the main office of the surviving company or successor company. The same requirement for registration applies to entity conversions. In the case of share exchanges and partial share exchanges, registration of changes such as changes in the total number of authorised shares, must be completed.

Also under the Companies Act, in the case of mergers, company splits, share transfers, share exchanges and partial share exchanges, a company must prepare post-disclosure documents and keep them at the main office for six months after the corporate reorganisation takes place.

In the case of listed companies undergoing corporate reorganisation, there are certain instances where they must submit interim reports. Additionally, investors who acquire a certain amount of listed shares (or share options, etc) are required to submit a Statement of Large Volume Holding to the Director General of the local finance bureau.

If a foreign investor acquires 10 per cent or more of the shares of a Japanese company through corporate reorganisation, they are required to submit a post-reporting document in accordance with the Foreign Exchange and Foreign Trade Act.

Law stated - 28 February 2025

UPDATE AND TRENDS

Hot topics

26 What are your predictions for next year and how will these impact corporate reorganisations in your jurisdiction (for example, expected trends or pending legislation)?

The Japanese government has been implementing various policies to facilitate the smooth entry and exit of companies, including strengthening the investment functions of public and private funds and improving tax systems. The government has also expressed its intention to expand the scope of M&A transactions using shares as consideration, and the matter was submitted for deliberation by the Legislative Council of the Ministry of Justice in February 2025. Future legislative amendments could make it easier to conduct corporate reorganisations using share consideration. Corporate reorganisations are expected to remain active in 2025 as they align with the government's incentives.

Tax law is amended each year across various statutes to facilitate the smooth implementation of corporate reorganisations; therefore, companies considering such reorganisations should consult tax professionals for planning based on the most current tax laws.

Law stated - 28 February 2025

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Summary

LEGAL AND REGULATORY FRAMEWORK

Types of transaction

1 What types of transactions are classified as 'corporate reorganisations' in your jurisdiction?

'Corporate reorganisations' is a wide and loosely defined term describing various transactions involving mostly economic and legal actions of subjects within the corporate group. These actions are, on the one hand, aimed at improving the corporate group or the company itself, adding value and enhancing the competitiveness of the whole group and, on the other hand, may serve as a preparatory step for a sale. Depending on their nature, reorganisations can be carried out on a national level or cross-border.

The basic forms of corporate reorganisations in Slovenia are mergers or divisions within the corporate group, transfer of assets and changes of the legal form.

A merger can be accomplished by an absorption, where the transferor company acquires all assets and liabilities of the transferee company, or a consolidation, where all assets and liabilities of two or more transferor companies are acquired by a newly formed transferee company. The acquired companies cease to exist with the merger, without undergoing liquidation beforehand. The shareholders of the acquired companies are provided with shares of the acquiring company.

A division can be accomplished by a split-up, spin-off or split-off. A split-up is where all assets and liabilities of the transferor company, which ceases to exist, are transferred to newly formed or existing transferee companies, a spin-off is where all or parts of assets and liabilities of the transferor company, which does not cease to exist, are transferred to newly formed or existing transferee companies, or a split-off, where parts of assets and liabilities of the transferor company, which does not cease to exist, are transferred to newly formed or existing transferee companies. In a spin-off, the shares of the transferee company are acquired by the transferor company, whereas in a split-up or a split-off the shares of the transferee company are acquired by the shareholders of the transferor company.

A transfer of assets, not to be mistaken for an asset deal, is a type of reorganisation where Slovenia or a local community acquires all or parts of assets of the transferor company in exchange for monetary compensation.

A change of legal form can be accomplished by a conversion procedure, such as a conversion from a limited liability company to a joint-stock company, which does not affect the assets and liabilities on the reorganising company.

Further measures could include share deals, asset deals, capital and debt restructuring and various modalities of intra-group financing arrangements.

Law stated - 25 March 2025

Rate of reorganisations

2

Has the number of corporate reorganisations in your jurisdiction increased or decreased this year compared with previous years? If so, what are the key drivers for such change in the number?

No official data regarding the number of corporate reorganisations is published by the Slovenian authorities. However, after a noticeable surge in corporate reorganisations relating to containing the effects of the 2008 financial crisis and improving the efficiency of the operations, we noticed that the numbers had stabilised and have increased slightly over the past few years.

Law stated - 25 March 2025

Jurisdiction-specific drivers

3 | Are there any jurisdiction-specific drivers for undertaking a corporate reorganisation?

The Companies Act (ZGD-1) provides a number of legal forms that are specific and each have their typical features. This can be seen as a limitation or an advantage for certain reorganisations. For example, a limited liability company remains the most suitable form for the vast majority of business activities (unless a joint-stock company is required by law). Recently, we have seen several major companies transforming from a joint-stock company to a limited liability company to benefit from less restrictive corporate governance rules.

A change in legislation of personal income tax has made transactions by a shareholder selling their own shares to the company less favourable. If a company purchases its own share or shares from the shareholder, this is considered a dividend payment and is subject to a lump-sum tax at the rate of 27.5 per cent of the entire value of the shares included in the transaction. On the other hand, when selling shares to any other entity, the shareholder only has to pay tax on any of the capital gains achieved and the tax rate reduces proportionally to the time the shareholder owned such shares. This change is not applicable when the purchase of own shares is made on an organised market.

In 2023, the amendment to the Investment Promotion Act (ZSInv) was adopted, which now regulates the screening of foreign direct investments and narrows the definition of a foreign investor that now encompasses solely natural or legal persons from third countries. Prior to the change, persons from the EU were also considered as foreign investors; therefore, such investments needed to be notified and approved. Nevertheless, under the new legislation, indirect foreign investments must also be notified, such as investment into a Slovenian company by a third-country national through a company, incorporated in the EU member state. This amendment will likely increase investments and simplify the reorganisation procedures from the EU nationals as this bureaucratic hurdle was removed.

Law stated - 25 March 2025

Structure

4 | How are corporate reorganisations typically structured in your jurisdiction?

The structure of a corporate reorganisation depends on the needs of each case. Generally, the standard planning, negotiations and implementation structure is followed, namely:

- the planning phase – before undertaking a corporate reorganisation, an analysis of the impact on the envisaged reorganisation should be conducted. In addition to involving all relevant stakeholders, it is also recommended to include legal and tax advisers in particular, who can assist with the necessary due diligence reviews;
- the negotiation phase – this mainly concerns the employees and the relevant notifications of the companies involved; and
- the implementation phase – all types of corporate reorganisations, especially mergers and divisions, entail miscellaneous intra-company requirements, for example, general assembly consensus, company management reports, various audit procedures, creditor protection mechanism, different proceedings regarding conversion rate and similar. Most types of corporate reorganisations are focused around a notarial appointment. For a statutory change to take effect, the notary public has to file an application with the registry court. Therefore, the implementation phase consists of document collection and peaks at the notarial appointment where the transaction is executed.

Law stated - 25 March 2025

Laws and regulations

5 What are the key laws and regulations to consider when undertaking a corporate reorganisation?

The key law to consider when undertaking a corporate reorganisation is the Companies Act (ZGD-1), which sets out the main legal framework of corporate law and governs establishment, structure and potential reorganisation of both publicly and privately traded companies.

In cases where a controlling influence over a publicly traded or a very large subsidiary exists, but the subsidiary is not entirely owned by the parent company, the Takeovers Act (ZPre-1) might apply. Additionally, rules for disclosure of information for publicly traded companies are regulated by the Market in Financial Instruments Act (ZTFI-1).

Taxation of corporate income is regulated by the Corporate Income Tax Act (ZDDPO-2) and any gains made by private individuals would be governed by the Personal Income Tax Act (ZDoh-2).

Taking into account the specific circumstances of each individual case, other fields of law may apply, namely those relating to labour law, intellectual property law, data protection law, screening of foreign direct investment law and similar. In addition, reorganisation of companies operating in regulated sectors would be subject to further sector-specific regulations.

Law stated - 25 March 2025

National authorities

6 What are the key national authorities to be conscious of when undertaking a corporate reorganisation and what role does each authority play?

No specific national authorities need to be involved in a corporate reorganisation in terms of permits, approvals or notifications. The majority of the transactions under a corporate reorganisation must, however, be filed with the registry court for the legal actions to become effective and have legal consequences. Such registrations must be done by a notary public. The exact procedures and the sequence of certain legal actions are set out in the Companies Act (ZGD-1). Moreover, real estate properties need to be registered with the land register. For specific regulated industries, like energy, infrastructure and financial services, other sectorial authorities may need to be involved. Foreign direct and indirect investment must be approved by the Ministry of Economy.

Law stated - 25 March 2025

KEY ISSUES

Preparation

7 What measures should be taken to best prepare for a corporate reorganisation?

Before starting, it is advisable to conduct a business analysis and prepare a step plan for the implementation of the most optimal reorganisation structure. If the companies in question are active in a regulated sector, involvement of the relevant authorities as well as its effect on the proposed step plan and the timeline should be anticipated. Furthermore, it is crucial to include all the stakeholders in the discussion in the early stages. It is recommended to appoint advisers (typically legal and tax) to get an independent opinion of the process and, most importantly, to perform a due diligence review. In the due diligence phase, the advisers assess whether there are any company-specific issues that could impact the proposed reorganisation. Quite often, the articles of association or internal regulations containing additional restrictions are discovered. The scope of such a due diligence is narrower, as in an M&A procedure, and would typically focus on avoiding or remedying the effects of change of control clauses in the relevant contractual arrangements, rights of third parties on the assets of the company and required notices toward third parties or regulatory bodies.

Law stated - 25 March 2025

Key departments and operational issues

8 What departments of the concerned companies are most involved in corporate reorganisations and what are the most challenging operational issues?

Not applicable in our jurisdiction.

Law stated - 25 March 2025

Employment issues

9 What are the main issues relating to employees and employment contracts to consider in a corporate reorganisation?

Slovenia has, comparatively speaking, a rather strict employment protection system and a long-standing tradition of unions. There are several levels of employment protection that should be considered in a corporate reorganisation.

First, the Employment Relationships Act (ZDR-1) sets out the rules for the transfer of undertakings. Second, most companies are subject to a collective bargaining agreement that may provide additional restrictions for the employer and the obligations towards the union and its members. And third, most companies have a works council that is organised on the basis of a participation agreement and also provides additional rights and obligations for the company.

The rights and obligations arising under these documents are triggered by certain legal actions. In the case of corporate reorganisations, the formal change of the employer would be such an event. In principle, three levels of worker participation should be considered in the case of a corporate reorganisation, which provide a specific level of employee involvement, namely:

- obtaining consent (redundancy of workers in contrast to the rules of the collective agreement, giving notice to the union representative, etc);
- consultations (proposal of company's internal acts, consequences of transfer of undertaking concerning workers, etc); and
- notifications (transfer of undertaking in general, redundancy of workers and measures to be taken in this regard, etc).

Generally, if the change of employer is the result of a legal transfer of the company or a part of the undertaking carried out on the basis of a legal transaction, the rights and obligations relating to employment at the date of the transfer should be transferred to the transferee.

By stipulating that the unaltered rights and obligations are transferred to the transferee, it indirectly stipulates that the transfer of the company is not in itself a reason for terminating the employment of workers. The content of the transferred employment relationship must remain unchanged. The transferred employee, however, has the right to refuse such a transfer, which provides grounds for the employer to terminate the employment agreement.

The transferor employer and the transferee employer are jointly and severally liable for workers' claims incurred up to the date of transfer, as well as for claims arising from termination of the employment contract because of the infringement of workers' rights.

Law stated - 25 March 2025

10 What are the main issues relating to pensions and other benefits to consider in a corporate reorganisation?

As corporate reorganisations in Slovenia may affect pensions or other benefits, all potential impacts of a proposed change on such benefits should be reviewed. It is possible that the collective bargaining agreement and other relevant documents would contain specific limitations. In addition to the general pensions system to which the contributions are mandatory, a company may voluntarily offer an additional pension scheme to its employees. According to the data of the government of Slovenia, 61.33 per cent of all those included in the general pensions system were also included in some form of additional pension scheme at the end of 2023.

When transferring undertakings, the transferee employer should assure the rights and obligations under the collective agreement for at least one year. If the additional pension scheme is part of the collective agreement, the aforementioned obligation applies. If the transferring employer has a collective additional pension scheme in place, all contractual rights and obligations are automatically transferred to the transferee employer, unless otherwise stipulated at the time of transfer. The transferee employer must assure the rights under the pension scheme of the transferring employer for at least one year after the date of the transferring of the undertaking (unless a new pension scheme agreement is concluded before or the transferring employer's collective pension scheme agreement would expire prior to this date). If the transferee employer already has a pension scheme in place, the transferred employees are included into the transferee employer's pension scheme after one year.

Law stated - 25 March 2025

Financial assistance

11 | Is financial assistance prohibited or restricted in your jurisdiction?

Generally, acquisition of its own shares by the joint-stock company is prohibited, while acquisition in a derivative manner is permissible under the statutory exceptions (eg, the company is threatened with direct damage conditioned by damage to the property of the company; if shares are offered for sale to the employees; or if own shares are acquired to provide workers or shareholders with severance pay). The company may not, however, obtain own shares representing more than 10 per cent of its share capital. The rules are less restrictive for limited liability companies. The general rule is that a company may not acquire or receive in pledge its own shares for which contributions have not been paid in full. When acquiring the shares, the company must, however, create reserves for its own shares.

Financial assistance means that a company provides funds to a third party to help acquire shares in itself. This is explicitly prohibited for joint-stock companies in Slovenia, except for limited exceptions laid down in the Companies Act (ZGD-1). Any advance payments, loans, guarantees or transactions with similar economic effects, concluded with third parties for the purpose of obtaining own shares may be considered as financial assistance. A transaction in violation of this prohibition would be considered null and void and a regulatory offence subject to a significant fine. The aforementioned rules do not apply to the same extent to transactions involving limited liability companies. In these cases, financial assistance is assessed via the share capital maintenance rules, which provide that the assets required for maintenance of the share capital must not be paid to the shareholders.

Law stated - 25 March 2025

Common problems

12 What are the most commonly overlooked issues or frequently asked questions in a corporate reorganisation?

As corporate reorganisations are usually more complex transactions, clients put significant emphasis on adequate preparation, research and consulting with advisers and consequently there are fewer substantive issues that would be commonly overlooked. On the other hand, some smaller formalistic hindrances may occur in relation to filing forms or obtaining certain documents or certificates from government authorities. One example is obtaining a tax identification number, which foreign natural persons and entities that are subsequently to be entered in the Slovene Business Registry need to obtain (to the extent they do not have it yet).

Law stated - 25 March 2025

ACCOUNTING AND TAX

Accounting and valuation

13 How will the corporate reorganisation be treated from an accounting perspective? How are target assets and businesses valued?

Entities belonging to the same group are, although legally independent, not economically independent. These group entities must prepare consolidated financial statements, which demonstrate true and fair financial standing and business performance of companies as if they were a single company. This means that all mutual receivables and liabilities, all mutual income and expenses, as well as all interim profits and losses arising from operations between the group companies are eliminated. In the case of a merger or acquisition, the assets and liabilities shall be measured at fair value at the acquisition date and the acquirer shall recognise goodwill and bad will at the acquisition date, whereas in intragroup mergers and acquisitions carrying value shall be used.

Law stated - 25 March 2025

Tax issues

14 What tax issues need to be considered? What are the tax implications of carrying out a corporate reorganisation?

Generally, the basic tax principle of material corporate reorganisations is tax neutrality. This means that, provided that certain conditions laid down in the Corporate Income Tax Act are met, the companies involved in the reorganisation are entitled to a tax-neutral transaction. Although it is not a condition for the applicability of tax neutrality, the transaction should be notified to the tax authority prior to the envisaged date of the reorganisation.

Corporate reorganisations involving domestic and foreign legal entities may trigger transfer taxes. Furthermore, hidden reserves must be disclosed in certain types of corporate reorganisations. On the other hand, the application of the real estate transfer tax is explicitly excluded when the real estate is being transferred in the process of material corporate reorganisations, specifically in cases of mergers (either in the form of a merger by absorption or a merger by consolidation), demergers (either in the form of a division, split-off or spin-off) or asset transfers to Slovenia or a Slovenian municipality.

In any event, it is strongly advised to seek professional assistance for assessing the tax implications prior to starting any reorganisation procedure.

Law stated - 25 March 2025

CONSENT AND APPROVALS

External consent and approvals

15 What external consent and approvals will be required for the corporate reorganisation?

Most commonly, such approvals relate to the change of control clauses in financial and other contractual arrangements with third parties. If contractual relationships are transferred to a new party, the civil law rules regarding the novation have to be observed (ie, approval of the third party would be required). While not strictly a consent or approval, it is possible that debtors would have to be notified if a contractually relevant change of a creditor has occurred. Unless these formalities regarding the external relationships to private parties are observed, it is likely that a full third-party effect of the transaction will not be achieved.

If the relevant company is active in a regulated sector and requires certain approvals and permits for its activities, it is likely that either the relevant authority would have to be notified or the permits or approvals would have to be acquired anew.

Law stated - 25 March 2025

Internal consent and approvals

16 What internal corporate consent and approvals will be required for the corporate reorganisation?

Whether a corporate consent or approval is required depends on the type of corporate reorganisation and the type of entity in question. The formalities are most restrictive for joint-stock companies and limited liability companies that have a supervisory board.

Usually, a resolution of the general meeting is required for an action to be valid, sometimes even an examination by an auditor and a written report from the supervisory board. However, the lack of the supervisory board's approval does not automatically make a transaction void – a third party acting in good faith is protected in such a case.

Fewer formalities are required in the case of limited liability companies with a board of directors where their resolution would usually suffice. However, the articles of association may provide for additional procedural steps for various kinds of corporate decisions. Additionally, the formalities tend to be more relaxed in the case of a sole shareholder entity where a simple shareholder resolution usually suffices for the majority of the transactions.

Law stated - 25 March 2025

ASSETS

Shared assets

17 How are shared assets and services used by the target company or business typically treated?

A transfer of shared assets co-owned by the target company may be subject to certain restrictions depending on the type of transaction. If the transaction is an asset deal concerning an immovable property (real estate), the co-owners have a statutory pre-emptive purchase right to buy the assets under the same conditions as the acquiring company. However, this pre-emption right does not apply to movable property. In the case of mergers, divisions or changes of the legal form of the target company, the aforementioned restriction does not apply, as the acquiring company simply replaces the target company in the co-ownership. The pre-emption right would be less obstructive if the immovable property is shared intra-group than if it is shared with third parties.

A different difficulty arises with regard to services in the scope of asset deals. For a transfer of a contract to be valid and to come into effect under Slovenian law, the counterparty must consent to the transfer. This would present a similar concern for shared services both within the group and with third parties, as the emphasis to the potential hindrances to the reorganisation process is with the third party providing the services, rather than the shared beneficiary of the service.

In any event, any shared assets or services of the target company should be identified in the planning phase of the corporate reorganisation process, so that the potential interferences with the process may be evaluated and taken into account when determining the benefits of the reorganisation.

Law stated - 25 March 2025

Transferring assets

18 Are there any restrictions on transferring assets to related companies? If not, are there measures that can be taken to allow such a transfer?

There are no specific restrictions on transferring assets within a corporate group as long as the transactions are conducted at arm's length. Otherwise, if the assets are transferred below or above the market value, this may be treated as a hidden distribution of profit. These transactions are considered a regulatory offence subject to a significant fine and may have further tax implications.

Additionally, the existence of a group in a legal or economic sense does not absolve the members of the group to abide by the rules regulating data protection both on the national level and the EU level, with special regard to the General Data Protection Regulation. When transferring personal data, special regard must be given to transfers outside of the European Union.

Potential restrictions may also apply when transferring immovable property.

Law stated - 25 March 2025

19 | Can assets be transferred for less than their market value?

If assets are transferred to a shareholder for less than the market value, the transaction may be considered as a hidden distribution of profit. When a controlling company uses its influence to induce a controlled company to carry out a detrimental transaction, it must compensate for the incurred loss. If such loss is not compensated, the controlled company and its shareholders have a claim for damages against the controlling company and the representatives who induced the detrimental transaction.

Transferring assets for less than their market value between related companies in international transactions may also have tax consequences from the point of view of transfer prices. Although transferring assets to related companies in the group is usually permitted, the price for the group service must be the same as that which would be set and accepted by the independent companies in comparable circumstances.

Law stated - 25 March 2025

FORMALITIES

Date of reorganisation

20 | Can a corporate reorganisation be backdated or deemed to have already taken place, for example, from the start of the financial year?

As the entry into register has a constitutive effect on the consequences of reorganisation, backdating of the documents required for the transaction would be unadvisable and may even impede the reorganisation procedure. From the accounting and tax perspective, a cut-off date (in our experience, related to the date of the entry in the registry) will be defined by the tax adviser when the new balance sheets of the reorganised company are prepared. Under the Companies Act (ZGD-1) it is not permitted for the cut-off date to be determined more than nine months prior to the entry into the register. We strongly advise consultation with a tax adviser or accounting specialist or both on this matter in relation to the specifics of the case at hand.

Law stated - 25 March 2025

Documentation

21 | What documentation is required or advisable in a corporate reorganisation?

The documentation that is required depends on the type and extent of a corporate reorganisation and the participating companies. Changes of legal form from a joint-stock company to a limited liability company or vice versa will require a resolution of the general meeting, a document naming the members of the management bodies and supervisory board and audit reports with some further specifics depending on the type of change. Asset deals and share deals require a purchase agreement combined with accompanying documentation that allows subsequent registration of the ownership. Mergers and divisions require either a merger agreement or a division plan, a management's report on the merger or division respectively, a resolution of the general meeting and an examination of the proposed reorganisation by an auditor. In the case of a corporate reorganisation with a cross-border element, all foreign entities or nationals need to acquire a Slovenian tax number before they can be entered in the court registry as shareholders or directors, etc. In the case of a limited liability company with a sole shareholder, a resolution of the general meeting is replaced by a sole shareholder's resolution.

Law stated - 25 March 2025

Representations, warranties and indemnities

22 | Should representations, warranties or indemnities be given by the parties in a corporate reorganisation? If so, which are most common?

Slovenian laws do not regulate representations, warranties and indemnities in detail as may be the case in some other jurisdictions. Consequently, the documentation for corporate reorganisation usually does not include provisions for that kind of protection, which is more common in M&A transactions with third parties. However, a very limited list of representations and warranties may be used in these transactions as well, usually relating to the existence of encumbrances or rights of third parties, which may impede the reorganisation procedure or negate any beneficial effects of these transactions.

Law stated - 25 March 2025

Assets versus going concern

23 | Does it make any difference whether assets or a business as a going concern are transferred?

In the case of an asset deal, difficulties may arise in regard to the transfer of contracts, as the consent of the contract parties of each contract being transferred is required for the transfer to be valid and to come into effect. Furthermore, an important drawback of the Slovenian asset deal regulation is constituted by a provision stipulating that the party to which an asset is transferred shall be – along with the transferring party – jointly and severally liable for all the debts that shall arise from that asset or any part thereof, up to value of the assets.

On the contrary, transferring a business as a going concern in case of a share deal or a change of legal form would not require a consent of the counterparty and the acquiring company would automatically assume all the contractual relationships of the target company. However, change-of-control clauses or third-party notice provisions might still be applicable.

The status of the employees and their involvement in the pension schemes is subject to the same regulatory regime regardless of whether assets or a business as a going concern is transferred.

Law stated - 25 March 2025

Types of entity

24 Explain the key differences between public, private, government or non-profit entities to consider when undertaking a corporate reorganisation.

Corporate reorganisations of publicly traded entities usually have more strict rules than those involving private entities. An audit (examination) of the merger contract is not obligatory for a limited liability company, as is the case for the scrutiny of the merger by the supervisory board. The requirements for preparation and holding of the general meeting and the potential increase of share capital are less stringent. Additionally, financial assistance is prohibited for a joint-stock company but not in the same way for a private limited liability company. Also, special provisions regarding takeovers and financial instruments may be applicable with regard to publicly traded entities.

Government-controlled entities such as public undertakings may take one of the forms of either private or publicly traded companies as prescribed by the Companies Act (ZGD-1). A special reorganisation procedure named 'transfer of assets' is applicable when a transferring company decides to transfer all or a part of its assets to Slovenia or a local community in exchange for monetary compensation or bonds. The rules for a reorganisation of a public limited company apply analogously regarding the general meeting and the rights of the shareholders.

Corporate reorganisations concerning non-profit entities are subject to less stringent rules than public and private companies.

Law stated - 25 March 2025

Post-reorganisation steps

25 Do any filings or other post-reorganisation steps need to be taken after the corporate reorganisation?

It depends on the type of corporate reorganisation whether any filings or other post-reorganisation steps need to be taken. Generally, the reorganisation is considered to enter into force from the day of the entry into the court registry. Therefore, most reorganisation steps will be completed prior to this entry and any obligations after this event are considered an exception. Some changes do need to be registered with the competent registration authority for them to be effective and have legal consequences.

As an example of the exception, the shareholders of the transferor company who objected against the resolution of the general meeting on the merger can demand cash compensation in exchange for shares of the transferee company and the offer of cash compensation is binding upon the transferee company for two months from the date of the merger.

Another possible post-reorganisation duty is under the obligation to obtain and provide the beneficial ownership information under the '4th AML' Directive of the EU, which was transposed into national law by the Slovenian Prevention of Money Laundering and Terrorist Financing Act (ZPPDFT-2). This obligation requires the notification of the change of a beneficial owner in eight days if this change has occurred.

Additionally, a foreign direct investment screening mechanism was introduced in Slovenia in 2020. Acquisitions of a 10 per cent share capital or voting rights can already constitute foreign direct investment, including corporate reorganisations. Currently, there is no clear exception for intra-group transactions and the relevant authorities are yet to publish any guidance on the topic. Therefore, it is advisable to notify a reorganisation, which should happen within 15 days of closing the transaction.

Law stated - 25 March 2025

UPDATE AND TRENDS

Hot topics

26 What are your predictions for next year and how will these impact corporate reorganisations in your jurisdiction (for example, expected trends or pending legislation)?

Currently, we are not aware of any pending legislation that would have a significant effect on the number of corporate reorganisations. A new amendment of the Slovenian Companies Act came into force on 18 December 2024, but the main novelties pertain to reporting, transparency and the introduction of gender balance within directors, which are not anticipated to have a significant effect on the number of corporate reorganisations.

Law stated - 25 March 2025

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Switzerland

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Summary

LEGAL AND REGULATORY FRAMEWORK

Types of transaction

1 What types of transactions are classified as 'corporate reorganisations' in your jurisdiction?

In Switzerland, corporate reorganisations encompass a variety of transactions aimed at restructuring businesses. These transactions may include the rationalisation of company groups by merging or liquidating companies, the carve-out of entire or parts of businesses by demerger, spin-offs or business transfers, which may include the formation of new companies, the repatriation of cash or other assets by means of distributions or transfers, or the relocation of companies within, to or out of Switzerland. The legal framework governing most of these reorganisations measures are set in the Swiss Code of Obligations and the Swiss Merger Act.

Law stated - 10 March 2025

Rate of reorganisations

2 Has the number of corporate reorganisations in your jurisdiction increased or decreased this year compared with previous years? If so, what are the key drivers for such change in the number?

The number of corporate reorganisations in Switzerland has increased in recent years. International pressure on offshore structures has led to a trend of onshoring to Switzerland as it is highly regarded for its favourable corporate law that offers extensive flexibility in share capital structure and equity distributions, making it an attractive destination for international company groups. The country's robust legal framework, particularly the Swiss Corporate Law Reform, allows companies to optimise their structures efficiently. Additionally, the stability and predictability provided by recent tax reforms and international compliance measures further enhance Switzerland's appeal for global businesses seeking a strategic base. Lastly, economic uncertainty has led many companies to undertake carve-outs and spin-offs to streamline their business operations, raise cash and unlock shareholder value.

Law stated - 10 March 2025

Jurisdiction-specific drivers

3 Are there any jurisdiction-specific drivers for undertaking a corporate reorganisation?

In Switzerland, several jurisdiction-specific drivers have prompted corporate reorganisations. A significant factor is the recent Swiss Corporate Law Reform, adopted by the Swiss Parliament in June 2020 and effective from 1 January 2023. This reform introduced greater flexibility in share capital, allowing it to be denominated in foreign currencies and enabling the use of a capital band for adjustments. Additionally, the ongoing reform of the Swiss tax regime for corporate entities has encouraged many companies to reorganise to optimise their tax positions. Notably, the OECD minimum tax rate was implemented in Switzerland on 1 January 2024, through an ordinance. Furthermore, on 4 September 2024, the Federal Council decided to enforce the international supplementary tax under the income inclusion rule (IIR) from 1 January 2025, thereby preventing base erosion and creating stable framework conditions. Within six years, the Federal Council will submit a federal act to Parliament to replace the existing ordinance

Law stated - 10 March 2025

Structure

4 | How are corporate reorganisations typically structured in your jurisdiction?

Swiss corporate reorganisations are typically structured under the framework of the Swiss Code of Obligations. The Swiss Merger Act rules (1) mergers (leading to the combination of at least two companies into one), (2) demergers (leading to the split of a company into at least two separate companies), (3) conversions (through which companies can change their legal form), and (4) asset transfers with partial universal succession. However, reorganisations are conducted under the Swiss Merger Act only in case of mergers and conversions as all other instruments have proven to be too complicated, too risky, too time consuming and too expensive, except in cases involving the transfer of various real estate located in Switzerland. Demergers are generally completed under the Swiss Code of Obligations, as was the practice prior to the entry into force of the Swiss Merger Act. These are as two-step demergers, involving the contribution of the assets and liabilities to be demerged into a newly created company in the first step, which is then distributed to its parent in the second step. Likewise, business transfers are performed under the Swiss Code of Obligations as regular contractual agreements on transfers with single succession. To ensure the tax neutrality of such intercompany transactions, most of them are structured as book value transactions, whereby tax rulings are obtained to secure the tax consequences prior to completion.

Law stated - 10 March 2025

Laws and regulations

5 | What are the key laws and regulations to consider when undertaking a corporate reorganisation?

Swiss corporate reorganisations are generally ruled by a multitude of federal and cantonal acts and ordinances as well as circulars, predominantly the following:

- Federal Act on the Amendment of the Swiss Civil Code of 30 March 1911 (Part Five: Code of Obligations), amended on 1 January 2025 (Swiss Code of Obligations).
- Federal Act on Merger, Demerger, Conversion, and Transfer of Assets and Liabilities of 3 October 2003, as amended on 1 January 2023 (Swiss Merger Act).

- Federal Act on the Swiss Civil Code of 10 December 1907, amended on 1 January 2025.
- Federal Act on Private International Law of 18 December 1987, amended on 1 January 2025.
- Ordinance on the Commercial Register of 17 October 2007, amended on January 2025.
- Federal Act on Direct Federal Tax of 14 December 1990, amended on 1 January 2025.
- Federal Act on Harmonisation of Direct Cantonal and Communal Taxes of 14 December 1990, amended on 1 January 2025.
- Federal Act on Withholding Tax of 13 October 1965, amended on 1 January 2025.
- Federal Act on Stamp Duty of 27 June 1973, amended on 1 January 2024.
- Federal Act on Value Added Tax of 12 June 2009, amended on 27 February 2025.
- Ordinance on the minimum tax rate of the big group of companies of 22 December 2023, amended on 1 January 2025.
- Cantonal Acts on Cantonal Taxes.
- Circular Letter No. 5 of the Swiss Federal Tax Administration of 1 February 2022.
- Circular Letter No. 6 of the Swiss Federal Tax Administration of 6 June 1997.
- Circular Letter No. 27 of the Swiss Federal Tax Administration of 17 December 2009.
- Circular Letter No. 29a of the Swiss Federal Tax Administration of 9 September 2015.
- Circular Letter No. 29b of the Swiss Federal Tax Administration of 23 December 2019.

Law stated - 10 March 2025

National authorities

6 | What are the key national authorities to be conscious of when undertaking a corporate reorganisation and what role does each authority play?

Several authorities should be considered when contemplating a corporate reorganisation in Switzerland. In particular, the Swiss Federal Tax Administration and the relevant cantonal tax authorities are regularly contacted and tax rulings obtained from them in advance to secure tax neutrality and compliance with the related conditions. Likewise, the competent cantonal Commercial Register Office, responsible for the registration of changes affecting companies in Switzerland will have to be involved to the extent the reorganisation or an aspect of it requires an entry in the commercial register, which holds true in case of, for example, mergers, conversions, relocations, issuance of shares or liquidations. To the extent a reorganisation involves the transfer of employees, the competent social security authority may need to be contacted as well. Finally, reorganisations involving companies active in the banking and insurance sector will have to submit their reorganisation undertaking to the Swiss Financial Market Supervisory Authority, which oversees financial institutions and ensures compliance with financial regulations.

Law stated - 10 March 2025

KEY ISSUES

Preparation

7 | What measures should be taken to best prepare for a corporate reorganisation?

The success of a corporate reorganisation strongly depends on thorough preparation and planification. It starts with clearly defining the goal of the reorganisation. In order to properly emphasise the tasks and steps required to achieve the defined goal, it is essential to conduct due diligence at the beginning of the project in order to understand the financial, legal and operational aspects of the entities involved and to define the tasks required. The due diligence exercise will regularly involve the review of contracts and corporate functions of the entities involved and may, depending on the industry the company group is involved in, also encompass authorisations. It is crucial to identify time-critical and time-consuming aspects of the reorganisation process such as audit and valuation requirements and mandatory legal waiting periods in order to prepare a reliable timeline. In particular, approval requirements and third party consents are to be considered early in order to avoid unpleasant surprises jeopardising the entire project later on. Certain transactions require for example that employees and/or shareholders be informed reasonably in advance. Addressing these measures early helps to navigate the complexities of corporate reorganisations efficiently and effectively. As a corporate reorganisation process regularly involves various functions such as legal, tax, financial and IT work streams, it is recommended to depict the main steps of the reorganisation project in a so-called macro step plan allowing the various work streams to easily comment on and provide their input. Each work stream can then develop a more detailed step-by-step plan on the basis of the macro step plan, a so-called micro step plan, ensuring that all necessary actions are taken in a structured and timely manner. Both the macro and the micro step plan have proven to be excellent management and information tools as they allow monitoring the progress of the project and providing the various stakeholders with the information necessary for them to be able to accomplish their tasks in a timely and efficient manner.

Law stated - 10 March 2025

Key departments and operational issues

8 | What departments of the concerned companies are most involved in corporate reorganisations and what are the most challenging operational issues?

In Switzerland, the departments involved in corporate reorganisations typically include the legal, tax, finance, procurement and IT departments. The legal and tax department play a crucial role in ensuring compliance with relevant laws and regulations, drafting (or reviewing if external counsels are involved) necessary documents, obtaining the necessary rulings and authorisations and managing legal and tax risks. The finance department is responsible for assessing the financial implications, managing budgets and ensuring the financial viability of the reorganisation. The procurement department handles the logistics of acquiring necessary resources and managing supplier relationships. Finally, the IT departments deals with the IT relevant changes resulting from the reorganisation (such as, eg, the system changes to be made when adding a new group company or changing the name of an existing company). One of the most challenging operational issues is coordinating between all departments involved to ensure seamless communication and alignment of objectives. Additionally, managing the integration of different corporate cultures, systems and processes can be complex and time-consuming. Ensuring that all stakeholders are on board and addressing any resistance to change are also significant challenges during corporate reorganisations.

Law stated - 10 March 2025

Employment issues

9 What are the main issues relating to employees and employment contracts to consider in a corporate reorganisation?

The consequences of the corporate reorganisation for employees in Switzerland and their employment should be addressed at an early stage of the project. One primary concern is ensuring compliance with the Swiss Code of Obligations, which governs employment contracts and mandates specific provisions for their modification or termination. Employers should carefully review and, if necessary, renegotiate employment contracts to align with the new organisational structure while adhering to legal requirements. Particular focus on employee-related matters should be addressed in the event of dismissals, transfer of employees as well as changes to employment terms.

Unless employment transfers are operated through a business transfer, merger or demerger, in which cases employees and their employment are transferred by operation of law, the transfer of employment requires the consent of each individual employee. In case of an automatic transfer of employment in the mentioned cases, the works council or, in the absence of works council, employees must be properly informed of the reasons for the transfer and all legal, economic, and social consequences associated therewith. Employees have the right in such cases to oppose the transfer of their employment in which case their employment will end at the end of the notice period stipulated by law. Contractual termination generally periods are irrelevant in such cases. Notwithstanding the automatic transfer of employment, the former employer remains jointly and severally liable with the new employer for all employee claims that fell due before the transfer date or between the transfer date and the date on which the employment relationship could normally be terminated or is terminated due to opposition to the transfer. Should the new employer intend to change employment terms after the transfer, such changes must be notified to the employees in advance of the transfer and may trigger the obligation to conduct lengthy consultation processes with the works council, or, in the absence of works council, the employees. A consultation process also applies in case terminations are planned, if the thresholds for a collective dismissal are met. In such a case, employees must be given the opportunity to make suggestions on how to avoid or alleviate the consequences of the measures planned against the workforce and limit the number of dismissals. Additionally, the cantonal labour office has to be notified. It is important to highlight that notification to the cantonal labour office is required if 10 (or in some cantons, six) or more employees are dismissed, irrespective of a collective dismissal. Employers must also consider the potential impact on employee morale and productivity, as reorganisations can be disruptive and may lead to resistance or anxiety among staff. Ensuring that employees are adequately supported and that their rights are protected is essential for a smooth transition. Finally, employers should be mindful of any collective labour agreements that may apply, as these can impose additional obligations and protections for employees during a reorganisation.

Law stated - 10 March 2025

10 What are the main issues relating to pensions and other benefits to consider in a corporate reorganisation?

When undertaking a corporate reorganisation in Switzerland, it is essential to address several key issues related to pensions and other employee benefits. A primary concern is ensuring compliance with the Swiss occupational pension scheme (BVG/LPP), which mandates specific provisions for employee pensions. Employers must meticulously review and, if necessary, adjust pension plans to align with the new organisational structure while adhering to legal requirements. If the reorganisation results in employee transfers, it is essential to ensure that the transferred employees are registered with the pension scheme of the new employer in due time. Employers should also consider the potential impact on other employee benefits, such as health insurance, bonuses and stock options, ensuring these benefits are preserved or appropriately adjusted following the reorganisation. Supporting employees adequately and protecting their rights are vital for a smooth transition. Finally, employers should be mindful of any applicable collective labour agreements, as these may impose additional obligations and protections for employees in connection with a corporate reorganisation.

Law stated - 10 March 2025

Financial assistance

11 Is financial assistance prohibited or restricted in your jurisdiction?

Intercompany financial assistance (eg, granting of guarantees or loans) is generally permitted in Switzerland. However, there are certain restrictions that apply in this regard. As a preliminary condition, the articles of association of the Swiss company granting the financial assistance must allow such financial assistance which is generally the case if such articles contain an adequate purpose clause explicitly envisaging the support of the company group and financial assistance. The financial assistance must be in the interest of the companies involved. It is essential that the financial assistance does not constitute a repayment of company capital or an unjustifiable contribution. Particularly in cases of up- and cross-stream financial assistance granted by a Swiss company to another group company (ie, a parent or sister company) it is essential to adhere to the arm's-length principle, meaning that the financial assistance should be conducted as if the parties were unrelated, ensuring fairness and market conditions. Furthermore, the financial assistance granted should not exceed the freely distributable equity of the financing Swiss company and must be approved by the shareholders' meeting. Non-compliance with these rules can render the financial assistance null and void, potentially leading to challenges by the company or its shareholders, and directors' liability. Additionally, up or cross-stream financial assistance not adhering to the at arm's length principle may be qualified as hidden distributions from a Swiss tax perspective triggering Swiss withholding tax.

Law stated - 10 March 2025

Common problems

12 What are the most commonly overlooked issues or frequently asked questions in a corporate reorganisation?

The most overlooked issues in corporate reorganisations in Switzerland first and foremost relate to financial statements, audit requirements, and valuation topics. Recent financial statements, regularly audited, showing sufficient freely distributable equity, will be required for distributions, mergers or demergers. Distributions in kind and assets transferred either in the context of the sale, contribution or transfer of businesses or assets must be accurately valued and purchase prices determined. The preparation of recent financial statements as well as the obtaining of the audit report related thereto and the preparation of valuations regularly take longer than estimated and may jeopardise entire projects if the values obtained do not match the requirements, such as when recent financial statements do not show sufficient distributable equity to execute the intended distribution or complete the proposed merger. Additionally, the legal requirements and the impact of involved stakeholders such as notaries public, commercial register officers, tax and other authorities may have on the timeline of a corporate reorganisation are regularly underestimated. Insurance considerations necessitating a review and potential adjustment of insurance policies to ensure adequate coverage for the reorganised entity are also often overlooked. In recent times, questions about regulatory requirements have increased in connection with corporate reorganisations projects. While in the past, intercompany reorganisations were less subject to regulatory restrictions, this has changed nowadays. Depending on the nature of the business being reorganised and the reorganisation steps, such projects may very well be subject to regulatory restraints.

Law stated - 10 March 2025

ACCOUNTING AND TAX

Accounting and valuation

13 How will the corporate reorganisation be treated from an accounting perspective? How are target assets and businesses valued?

Corporate reorganisations are approached with meticulous attention from an accounting perspective. The reorganisation has to comply with Swiss accounting standards, ensuring that all transactions are accurately recorded and reported. This includes maintaining the integrity of the company's financial statements and properly documenting any changes in structure or ownership. The selection of book values over fair market values and vice versa is also particularly important as it may result in different tax consequences. The appropriation of the accurate values and the currency may present challenges, especially in cases where assets and liabilities are transferred.

Law stated - 10 March 2025

Tax issues

14 What tax issues need to be considered? What are the tax implications of carrying out a corporate reorganisation?

Corporate reorganisations may be subject to various Swiss taxes. One key aspect of every corporate reorganisation is ensuring tax neutrality, which means that the reorganisation should not trigger immediate tax liabilities for the companies involved. This can be achieved by meeting specific conditions, such as maintaining the tax liability in Switzerland and transferring assets at their tax book values without realisation of hidden reserves. Such tax neutrality may allow to avoid payment of certain taxes such as corporate income tax, issuance stamp tax, transfer stamp tax, withholding tax and value added taxes. Companies often seek advance tax rulings from the Swiss Federal Tax Administration and the relevant cantonal tax authorities to ensure tax neutrality.

Law stated - 10 March 2025

CONSENT AND APPROVALS

External consent and approvals

15 What external consent and approvals will be required for the corporate reorganisation?

External consents and approvals are regularly required for corporate reorganisations in Switzerland. These may include approvals from third contract parties such as lenders, who might need to consent to changes in the company's structure or ownership due to existing loan engagements. Regulatory authorities especially may need to be consulted if the reorganisation involves sectors with specific regulatory requirements, such as financial services or telecommunications. Additionally, certain transactions might require approval from competition authorities to ensure that the reorganisation does not create anticompetitive practices in cases a reorganisation also involves a third party. Finally, any changes pertaining to a Swiss company that need to be registered in the commercial register such as any changes in the articles of association, the approval of the competent cantonal Commercial Register Office is required for such registration. It is crucial to review all contractual obligations and regulatory requirements to identify and obtain or at least secure the necessary consents and approvals in advance in order to ensure a smooth and compliant reorganisation process within the proposed timeline.

Law stated - 10 March 2025

Internal consent and approvals

16 What internal corporate consent and approvals will be required for the corporate reorganisation?

Internal corporate consents are essential for a corporate reorganisation in Switzerland and should be well documented in order to secure the validity of the transactions and avoid the personal liability of the involved stakeholders. Typically, the board of directors of a Swiss company must approve the reorganisation steps, ensuring they align with the company's strategic goals and comply with legal requirements. Furthermore, the approval of shareholders of a Swiss company may also be required if the decision on a particular reorganisation step lies in the competence of the shareholders either by law or by the articles of association. This will regularly be the case with regard to steps involving changes in equity (contributions and distributions), changes in the articles of association, changes in the form of the legal entity (conversions), or changes in the shareholder structure of a Swiss company including mergers and demergers or in cases of up- and cross-stream transactions. Note that there are certain rules on how to obtain such consents, which need to be complied with and may vary slightly depending on the particular circumstances.

Law stated - 10 March 2025

ASSETS

Shared assets

17 How are shared assets and services used by the target company or business typically treated?

Shared assets and services used by the target company or business require particular attention in corporate reorganisations. These assets and services are often subject to detailed agreements which may need to be renegotiated. It is important that the reorganisation does not disrupt ongoing operations occurring on the basis of such agreements and that all shared resources are appropriately accounted for and allocated.

Law stated - 10 March 2025

Transferring assets

18 Are there any restrictions on transferring assets to related companies? If not, are there measures that can be taken to allow such a transfer?

Transferring assets to related companies in Switzerland is generally permissible, but it must comply with specific legal and regulatory requirements. The transfer must generally be conducted at arm's length, meaning the terms should be similar to those that would apply between unrelated parties. This ensures that the transaction is fair and does not disadvantage any stakeholders. Under Swiss law, each company is independent and should prioritise its own interests rather than those of the group. Unlike in other countries, there is no legal framework that deals with groups of companies in Switzerland. Additionally, the transfer must not jeopardise the company's financial stability or violate capital maintenance rules. To facilitate such transfers, companies can take measures such as obtaining independent valuations to ensure the assets are fairly priced, seeking approval from the board of directors and shareholders, and ensuring all transactions are properly documented and disclosed in the financial statements.

Law stated - 10 March 2025

19 | Can assets be transferred for less than their market value?

Yes, as an exemption to the at arm's length principle, a Swiss company may transfer assets for less than their market value, for example, at book value if such transfer either occurs in the context of a distribution or a contribution. However, such transactions must be carefully reviewed from a legal and tax perspective in order to make sure that all conditions are met.

Law stated - 10 March 2025

FORMALITIES

Date of reorganisation

20 | Can a corporate reorganisation be backdated or deemed to have already taken place, for example, from the start of the financial year?

Backdating of documents is not permitted under Swiss law. Nor is it possible from a corporate law perspective to have a corporate reorganisation or any step thereof taking effect at a time prior to its completion. Legally, the transaction is completed when agreed upon or at such later date as stipulated in the legal documents. However, it is permitted and possible to agree for accounting and tax purposes that a corporate reorganisation or a particular step thereof shall be deemed to have economically occurred at a time prior to the legal effectiveness (ie, with economic retroactive effect, for instance, to the beginning of the financial year). For tax reasons, such retroactive effect should not be longer than six months. Such economic retroactive effect affects accounting and tax qualifications, allowing the reorganisation to be reflected in the financial statements as if it had occurred at an earlier date.

Law stated - 10 March 2025

Documentation

21 | What documentation is required or advisable in a corporate reorganisation?

The documentation required for a corporate reorganisation in Switzerland varies based on the steps such reorganisation involves. Generally, each transaction requires documents supporting the corporate approval (ie, a consent of the board of directors and sometimes also of the shareholders of the Swiss company), as well as the legal documents, typically agreements, effecting the proposed reorganisation step. Additionally, (audited) financial statements, statutory auditors' reports and consents, letters or consents from third parties and authorities as well as documents required to make the proper filings in the particular case may be required.

Law stated - 10 March 2025

Representations, warranties and indemnities

22 | Should representations, warranties or indemnities be given by the parties in a corporate reorganisation? If so, which are most common?

In the context of reorganisations involving third parties, the parties involved often provide representations, warranties and indemnities. Common representations and warranties pertain to the title of the assets or shares being transferred, the financial condition of the business, compliance with laws and regulations, and the absence of undisclosed liabilities. Indemnities are typically offered to cover specific risks identified during due diligence, such as tax liabilities or environmental issues. Although these provisions are common, their extent varies on a case-by-case basis. In the context of intercompany corporate reorganisations, representations and warranties should be limited to legal title and indemnities avoided to the extent possible as they may cause ramifications in later divestitures with third parties.

Law stated - 10 March 2025

Assets versus going concern

23 | Does it make any difference whether assets or a business as a going concern are transferred?

Under Swiss law, there are some differences between the transfer of assets (and liabilities) and the transfer of a business as a going concern. However, both types of transfer can be achieved either under the Swiss Merger Act with 'partial universal succession' or under the Swiss Code of Obligations with 'singular succession', the latter regularly being the preferred option. Both types of transfer require the identification of the assets, liabilities and contracts to be transferred, which can be a complex and time-consuming process. Transferring a business as a going concern has, however, certain advantages as it is easier to identify assets, liabilities and contracts to be transferred by relating them to the business transferred. Furthermore, employment contracts are transferred by operation of law in the case of the transfer of a business as a going concern while they are regularly not automatically transferred in the case of an asset transfer. Finally, the two types of transfers may lead to different tax consequences, in particular form a Swiss VAT perspective. The choice between the two types of transfers will mainly be driven by the specific circumstances and objectives of the corporate reorganisation.

Law stated - 10 March 2025

Types of entity

24 Explain the key differences between public, private, government or non-profit entities to consider when undertaking a corporate reorganisation.

Public, private, government, and non-profit entities are generally governed by the same corporate, civil and tax law principles. However, each type presents unique challenges and may be subject to specific regulatory requirements. Public entities face stringent regulatory requirements and shareholder scrutiny. Private entities enjoy more operational flexibility and fewer regulations. Government entities navigate complex regulations and public interests, requiring approval from multiple departments. Non-profit entities must comply with specific regulations to maintain tax-exempt status and address stakeholder interests.

Law stated - 10 March 2025

Post-reorganisation steps

25 Do any filings or other post-reorganisation steps need to be taken after the corporate reorganisation?

A corporate reorganisation may trigger several filings and post-closing steps in Switzerland to ensure compliance with legal and regulatory requirements. These steps typically include registering the reorganisation with the competent cantonal commercial register, which involves submitting the necessary documentation depending on the type of reorganisation. Additionally, certain tax filings with the relevant tax authorities must be made. Furthermore, reorganisations involving the transfer of real estate or intellectual property rights may require filings with the competent registries. Finally, updating internal records, such as the share register and ultimate beneficial owner registers, might be necessary.

Law stated - 10 March 2025

UPDATE AND TRENDS

Hot topics

26 What are your predictions for next year and how will these impact corporate reorganisations in your jurisdiction (for example, expected trends or pending legislation)?

The corporate reorganisation landscape in Switzerland is driven by international and local legal and tax changes as well as the growing M&A activity in Switzerland and abroad. We have encountered in the past 12 months a growing appetite for carve-out transactions as preparatory steps for larger divestitures. We expect in the upcoming 12 months to see a shift from carve-out transactions to corporate reorganisations focusing on integrating newly acquired businesses and on relocations of entire company groups from abroad into Switzerland.

Law stated - 10 March 2025

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Summary

LEGAL AND REGULATORY FRAMEWORK

Types of transaction

1 What types of transactions are classified as 'corporate reorganisations' in your jurisdiction?

Mergers, demergers and changes of company type can be considered as types of corporate reorganisations. The transfer of shares, the liquidation of dormant organisations, intra-group transfers of shares and squeeze-outs of troublesome minority shareholders, which may be considered problematic, also can be classified as corporate reorganisations.

Law stated - 26 March 2025

Rate of reorganisations

2 Has the number of corporate reorganisations in your jurisdiction increased or decreased this year compared with previous years? If so, what are the key drivers for such change in the number?

It would be correct to say that the number of corporate reorganisations has been below average for the past 10 years; however, although the number of transactions has decreased, the value of transactions has increased.

The reason for the further decrease in the number of reorganisations this year may be that due to the currency crisis Türkiye experienced in 2018, companies have given precedence to financial restructuring rather than corporate reorganisations.

Law stated - 26 March 2025

Jurisdiction-specific drivers

3 Are there any jurisdiction-specific drivers for undertaking a corporate reorganisation?

The Law on Additional Motor Vehicles Tax for Compensation of Economic Losses Caused by Earthquakes Occurring on 6/2/2023 and on the Amendment of Some Laws and Decree-Law No. 375 (Law No. 7456) was published in The Official Gazette (15 July 2023, No. 32249).

With article 20 of Law No. 7456, immovables were excluded from the scope of partial division transactions to be made pursuant to subparagraph (b) of paragraph 3 of article 19 of the Corporate Tax Law as of 1 January 2024.

Law stated - 26 March 2025

Structure

4 | How are corporate reorganisations typically structured in your jurisdiction?

Mergers and partial or full spin-offs are the most common examples of corporate reorganisations in Türkiye. Conversion from a limited liability partnership to a joint stock company by changing the type of company can be considered another method of corporate reorganisation.

Law stated - 26 March 2025

Laws and regulations

5 | What are the key laws and regulations to consider when undertaking a corporate reorganisation?

Turkish Commercial Code (TCC) No. 6102, published in the Official Gazette (14 February 2011, No. 27846), is the primary legislation that specifies the details of the legal regime for corporate reorganisations. Similarly, the tax aspects of corporate reorganisations are mainly regulated by: Corporate Income Tax Law (CIT Law) No. 5520, published in the Official Gazette (21 June 2006, No. 26205); Value Added Tax Law (VAT Law) No. 3065, published in the Official Gazette (2 November 1984, No. 18563; and Stamp Tax Law No. 488, published in the Official Gazette (11 July 1964, No. 11751). Employee relations are mainly regulated by Labour Law No. 4857, published in the Official Gazette(10 June 2003, No. 25134),

If the corporate reorganisation is carried out by a publicly held corporation or a company regulated under Capital Markets Law (CM Law) No. 6362, published in the Official Gazette (30 December 2012, No. 28513), then the provisions of the CM Law and the relevant regulations and communiqués issued under the CM Law also will be applicable, including, without limitation, Merger and Demerger Communiqué II-23.2, published in the Official Gazette (28 December 2013, No. 28865).

Reorganisations that involve companies operating in specifically regulated sectors are also subject to the relevant sector-specific legislation, such as Insurance Law No. 5684, Banking Law No. 5411, Electricity Market Law No. 6446, Turkish Petroleum Law No. 6491, Natural Gas Market Law No. 4646, Electronic Communications Law No. 5809, Regulation of Tobacco, Tobacco Products and Alcohol Markets Law No. 4733, Mining Law No. 3213 and their respective secondary legislation.

Code No. 4054 on the Protection of Competition, published in the Official Gazette (13 December 1994, No. 22140), referred to as the Competition Law, and its secondary legislation, also may apply if the corporate reorganisation triggers a change of control and the turnover of the parties involved in the transaction exceeds the thresholds set out in the competition legislation.

Law stated - 26 March 2025

National authorities

6 | What are the key national authorities to be conscious of when undertaking a corporate reorganisation and what role does each authority play?

Most corporate reorganisations take effect after registration in the relevant commercial register, which is organised and supervised by the Ministry of Trade.

In the event that publicly traded companies or companies subject to the CM Law undergo a corporate reorganisation, such reorganisation is subject to the review and approval of the Capital Markets Board, the public authority responsible for capital markets in Türkiye.

If the corporate reorganisation triggers a change of control and the turnover of the parties involved in the transaction exceeds the thresholds set out in the competition legislation, the Competition Authority also becomes an important regulator.

Depending on the type of activity of the company undergoing reorganisation, companies in specially regulated sectors may require prior approval from the relevant regulatory authorities. Therefore, the secondary legislation of these regulatory authorities must be taken into account when carrying out corporate reorganisation. In this regard, some sector-based examples are shown below:

- insurance companies require approval from the Ministry of Treasury and Finance;
- banks and financial leasing and factoring companies require approval from the Banking Regulation and Supervision Authority;
- electricity companies require approval from the Energy Markets Regulatory Authority; and
- petroleum licence-holder companies require approval from the Ministry of Energy and Natural Resources.

Law stated - 26 March 2025

KEY ISSUES

Preparation

7 | What measures should be taken to best prepare for a corporate reorganisation?

Before embarking on a reorganisation, it is important to carry out a structure review to assess whether the planned reorganisation structure meets the needs and likelihood of meeting the minimum requirements for reorganisation processes. Since it is important to evaluate the companies involved in the reorganisation, it would be appropriate to undergo evaluation by independent experts on each of the issues assessed.

To determine the optimal conditions precedent for a proper reorganisation and to understand and manage the implications of the reorganisation, technical, legal, financial and tax due diligence must be carried out, in particular with regard to financial statements, books of account, tax returns, contracts, employment matters, legal issues, licences and permits.

Law stated - 26 March 2025

Key departments and operational issues

8 What departments of the concerned companies are most involved in corporate reorganisations and what are the most challenging operational issues?

Human resources and IT departments often tend to be mostly involved departments in the implementation of the reorganisation once the design is completed by legal and financial advisers.

Law stated - 26 March 2025

Employment issues

9 What are the main issues relating to employees and employment contracts to consider in a corporate reorganisation?

Under Turkish law, company reorganisations shall not affect the status of the employees so long as the identity (legal personality) of the company remains unchanged, unless there is a material (adverse) change in the working conditions of the employees.

In light of the above information, should only a share transfer and no transfer of business or workplace be in question, the legal status of the employees of the company shall not be affected unless a material amendment takes place on the working conditions of such employees. Therefore, no legal requirements such as notification to employees or obtainment of their prior written consents thereof shall arise in this regard. Consequently, no obligation shall exist to inform or consult with employee representatives, trade unions or governmental bodies.

It also should be noted that if the company plans to implement any material changes, such as altering the workplace address, job titles, salaries or any other significant employment conditions, in the working conditions of the employees, it must strictly adhere to the provisions of the Labour Law upon realisation of the contemplated corporate reorganisation.

Pursuant to the provisions of article 22 of the Labour Law, material amendments can be made to the working conditions constituted by the employment contracts or the personnel regulation in the nature of its attachment and similar sources or practices of working place only by informing the employees in writing of the situation. Any amendments that are not made in compliance with such form and are not accepted in writing by the employees within six business days shall not be binding upon such employees.

If the employee does not accept the proposed amendment within this period, the employer may terminate the employment contract, provided that it complies with the notice period and explains in writing that the amendment is based on a justified ground or another justified ground for termination. In this case, the employee in question shall be entitled to file a lawsuit in accordance with the relevant provisions of the Labour Law. However, the parties may at any time amend the working conditions by mutual agreement. The amendment to the working conditions shall not be enforced retrospectively.

In the event of the transfer of the entire department (transfers of workplace) based on a legal transaction, article 6 of the Labour Law shall be applicable. According to said article, in the event of a transfer of the entire or part of the workplace to any other party in the form of a legal transaction, all the employment contracts or any part of it concluded in the workplace are assigned to the transferee together with all rights and obligations. The transferee, as the new employer, is liable to affect all the transactions pertaining to the rights of the employees acquired during the service period by taking into account the first date of employment of the employee by the transferor.

The transferor and the transferee are jointly responsible for the debts accrued before the transfer and become due on the date of transfer. However, the liability of the transferor to fulfil such obligation is limited to two years as of the date of transfer.

Neither the transferor nor the transferee may terminate the employment contract due to the transfer of workplace or part of it. In other words, transfer may not constitute a justified reason from the aspect of the employee.

The Labour Law introduces the principle of equity, which entails the prohibition of any kind of discrimination in employment relations on the basis of language, race, gender, political opinion, religion and sect or similar reasons. Employees working in the same or equivalent jobs may not be discriminated against on the basis of gender when being remunerated. Also, no discrimination is allowed among employees working under a definite or indefinite term or part- or full-time contract. However, it should not be forgotten that this principle of equality is an equality between equals. In other words, the employer is obliged to treat employees of the same status as equals unless a valid reason exists for treating them differently. In this regard, in the case of corporate reorganisation, the working conditions of the transferred employees should be examined and it should be determined whether there are differences. In the event that differences are detected, the situation of employees in poor conditions should be improved.

Law stated - 26 March 2025

10 | What are the main issues relating to pensions and other benefits to consider in a corporate reorganisation?

The entitlement to a pension depends on the length of time the employee has worked, the number of days for which insurance contributions have been paid and the age of the employee. In other words, pension rights are subject to the terms and conditions of the relevant legislation and are independent of the company and the employment contract. In this respect, the employee's entitlement to retirement or pension rights shall not be affected in the event of a corporate reorganisation.

In the event of a corporate reorganisation, if the employment contracts of the employees have not been renewed and the current employment contracts remain in force, the benefits arising from these employment contracts shall remain in force. Therefore, the reorganised company must retain the benefits that were available prior to corporate reorganisation.

Law stated - 26 March 2025

Financial assistance

11 | Is financial assistance prohibited or restricted in your jurisdiction?

Although the Turkish Commercial Code (TCC) does not define or explicitly refer to the concept of financial assistance, financial assistance under the TCC can be understood as the provision of advances, loans, security or similar financial assistance by a company to a third party to enable the repurchase of that company's shares.

Any legal transaction constituting financial assistance is considered null and void under article 380 of the TCC. Therefore, apart from certain exceptions, financial assistance is prohibited under Turkish law. In addition to that, shares repurchased by the company or its subsidiary shall not be taken into account to calculate the quorum of the general meeting of the company. In other words, such shares shall not grant shareholding rights to the holder.

Law stated - 26 March 2025

Common problems

12 | What are the most commonly overlooked issues or frequently asked questions in a corporate reorganisation?

Examples of issues that may be overlooked in corporate reorganisations include negative equity, the availability of distributable reserves, technical insolvency issues, particularly in the case of spin-offs, strategies for maintaining business continuity in the event of a partial spin-off and change of control provisions in contracts.

According to article 376 of the TCC and article 179 of the Enforcement and Bankruptcy Law, a company is considered technically insolvent or bankrupt if its capital falls below certain thresholds due to accumulated losses in the past. In the case of a merger, the other company involved in the merger must have sufficient net assets to cover the accumulated losses and to compensate for the negative equity; otherwise, the merger cannot be consummated. In such circumstances, the board of directors is obliged to inform the shareholders, prepare an interim balance sheet, increase the share capital if it is decided to complete the capital or decrease the share capital if the board decides it is satisfied with the remaining capital.

The integrity of the production or service business of the company must be maintained in the new company in tax-exempt partial demergers. In other words, in tax-exempt corporate reorganisations, the assets and liabilities of the production or service business cannot be separated.

Issues such as ensuring the continuity of the reorganised company's contracts through pre-reorganisation due diligence, obtaining change of control consents, determining certain disclosures to be made in accordance with commercial practice and managing situations where conflicts of interest may arise are sometimes overlooked in corporate reorganisations.

Law stated - 26 March 2025

ACCOUNTING AND TAX

Accounting and valuation

13 How will the corporate reorganisation be treated from an accounting perspective? How are target assets and businesses valued?

Corporate reorganisations are treated as share sales, spin-offs or share exchanges. If the assets and liabilities are transferred at their book value and if the other requirements of corporate income tax law are met, the demerger will have a neutral effect on tax. Irrespective of whether the demerger is tax-neutral, the target company is valued at fair value (market price) for the purpose of distributing the shares following the demerger.

During corporate reorganisation, it is important that accounting and financial experts carry out the necessary reviews to evaluate the target assets and the business.

Law stated - 26 March 2025

Tax issues

14 What tax issues need to be considered? What are the tax implications of carrying out a corporate reorganisation?

Profits resulting from a merger are subject to corporate income tax under article 18 of the Corporate Income Tax Law (the CIT Law). In addition to this, articles 19 and 20 specify the conditions for tax-neutral corporate reorganisations.

If both the transferor and the transferee companies are tax residents and the transferee company includes all the assets and liabilities of the transferor company in its balance sheet on a carry-over basis, this type of acquisition is recognised as a tax-neutral merger under the CIT Law. Changes in the type of company under the same circumstances also are considered to be tax-neutral.

In the case of a full spin-off, only the earnings of the dissolved corporation until the date of spin-off shall be taxed and the profits arising from the spin-off shall not be calculated and taxed. According to the CIT Law, the spin-off date is the date on which the resolution of the company's directors regarding the spin-off is registered in the trade registry.

In the case of a partial spin-off, profits arising from spin-off transactions shall not be calculated or taxed. In a partial spin-off, transactions carried out in accordance with subparagraph (b) of the third paragraph of article 19 of the CIT Law, the companies that take over the assets of the spin-off shall be jointly and severally liable for the tax debts accrued and to be accrued until the spin-off date, limited to the fair value of the assets they have assumed.

In the case of share exchange transactions in which a capital company that is a full taxpayer acquires administrative control and the majority of shares in another capital company and in return transfers its shares to the shareholders of the acquired company, the share exchange will be neutral with regard to corporate income tax, provided that other conditions set out in article 20 of the CIT Law are met.

A full VAT exemption applies if the shares have been held for more than two years at the time of the sale (for both joint stock companies and limited liability companies) or share certificates have been issued before the share sale (joint stock companies only). However, there is an opinion that if the transfer is between two non-residents and does not take place in Türkiye, the transfer should not be subject to VAT (even though no specific exemption exists).

According to the Stamp Tax Law, the papers related to corporate reorganisations performed according to articles 19 and 20 of the CIT Law are exempt from the stamp tax.

Companies can spin off their immovable property by transferring it to a new company where it is registered as a capital contribution to the new company, which effectively means that it is possible to spin off and transfer immovable property without having to pay VAT, title deed fees or stamp duty on the transfer. This also allows shareholders to spin off any property they wish to exclude from a potential acquisition at little or no cost, providing a highly tax-efficient method of corporate reorganisation in preparation for acquisitions. However, with Law No. 7456, published on 15 July 2023, it was provided that a tax-free spin-off of immovable property would no longer be possible as of 1 January 2024.

Law stated - 26 March 2025

CONSENT AND APPROVALS

External consent and approvals

15 What external consent and approvals will be required for the corporate reorganisation?

Where a change of control occurs as part of a corporate reorganisation and the identity of the shareholders or management is commercially or financially important to the company's stakeholders – such as lenders, suppliers and clients – their consent may be required. If contractual requirements mandate the approval of a change of control, such approval should be obtained prior to the reorganisation of the company. Mergers and demergers also require the approval of the company's board of directors and shareholders. In addition, there must be no objection from the creditors.

In addition, the approval of the Turkish Competition Authority is required if the corporate reorganisation results in a change of control and exceeds the turnover thresholds defined in the Competition Communiqué.

In the case of tax-neutral corporate reorganisations, the Corporate Income Tax Law stipulates that the tax office must be duly informed and that certain forms and declarations must be completed.

Also, as stated above in the relevant section, depending on the sector, regulatory and supervisory approval may be required prior to a corporate reorganisation.

Law stated - 26 March 2025

Internal consent and approvals

16 What internal corporate consent and approvals will be required for the corporate reorganisation?

Certain documents, such as the report prepared and signed by the company's board of directors and the merger or demerger agreement and its plans, must be approved by the general assembly.

In the case of a change in the type of company, the general meeting of shareholders is also required to approve the plan and the report prepared by the board of directors regarding the change of the type of company.

Law stated - 26 March 2025

ASSETS

Shared assets

17 How are shared assets and services used by the target company or business typically treated?

No specific rules exist for the assets and services used by the target company or business and these can be regulated by contracts between the parties. Nevertheless, for tax-neutral spin-offs, the integrity of the production or service business of the company must be maintained in the new company.

Law stated - 26 March 2025

Transferring assets

18 Are there any restrictions on transferring assets to related companies? If not, are there measures that can be taken to allow such a transfer?

Transfers of assets to related parties are not restricted; however, any such transfer must be in accordance with the rules on transfer pricing.

The concept of transfer pricing, introduced with the implementation of the Corporate Income Tax Law (the CIT LAW), generally pertains to the pricing applied by related businesses or individuals when selling assets or providing services to one another. Transfer pricing is a positive concept that refers to a pricing system that sets out the basic principles of how assets and services should be exchanged between related entities. The concept by itself does not refer to any tax evasion or unlawfulness.

Pricing that violates the arm's length principle is considered a disguised distribution of profits as a result of transfer pricing abuse (article 13 of the CIT Law). The purpose of this provision is to ensure that the income of natural persons and legal entities exchanging assets or services with related parties is fully and accurately declared and to prevent the erosion of the tax base through transfer pricing.

Additionally, it is important to address the matter of disguised profit distribution via transfer pricing, recognised as one of the methods employed for tax security. Disguised profits are a measure introduced to prevent organisations from transferring untaxed income to related parties by inflating costs or understating income.

If the companies enter into transactions with related parties for the purchase or sale of assets or services at a price or price determined in violation of the arm's length principle, the profit is deemed to be wholly or partly disguised through transfer pricing.

Certain conditions must be met to qualify as a disguised distribution of profits. First, the parties to a transaction that is deemed to be a disguised distribution of profits must be in a certain relationship to one another. Second, the transaction between parties must result in an unfair advantage for the related person. If the transaction in question has a legitimate justification and is not for the purpose of tax erosion, disguised distribution of profits will not occur. A further condition is that the transaction must be contrary to the arm's length principle.

Law stated - 26 March 2025

19 | Can assets be transferred for less than their market value?

The assets may be the subject of a transfer for less than their market value. However, any negative deviation from the arm's length market price may trigger the application of the transfer pricing rules if the transaction is between related parties.

Law stated - 26 March 2025

FORMALITIES

Date of reorganisation

20 | Can a corporate reorganisation be backdated or deemed to have already taken place, for example, from the start of the financial year?

Company reorganisations become legally effective upon registration with the competent commercial register, according to the Turkish Commercial Code (TCC); therefore, it is not possible to backdate corporate reorganisations.

Law stated - 26 March 2025

Documentation

21 | What documentation is required or advisable in a corporate reorganisation?

Some important documents are listed below and should be discussed with the relevant trade registry before the corporate reorganisation process is carried out. Furthermore, some additional information and documents may be requested for corporate reorganisations of companies in specially regulated sectors.

Mergers require:

- a photocopy of the registry gazette in which the announcement regarding the right of inspection of the transferred or acquired company is published 33 days before the general assembly;
- notarised copies of the resolutions regarding the approval of the merger agreement by the general assemblies of the transferor and transferee companies;
- the merger agreement to be signed by the parties;
- if the merger transaction is subject to the permission or favourable opinion of the ministry or other official institutions, a permission or favourable opinion letter for the transferee and the transferred company;
- in the event that the transferee company carries out a capital increase due to the merger, the documents required for the registration of the capital increase;
- in terms of the transferee company, if the merger is made in the form of a new establishment, the establishment documents of the new company;
- a certified public accountant or sworn-in certified public accountant and financial adviser's activity certificate;
- declarations regarding the list of the assets and rights of the transferred company registered in the land registry, ship registry, intellectual property registry and other similar registries; and
- announcements made by the merging companies to the creditors giving them the right to request the guarantee of their receivables.

Demergers require:

- a photocopy of the registry gazette of each of the companies participating in the demerger, in which the announcement indicating the shareholders' right of inspection is published two months prior to the resolution of the general meeting;
- a photocopy of the announcements published in the registry gazette inviting creditors to declare their claims and request the provision of collateral;
- the demerger agreement and demerger plan;
- a notarised copy of the resolution of the general meeting of the demerged company and other companies participating in the demerger approving the demerger agreement or plan;
- declarations regarding the list of the assets and rights of the demerged company registered in the land registry, ship registry, intellectual property registry and other similar registries;
- in the case of a new establishment by other companies participating in the spin-off, the establishment documents;
-

if the demerger transaction is subject to the permission or favourable opinion of the ministry or other official institutions, this permission or favourable opinion letter for the transferee and the transferred company;

- the certified public accountant or sworn-in certified public accountant and financial advisor's activity certificate; and
- documents related to capital increase, if any, for the transferee company or companies.

A change of corporate type requires:

- a certified public accountant or sworn-in certified public accountant or, if the company changing type is subject to audit, the auditor's report;
- declarations regarding the list of the assets and rights of the company registered in the land registry, ship registry, intellectual property registry and other similar registries;
- the type change plan and report;
- the notarised general assembly resolution regarding the acceptance of the change of type; and
- if the change of the corporate type is subject to the permission or favourable opinion of the ministry or other official institutions, this permission or favourable opinion letter for the transferee and the transferred company.

Law stated - 26 March 2025

Representations, warranties and indemnities

22 Should representations, warranties or indemnities be given by the parties in a corporate reorganisation? If so, which are most common?

Under Turkish law, no mandatory representations, warranties or indemnities are required to be given by the parties. However, it is common practice to require certain representations, warranties and guarantees from the parties to the reorganisation.

Law stated - 26 March 2025

Assets versus going concern

23 Does it make any difference whether assets or a business as a going concern are transferred?

Article 202 of the Turkish Code of Obligations No. 6098 (TCO) regulates the transfer of all kinds of enterprises, including commercial enterprises, together with their active and passive assets and liabilities. Additionally, article 11 of the TCC regulates the transfer of commercial enterprises.

The decisions of the Turkish Supreme Court apply the following three-pronged test to determine whether the divested assets constitute substantially all of the seller's assets:

- whether the assets can be treated as a stand-alone business;
- whether the assets are sufficient to continue the relevant business enterprise; and
- whether the seller's capacity to engage in the enterprise is materially diminished by the divestiture.

Under Turkish law, a sale of assets that meets each of the above criteria is considered to be a sale of substantially all of the assets of the seller and is considered to be a transfer of a commercial business.

In accordance with article 11 of the TCC, a commercial enterprise is to be considered as a whole and may be the subject of transactions such as pledges and transfers in toto. On the other hand, the transfer does not necessarily have to include all the material assets, since the transfer of assets essential to a particular business is considered to be a transfer of the whole business. However, if some assets are excluded from the transfer and those excluded assets prevent the buyer from continuing the business after the sale is completed, such a transfer of assets is only a transfer of assets of the business and not a transfer of the business as a whole.

According to the TCC, all assets of a business are transferred to the transferee upon registration and publication of the transfer in the trade register. On the other hand, the transfer of the debts of the transferred business is specifically regulated by the TCO. According to article 202 of the TCO, the liabilities attached to the assets constituting the seller's business, whether known or unknown at the time of the contract, are transferred to the purchaser irrespective of the consent of the creditors. The buyer and seller are jointly liable for a period of two years after the official publication of the sale.

Even though no clear distinction exists between the transfer of a commercial enterprise and the transfer of individual assets, they are assessed differently under Turkish law. Within the framework of the above explanations, where a transfer is considered to be a transfer of a business as a whole rather than of individual assets, appropriate steps must be taken to ensure the validity of the transaction. In addition, it is important and advisable to carry out due diligence, to draft a legally valid agreement containing the representations and warranties of the counterparties, and to make the necessary notifications and disclosures in a timely manner.

Law stated - 26 March 2025

Types of entity

24 Explain the key differences between public, private, government or non-profit entities to consider when undertaking a corporate reorganisation.

The general corporate reorganisation provisions of the TCC apply to:

-
    - commercial companies, foundations and associations that carry on a business in order to achieve their established purpose;

- institutions and organisations established by the government, a special provincial administration, a municipality or a county; and
- other public legal entities, for the purpose of carrying on a business or to operate under private law in accordance with their articles of association.

Law stated - 26 March 2025

Post-reorganisation steps

25 Do any filings or other post-reorganisation steps need to be taken after the corporate reorganisation?

In the event of a change from multiple shareholding to sole shareholding, a change of sole shareholder or a change from sole shareholding to multiple shareholding due to the reorganisation of the company, notification to the trade registry is required.

Article 198 of the TCC introduces exceptional provisions for share transfer in joint stock companies, mandating notification, registration and announcement under the conditions it specifies. Pursuant to article 198/1 of the TCC, if a company directly or indirectly owns shares in another company in the amount specified in the article or if its shares fall below these percentages, the acquiring company shall notify the target company and the competent authorities specified in the TCC and other legislation within 10 days of the completion of the said transactions.

Law stated - 26 March 2025

UPDATE AND TRENDS

Hot topics

26 What are your predictions for next year and how will these impact corporate reorganisations in your jurisdiction (for example, expected trends or pending legislation)?

The main legislation relating to corporate reorganisation is not expected to change in the near future. We have no further predictions in this regard, as the legislation is not expected to change in the near future.

Law stated - 26 March 2025

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Summary

LEGAL AND REGULATORY FRAMEWORK

Types of transaction

1 What types of transactions are classified as 'corporate reorganisations' in your jurisdiction?

In England and Wales, a 'corporate reorganisation' typically refers to changes in the share capital, share rights or ownership structure within a company or group of companies, the ultimate ownership of which does not change. It may include the subscription for, and the allotment and issue of, new shares by a company; the reclassification of or the alteration of rights attaching to existing shares; the reduction of the share capital of a company; or the repurchase by a company of its own shares.

It may also include the transfer of shares or assets between members of a group of companies, whether for cash or debt, in exchange for other assets or by way of dividend or other distribution, or some combination of these.

Statutory and contractual demergers, whereby assets of a company are divided between two or more companies, are considered corporate reorganisations. In such cases, some of the assets of a company (for example, the assets that relate to one business activity in a company that operates a number of different businesses) may be transferred to another entity within the group or even to the ultimate owners of the group.

Many considerations may drive the decision to undertake a corporate reorganisation. Commonly, where the owners of a group are contemplating a third-party sale of one or more businesses carried on by the group, it may be convenient to reorganise the group structure prior to putting the business up for sale. Similarly, following an acquisition, it is often desirable to undertake a reorganisation to place related businesses together within the enlarged group structure.

A company with surplus cash reserves, particularly where there are limitations on the company's ability to pay dividends, may wish to take steps to reduce its share capital or repurchase some of its shares to return some of the surplus cash to its shareholders.

There may be other operational or tax considerations, or even concerns over the viability of individual business lines, that may motivate a company or group of companies to undertake a reorganisation.

Law stated - 8 April 2025

Rate of reorganisations

2 Has the number of corporate reorganisations in your jurisdiction increased or decreased this year compared with previous years? If so, what are the key drivers for such change in the number?

There is no official record in England and Wales of transactions that constitute corporate reorganisations, and so it is not possible to say with certainty whether the number of such transactions has increased or decreased in the past year. However, it is likely that the number of corporate reorganisations in England and Wales will rise and fall with the number of mergers and acquisitions, since such transactions are a major driver of reorganisation projects both before a sale and after an acquisition.

Law stated - 8 April 2025

Jurisdiction-specific drivers

3 | Are there any jurisdiction-specific drivers for undertaking a corporate reorganisation?

In 2024, the United Kingdom elected a new Labour government, replacing a series of Conservative-led governments that had held power since 2010. Changes (from 6 April 2025) to the rate of capital gains tax for individuals selling business assets have motivated the owners of some small and medium-sized businesses to accelerate sales, which is likely in turn to lead to additional reorganisations.

The relative weakness of the United Kingdom currency in recent years has led to an increase in non-UK buyers acquiring UK companies; this is also likely to lead to an increase in reorganisation activity.

It is also likely that any change in tariffs levied on UK exports to the United States, as discussed since the inauguration of President Trump in January 2025, may drive groups of companies to reorganise the location of certain assets.

Law stated - 8 April 2025

Structure

4 | How are corporate reorganisations typically structured in your jurisdiction?

Corporate reorganisations are typically structured as multi-step projects, with careful analysis being undertaken of the tax and legal implications of each step and of the overarching project. It is common that such a project will include transfers of shares and assets, repurchases of shares or reductions of share capital, statutory or contractual demergers, and/or the subscription for new shares or the reclassification of existing shares.

It is very common for international groups of companies to undertake global reorganisations that involve companies within England and Wales as well as other countries. In such cases, teams of advisers from all affected jurisdictions are likely to work together to analyse the tax and legal implications and requirements.

Law stated - 8 April 2025

Laws and regulations

5 | What are the key laws and regulations to consider when undertaking a corporate reorganisation?

While the UK is a very open economy, generally welcoming free trade and inward investment, and accepting significant levels of foreign corporate ownership, a number of matters must be borne in mind when considering any form of corporate reorganisation.

In particular, tax law considerations will always be significant. In general, the tax analysis of transactions in the UK will take a 'substance over form' approach, and there are many anti-avoidance rules that can undermine what might at first glance appear to be a tax-beneficial proposal.

Company law in England and Wales incorporates a comprehensive 'maintenance of capital' regime, which is intended to protect creditors from the risk of misappropriation of companies' share capital and share premium accounts; this should always be carefully considered. In particular, only realised profits (less realised and unrealised losses) will constitute distributable reserves that can be distributed to shareholders, and so for a company with excess cash on its balance sheet that does not have (or whose parent company does not have) sufficient distributable reserves to facilitate dividends, other approaches may need to be considered. A company that wishes to return share capital to its shareholders, to enter into a transaction at undervalue, to purchase its own shares or to hold shares in its parent company, will need to make a careful analysis of what is proposed, and should always seek specialist legal advice.

Where there is any doubt about the solvency or financial viability of a company that is contemplating a reorganisation, there is a risk that its transactions could be set aside in future. Companies may sometimes wish to demerge profitable business lines from loss-makers to protect the profits, but this may not be feasible depending on the extent of the losses and the risk that the reorganisation might be considered to be putting the assets of the profitable business line out of the reach of the creditors of the loss-making business. Again, professional advice is essential.

Sector-specific requirements and restrictions, for example in relation to the regulated financial services sector, will require careful consideration where ownership, or management and control, of any regulated activity is expected to change.

Law stated - 8 April 2025

National authorities

6 What are the key national authorities to be conscious of when undertaking a corporate reorganisation and what role does each authority play?

In the United Kingdom, tax clearance from His Majesty's Revenue & Customs may be required or advisable for certain transactions.

Other transactions may require an application to the court, or the filing of certain documentation with the Registrar of Companies.

In regulated sectors, the consent of the relevant regulator may be required, while for certain changes of ownership, clearance may be required, for example, under the National Security and Investment Act 2021.

Law stated - 8 April 2025

KEY ISSUES

Preparation

7 | What measures should be taken to best prepare for a corporate reorganisation?

Once a full analysis has been undertaken of the tax and legal effects and limitations of the proposed reorganisation, it will be necessary to undertake a due diligence exercise in respect of the involved entities themselves.

For each English-incorporated entity involved in the reorganisation, a review of the constitutional documentation of the entity (in the case of a company, the memorandum and articles) will be necessary. Many English companies incorporate into their articles some or all of the Model Articles, which apply automatically to any company incorporated under the Companies Act 2006 unless the company has adopted (either on incorporation or by special resolution at a later time) alternative articles.

A company's articles may contain restrictions, or may remove statutory limitations, on the company's ability to undertake certain steps, including, for example, the repurchase of its own shares. The articles may also specify how certain steps must be implemented by a company – for example, they may set out requirements for board meetings, which must be followed if a board meeting is to be properly constituted and effective to make the decisions required for the reorganisation. The articles may make provision for how directors must handle any conflict of interest that may arise: it is common in groups of companies for the same individuals to be the directors of several of the legal entities within the group, and in a reorganisation this will frequently give rise to a conflict between the best interests of the respective companies, which must be dealt with in accordance with the provisions of the Companies Act 2006 and with the companies' respective articles.

A review will also be required of the third-party contractual relationships of all entities involved in the organisation. Contracts may contain prohibitions on assignment, or on a change of control, or it may be that such a step will entitle the other party to a contract to terminate it. It may be necessary to approach the other parties to such contracts to seek consent to the assignment of the contract, or a novation into the name of any transferee.

Of particular relevance in this context will be any agreements with lenders, including banks. Such agreements are highly likely to restrict the borrower entities and their group companies from divesting any valuable assets that may represent security for the relevant borrowings. A detailed review of all relevant entities' bank facility agreements will therefore be necessary.

The effects of the proposed reorganisation on the insurance arrangements of any affected entities should be carefully considered. It may be that bringing new assets or companies into the scope of insurance will require a change to the policy documentation or premiums payable.

Similarly, where any entity requires any form of regulatory licence or permit to carry on its activities, it may be necessary to approach the relevant regulatory authority in advance of the reorganisation to ensure that the business can continue without interruption.

It is important to give careful thought to issues surrounding the employees of any involved entities, and even employees engaged by uninvolved entities if they are deployed to other group companies; these issues are discussed in more detail below.

Finally, it will be necessary to check that all relevant companies' statutory records and required filings are up to date and accurate. If reliance is placed on public or statutory records that turn out to have been out of date or incorrectly maintained, all of the reorganisation documentation may be incorrect, and unravelling this at a later date can be complicated and expensive, if it is possible at all.

Law stated - 8 April 2025

Key departments and operational issues

8 What departments of the concerned companies are most involved in corporate reorganisations and what are the most challenging operational issues?

In almost every corporate reorganisation, the internal finance department will be heavily involved. Assets will be transferred from one entity to another, affecting the asset registers of individual group entities; various reserves in the accounts (such as share capital, share premium and revaluation reserve) are likely to be affected; and intra-group loan accounts may be created, increased or repaid.

If the group has an internal tax function, they will invariably need to give time and consideration to the steps proposed, and there may be clearance applications or other compliance obligations that will be required as the reorganisation proceeds or afterwards.

Group counsel or other internal legal officers will wish to involve themselves in the reorganisation, but typically (unless the group is particularly acquisitive and so employees corporate law specialists within its in-house legal team) the in-house legal team will need to engage external legal expertise and work closely with the external team to implement the reorganisation.

Human resources departments may need to be involved if the reorganisation involves the transfer of employees from one entity to another, and other teams such as those managing real estate or intellectual property assets are also likely to be involved to some degree.

Law stated - 8 April 2025

Employment issues

9 What are the main issues relating to employees and employment contracts to consider in a corporate reorganisation?

If a reorganisation involves the transfer of shares in the affected companies, as opposed to the transfer of a business and assets from one company to another, there will usually be no effect on the employees of the companies or their contracts. The employees will remain employed by the same employer entity, even where that employer entity has a new direct or indirect shareholder.

In contrast, where a reorganisation involves the transfer of a business and its assets from one company to another, this will constitute a transfer of an undertaking for the purposes of the Transfer of Undertakings (Protection of Employees) Regulations (TUPE). Certain legal requirements and implications flow from this.

The most important implication of TUPE is that all of the employees of the transferred business or undertaking will automatically move with the business, and will become the employees of the transferee entity. Their period of employment with the transferor entity will be deemed to continue, without interruption to the employees' periods of continuous employment, and any employment-related claims will also transfer with the employees. The implications of this can be significant, and careful due diligence is usually appropriate.

TUPE also imposes certain obligations to consult employees about the proposed transfer of the business or undertaking, the details of which differ according to the size of the workforce and whether or not there is a recognised trade union. A failure to comply with these obligations can give rise to a right to financial compensation for the affected employees. It is therefore important that expert legal advice is taken on the extent of these obligations in the context of the proposed reorganisation, and on the risks and implications of failing to comply.

TUPE may also be relevant where a reorganisation involves the seconding of employees from one entity to another within a corporate group. Where an employee spends (or will spend, after the reorganisation) the greater part of their time working for an entity that is not their legal employer, particular care is needed.

Law stated - 8 April 2025

10 | What are the main issues relating to pensions and other benefits to consider in a corporate reorganisation?

In England and Wales, all employers have certain obligations to ensure that employees are enrolled into a pension scheme and to make certain minimum contributions to employees' pensions. Some companies will have their own pension scheme, while others will enrol their employees into a scheme operated by an outside organisation. Some employees may have salary-linked pension entitlements (though this is far less common than it used to be and very few recent employees are likely to benefit from such schemes) and extreme care must be taken in any group where that is the case.

Most pension arrangements operate at a group level, and so for most reorganisations little will change – even if the employer entity within a group changes, contributions will usually continue to be made into the same scheme by the new group employer. If any entity is to be dissolved or to leave the group, however, it will be crucial to ensure that all pension liabilities will be met both in respect of the dissolving or departing entity and its employees, and in respect of any liabilities that that entity formerly bore or shared on behalf of any other group entity.

Where a reorganisation follows an acquisition, it may include ensuring that employees of the acquired entity are enrolled in or switched to the acquiror's pension scheme or other arrangement. Specialist advice is usually needed to ensure that this is done correctly.

Other employee benefits, such as private healthcare insurance, gym membership and company cars, are also typically provided at a group level and so in most reorganisations there will be no change. Again, a reorganisation following an acquisition may be different.

Where employees hold shares or share options, these will usually be held in the ultimate holding company of the group. If the reorganisation involves a new ultimate holding company being introduced to the group, employees' shares will usually be exchanged for shares in the new entity as part of the reorganisation. For private companies with large numbers of employee shareholders, this is likely to be achieved by way of a general offer made to all shareholders; specialist legal advice should be taken. Where employees hold options rather than shares, the share option scheme will usually contain provisions for the exchange of options in the original company for options in the new company.

Law stated - 8 April 2025

Financial assistance

11 | Is financial assistance prohibited or restricted in your jurisdiction?

Since the Companies Act 2006 came into force, there has been no prohibition in English law affecting the ability of a private company to give financial assistance for the purposes of the acquisition of its own or its parent company's shares.

However, public companies (whose names will usually end with the suffix 'PLC' rather than 'Limited' or 'Ltd') are prohibited from giving such financial assistance. In the context of reorganisations, this is most likely to become relevant after an acquisition of a public company by another company (whether public or private) that has entered into secured financing arrangements and that now requires the acquired entity to enter into cross-guarantees and group security documentation in relation to those arrangements. One possible solution in such circumstances may be to convert the public company into a private company as part of the reorganisation. In any case, expert legal advice should be sought.

Law stated - 8 April 2025

Common problems

12 | What are the most commonly overlooked issues or frequently asked questions in a corporate reorganisation?

Depending on the nature of the individual transactions comprising the proposed corporate reorganisation, the key questions that will need to be considered may include the availability of distributable profits in companies that are making transfers of assets, and other attributes of the companies' balance sheets, such as the share capital, share premium account and revaluation reserve.

Frequently overlooked are the provisions of companies' articles that might impose specific requirements on decision-making or on certain steps in the reorganisation, and the terms of key contracts of the business that could cause difficulties if the contract needs to be assigned.

Law stated - 8 April 2025

ACCOUNTING AND TAX

Accounting and valuation

13 How will the corporate reorganisation be treated from an accounting perspective? How are target assets and businesses valued?

The accounting treatment of a reorganisation can be a significant consideration. As most reorganisations will take place within the same group of companies, there will usually be little impact on the group's consolidated accounts, but at an entity level there can be significant implications. Where all intra-group transactions take place at fair market value, the individual companies' balance sheets may not change significantly (though the nature of the assets held will, of course, change, and there may be a recharacterisation of assets and liabilities from investments to cash or shareholders' funds to creditors).

Where transactions take place at book value, depending on the circumstances there may be no requirement to up-rate the valuations of assets even when they are transferred from one entity to another. Where this is the case, the impact on the entity balance sheets will be to the nature of assets and liabilities rather than the associated numbers.

Where an intra-group transaction takes place at less than book value, there may be significant impacts on the balance sheets of the relevant entities, and in many cases such a transaction will cause a reduction in the transferor company's distributable reserves. Care will always be needed where any company's distributable reserves are low in the context of the value of any transaction to which the company will be a party (or even where there are accumulated losses in a company's balance sheet) to ensure that no transaction in the reorganisation will constitute an unlawful distribution, which could be void or voidable depending on all the circumstances.

Law stated - 8 April 2025

Tax issues

14 What tax issues need to be considered? What are the tax implications of carrying out a corporate reorganisation?

Tax will always be a major consideration when planning a corporate reorganisation. The overall objective of a reorganisation can often be achieved in a number of different ways, and companies will usually seek tax advice to ensure that the approach taken is the most tax efficient of the available options.

It will frequently be advisable to seek an advance clearance from His Majesty's Revenue & Customs (HMRC) confirming that the proposed reorganisation has a genuine commercial purpose, rather than being undertaken mainly for tax avoidance purposes. In some cases, the tax legislation sets out a process for obtaining such a clearance, whereas in others it may simply be advisable to approach HMRC in advance.

Stamp duty, stamp duty reserve tax and stamp duty land tax are transfer taxes paid in the UK on the transfer of certain assets. Where transfers are between members of the same group of companies, provided certain conditions are met, it is possible to apply for an exemption from the payment of these transfer taxes. The application must be made within 30 days after the transfer has taken place.

Value Added Tax (VAT) is not usually relevant to corporate reorganisations, as in most cases all relevant entities will be members of the same VAT group and so will not be required to levy VAT on supplies between them. In addition, there is an exemption from VAT for a transaction that constitutes a 'transfer of a going concern' – usually relevant where a business and assets are being transferred between entities – and an application is usually advisable to HMRC to confirm that this exemption applies in any particular case.

Law stated - 8 April 2025

CONSENT AND APPROVALS

External consent and approvals

15 What external consent and approvals will be required for the corporate reorganisation?

Depending on the nature of the transactions comprising the reorganisation, it may be necessary to seek consents and approvals from external bodies. In particular, these could include any regulatory body that has jurisdiction over the activities of any group entities. For example, a business in the financial services sector may need the approval of the Financial Conduct Authority before the reorganisation can proceed.

Prior to embarking upon the reorganisation, a review should be undertaken of the contracts to which the affected entities are party. The consent of the other party to a contract may be required, if the contract is to be assigned as part of the reorganisation or if ownership or control of the contracting entity is going to change. In some cases, the contract may need to be novated into the name of the group entity that will take over the contract.

Any group that has loan facilities from banks or other external financial lenders will need to seek the approval of the lender to the proposed reorganisation. Any step that changes the assets over which a lender has taken security will always require lender's consent.

For many reorganisations, a prior clearance from HMRC is likely to be required, either to gain clearance that the purpose of the reorganisation is a genuine commercial purpose, or to secure exemptions from VAT or stamp taxes on intra-group transfers of assets.

Law stated - 8 April 2025

Internal consent and approvals

16 What internal corporate consent and approvals will be required for the corporate reorganisation?

Every director of a company is required, as both a statutory and a common law fiduciary duty, to act in the best interests of the company at all times. Where the same individual is a director of more than one company involved in a corporate reorganisation, this may give rise to a conflict between what is in the best interests of the various companies. It is usually possible to secure the approval of such a conflict of interest, thereby permitting the director to continue to act in both roles, but exactly how this should be done will depend on the terms of the companies' articles of association: it may require a resolution of the shareholders of the affected company, or a resolution of the directors, and the approval may simply authorise the directors to have such a conflict of interest, or may go further and permit them to participate in board meetings at which the affected transactions are discussed, to count in the quorum of such meetings, and to vote on any relevant resolutions. The articles of all affected companies should be carefully reviewed with this in mind.

Many transactions that commonly form part of corporate reorganisations (including repurchases of shares and reductions of share capital) require the specific prior approval of the shareholders of the affected companies, and in many cases that approval must take the form of a 'special resolution', which requires a 75 per cent majority by votes held. If an affected company is a wholly owned subsidiary of another member of the group, this should be straightforward (and with some exceptions should be capable of achieving at short notice) but if there are several shareholders (as for a joint venture company, a holding company, or even in some cases within complex investment structures) then it may be necessary to hold a formal general meeting to approve the special resolution, which is likely to require special notice of 21 days. The exact nature of the shareholder approvals that are required for each step in the reorganisation should be checked well in advance, so that the necessary notice periods can be built into the implementation timetable.

Every step of a corporate reorganisation should be approved by the board of directors of each company that is party to it. The directors should consider the transaction, and related documents, in detail and should consider the reasons why to approve the transaction is in the best interests of the company concerned. In some cases, there may be no direct benefit to the company, but it is clear that if the company does not approve the transaction then it may lose the support of the wider group, including access to capital and intra-group trading. Where this is the case, the directors may conclude that taken as a whole, the transaction is in the company's best interests, but their decision must be assessed seriously – this should not be a 'rubber-stamping' exercise.

Law stated - 8 April 2025

ASSETS

Shared assets

17 How are shared assets and services used by the target company or business typically treated?

Where the corporate reorganisation is entirely within a group of companies, rather than taking the form of a joint venture or similar between companies or groups with different ultimate ownership, a key driver for the reorganisation will often be to organise functions or business lines under the same management and ownership structure. In such cases, the treatment of services and assets used by entities within the group may become more straightforward, as they may fall for the first time under the same organisational and operational control.

Particularly where operational management is not consistent with corporate ownership, however, there may be shared services agreements between group entities, which may include minimum service level obligations and possibly even formal arrangements for purchase orders to be raised between entities, particularly where usage may be variable over time.

In most cases, group-wide shared assets and services (such as IT, accounting and finance services, the use of premises and sometimes the use of plant and machinery) will typically be re-charged through internal accounting arrangements, by way of a charge levied by the entity that incurs the relevant costs to the entity or entities within the group that use the relevant assets or services.

Re-charging for the use of shared assets and services in this way may give rise to considerations of transfer pricing, in groups that fall within the scope of the relevant legislation, as issues may arise if the charges levied are not equal to fair market value. While these issues are most significant where the entities are in different tax jurisdictions – because excessive charges may have the effect of diverting taxable profits from an entity in a higher tax jurisdiction to one in a lower tax jurisdiction, and vice versa – the relevant legislation applies even to transactions between UK entities; the UK government is consulting in 2025 on whether changes to the regime to eliminate this administrative burden may be appropriate, but at the time of writing it is not known when any changes may take effect. Transfer pricing is a technical and complex area and specialist advice should always be sought.

Law stated - 8 April 2025

Transferring assets

18 Are there any restrictions on transferring assets to related companies? If not, are there measures that can be taken to allow such a transfer?

English law is generally quite permissive on issues of asset and share transfers, and there are few restrictions on transfers at fair market value, whether between members of the same group or otherwise.

Where the reorganisation is not wholly within the same group of companies – for example, in connection with a joint venture – consideration should be given to matters that would be relevant to a transfer out of the group, which may (depending on the sectors and jurisdictions involved) include the National Security and Investments Act 2021 and/or transfer pricing considerations.

Law stated - 8 April 2025

19 | Can assets be transferred for less than their market value?

Where transfers are made between companies under common control, and the price is less than market value (or, conversely, where the asset is worth less than the cash for which it is exchanged, which is an 'undervalue' transaction when seen from the perspective of the buyer), statutory rules determine whether the transaction may constitute an unlawful distribution.

A transfer of an asset (including shares in another company) for nil consideration by a company to its shareholder, or to another company that is under the control of its shareholder, will constitute a distribution equal to the value of the asset. The company must have distributable reserves equal to the value of the asset, otherwise such a distribution will be unlawful. The same analysis applies where the asset is transferred for consideration that is lower than its fair value, with the amount of the distribution being the difference between the value of the asset and the consideration received for it.

If the transferor company has distributable reserves – regardless of the amount – and the value at which the asset is recorded in its accounting records (its 'book value') is lower than its fair market value (typically because it has increased in value since the date on which it was acquired or the date of its most recent revaluation), section 845 of the Companies Act 2006 will apply. This section provides that the amount of the distribution will be the book value minus the consideration received, or if the consideration is at least equal to the book value then the amount of the distribution will be nil.

Therefore, where a company has even £1 of distributable reserves, a transfer for consideration equal to the book value of the asset will constitute a distribution of nil. Where the consideration is less than the book value of the asset, the amount of the distribution will be equal to the difference, and the distribution will be unlawful unless the transferor company has distributable reserves at least equal to that amount.

Even where an asset is transferred for consideration that is at least equal to its book value, but lower than its fair market value, it is important to consider whether the transferor company is at any risk of insolvency. A transaction at undervalue may be set aside in certain circumstances by a liquidator or administrator if the transferor company later becomes insolvent, as it may have had the effect of putting the assets of the company beyond the reach of its creditors. This issue is particularly important where a reorganisation is motivated by a wish to separate a profitable business from a loss-making or less viable one, as a later failure of the loss-making business could be regarded as inevitable or as being caused by the reorganisation itself.

Of course, directors must always be mindful of their statutory and common law duties to act in the best interests of the company. Transferring an asset for less than its market value is unlikely, in and of itself, to ever be in the interests of the transferor company and so the directors must give very careful thought to any decision to do so; it may well be that there are good reasons why, in the wider context, such a step is to the benefit of the company, but those reasons should be carefully examined and set out in the minutes of a properly convened meeting of the board.

Law stated - 8 April 2025

FORMALITIES

Date of reorganisation

20 Can a corporate reorganisation be backdated or deemed to have already taken place, for example, from the start of the financial year?

Under English law, a legal document should never be dated with a date earlier than the date on which it was actually signed. This is true of all legal documents, but applies equally to those relating to corporate reorganisations.

In particular, where a corporate reorganisation may have an effect on the tax treatment of any of the parties, backdating the documents giving effect to the corporate reorganisation may amount to unlawful tax evasion and may constitute a criminal offence.

For this reason, most law firms, accountants and other professionals will refuse to engage in any transaction in respect of which documents are to be backdated.

While a document should never be backdated, it may sometimes be possible to give retrospective economic effect to legal arrangements that are documented at a later date. Where a document is prepared in order to reduce to writing the terms of an agreement that has already been made orally, or by way of an ongoing course of dealings between the parties, then such a document should be drafted carefully to make these surrounding circumstances clear. For example, where a parent company has made loans to its subsidiary (either by way of payments of cash or by leaving intra-group charges outstanding on intercompany account) it is common to enter into a loan agreement at a later date setting out the terms of the loan (as to interest payable and/or the due date for repayment) that have previously been agreed between the companies in a less formal manner.

In other circumstances, parties may have entered into arrangements before they have had the opportunity to consider the detail of the terms that will apply. For example, following an acquisition, a member of the acquiring group may immediately start to supply shared services (such as IT support or invoicing) to members of the acquired group, before management have finalised the way in which these shared services will be re-charged or, perhaps, before transfer pricing advice has been sought. Once the final pricing and other terms have been determined, the parties may enter into an agreement pursuant to which they agree that those terms will apply not only to services provided after the date of the agreement, but also to services already supplied.

Similarly, where a corporate reorganisation involves the transfer of the trade and assets of a business from one group company to another, it is quite common for the 'effective date' of that transfer to be specified as being a date that is earlier than the date of the transfer itself. This is usually achieved by the parties agreeing, in the asset transfer agreement, that all sales and purchases made by the transferor company in respect of that business will be treated as if they had been made by the transferee. Usually, in such circumstances, the transferee will agree to pay the transferor a sum equal to the costs incurred by the transferor since the agreed effective date, while the transferor will agree to pay to the transferee a sum equal to the revenues accrued.

In some circumstances, the terms of a document may be negotiated and agreed between the parties, but the parties do not wish to enter into the document until a later date – they may be waiting for regulatory or board approval, or for a business performance hurdle to be achieved, or simply for a key business date such as the end of the group's accounting year. In such circumstances, the document itself may be signed but left undated, usually in the trust of the parties' solicitors (or one of them), until the parties are ready to release the documents to one another; at that time, the parties or their solicitors will agree to release and date the documents, and they will become legally binding with effect from that date.

Care should be taken (especially where third parties are involved) to avoid any situation where one party can claim that by signing a document, the other party has become legally bound by it. It is for this reason that solicitors will usually be involved, agreeing that signed documents are exchanged 'to be held to the order' of the other party, and giving legally binding solicitors' undertakings to one another to hold the documents on that basis.

Law stated - 8 April 2025

Documentation

21 | What documentation is required or advisable in a corporate reorganisation?

The documentation that is required to implement a corporate reorganisation will vary depending on the individual steps involved.

Invariably, there will be board minutes or written directors' resolutions documenting the approval of all relevant steps by the directors of each of the entities involved. For some steps, such as the payment of a dividend, a change to a company's accounting reference date or the appointment of new directors, a board resolution or minute may be the only formal document required to give effect to the step.

Depending on the steps involved, on whether there are any directors' conflicts of interest, and on the extent to which the management of each company is delegated to the directors by the relevant companies' articles of association, shareholders' resolutions (sometimes ordinary resolutions and sometimes special resolutions) may be required. It may be necessary to call a general meeting of the shareholders to pass these resolutions, and if there are multiple shareholders whose support cannot be relied upon, these meetings may require prior written notice of 14 to 21 days, which will need to be factored into any timetable.

If shares are to be transferred between group entities, there is likely to be a share sale agreement, and a stock transfer form will definitely be required. Similarly, where a business or other assets are to be transferred, there is likely to be an asset transfer agreement, with formal transfer documents required for certain assets such as land, intellectual property and goodwill.

An allotment and issue of new shares will require a subscription agreement or application letter, while a repurchase of existing shares will require a share purchase agreement together with a detailed form setting out certain prescribed information. A reduction of capital will require a directors' solvency statement to be made.

Corporate reorganisations commonly involve intra-group loans, which will require loan agreements to be entered into, and/or capital contributions made by a shareholder to the company in which it holds shares, which will usually be done by way of deed of gift or capital contribution.

In almost all cases, filings of one sort or another will need to be made with the Registrar of Companies at Companies House. Any change to a company's share capital, its directors and persons with significant control, its registered office or its accounting reference date, among other things, must be notified within a prescribed period, or sometimes do not take effect until registered at Companies House. Other changes, such as to a company's shareholders, do not need to be registered immediately but must be recorded on a company's next Confirmation Statement (form CS01). Many of these filings can be made online, and many companies will have a retained company secretarial service provider who can make the filings on its behalf. A failure to make the necessary filings before the statutory deadline can lead to fines and penalties being imposed on the company and its directors.

It is impossible to compile an exhaustive list of all the documentation that may be required for a corporate reorganisation. Each step will always need to be considered in turn, and the accumulated effect of the steps will need to be considered overall, in order to compile a list of all documentation, and to prepare a timetable setting out any notice period or statutory waiting periods that may impact on the overall completion of the reorganisation.

Law stated - 8 April 2025

Representations, warranties and indemnities

22 Should representations, warranties or indemnities be given by the parties in a corporate reorganisation? If so, which are most common?

In a fully arm's-length transaction, for example where a company or a business is being bought and sold for fair market value between unrelated parties, it is usual to enter into a lengthy share or asset purchase agreement containing detailed warranties and indemnities that have been negotiated between the parties.

In contrast, in the case of a corporate reorganisation where all parties are usually under common ownership and control, such warranties are generally regarded as unnecessary as their ultimate effect is simply to reallocate risk between members of the same group. An intra-group share or asset purchase agreement forming part of a group reorganisation is therefore likely to be a more abbreviated document, and will contain far fewer warranties and indemnities.

Even in an intra-group share or asset purchase agreement, however, it would be common to include fundamental warranties relating to the transferor's title to what is being transferred, and its capacity to enter into the agreement. Where the directors of the transferee company have any concerns about the target company or business, which may affect their assessment of whether the transaction is in the best interests of the transferee company, they may wish to insist on more detailed warranties and indemnities, especially relating to matters where particular risk is perceived.

Where a company or business that is being transferred intra-group has itself been acquired by the transferor company from a third party, the transferor may still have the benefit of the warranties and indemnities that were given as part of that earlier acquisition. There is a risk that if the company or business is transferred out of the ownership of the original purchaser, the benefit of those warranties and indemnities may be lost, because the original purchaser will no longer be at risk of incurring any loss as a result of any defect in the company or business. The original purchase agreement may be assignable intra-group to the transferee of the related company or business, and if so this should be done, so that the transferee will be entitled to bring warranty and indemnity claims in place of the original purchaser. If the original purchase agreement contains provisions restricting its transfer, an alternative approach would be for the original purchaser to give identical warranties and indemnities (subject to the same limitations and in particular to the same time limits on bringing claims) so that if a defect arises, the transferee can claim against the transferor, which can in turn bring a claim against the original seller.

Law stated - 8 April 2025

Assets versus going concern

23 Does it make any difference whether assets or a business as a going concern are transferred?

A reorganisation may include a transfer of assets owned by a company, and consequences may flow from whether that transfer is one of certain assets only, or is a transfer of a business as a going concern. This is a usually question of fact rather than a matter of choice, and all of the relevant facts about the assets, and the undertaking to which they belong, must be taken into consideration.

Where the transfer is of an entire business or undertaking, the Transfer of Undertakings (Protection of Employment) Regulations will apply and all of the employees engaged in the undertaking will automatically transfer – together with their historical employment claims and entitlements, if any – to the transferee entity. Their period of continuous employment will be uninterrupted by the transfer, and the transferee company will substitute for the transferor for all purposes related to their employment. For this reason, careful due diligence may be appropriate.

Additionally, where the transfer is of a business as a going concern, even where the transferor and transferee are not members of the same VAT group the transfer will usually be exempt from VAT.

Whether the transfer is one of assets or of a going concern, the same formalities to effect the transfer of individual assets will be required. In particular, if the assets to be transferred include land (including land that is held on a registered leasehold title) or registered intellectual property, prescribed legal steps must be followed in order to give legal effect to the transfer of the assets and to arrange for the relevant registers to be updated with the details of the transferee.

Law stated - 8 April 2025

Types of entity

24 Explain the key differences between public, private, government or non-profit entities to consider when undertaking a corporate reorganisation.

When undertaking a corporate reorganisation, the most important distinctions are usually between different types of legal entity – whether a party to the reorganisation is a company, a partnership, a limited liability partnership, etc. However, in some cases, other differences may affect the way in which the reorganisation must be structured.

Where a member of a group – usually its ultimate parent company – is a public or listed company, there may be additional consents required, or considerations of value transfer where a transaction may be material in the context of the group consolidated balance sheet. In general, however, corporate reorganisations are most likely to take place wholly within a group, without any value leaving the group overall, and generally these considerations will not be relevant.

Law stated - 8 April 2025

Post-reorganisation steps

25 Do any filings or other post-reorganisation steps need to be taken after the corporate reorganisation?

After almost every corporate reorganisation, filings of one sort or another will need to be made with the Registrar of Companies at Companies House. Any change to a company's share capital, its directors and persons with significant control, its registered office or its accounting reference date, among other things, must be notified within a prescribed period, or do not take effect until registered at Companies House. Other changes, such as to a company's shareholders, do not need to be registered immediately but must be recorded on a company's next Confirmation Statement (form CS01). Many of these filings can be made online, and many companies will have a retained company secretarial service provider who can make the filings on their behalf. A failure to make the necessary filings before the statutory deadline can lead to fines and penalties being imposed on the company and its directors.

As well as notifications to the Registrar of Companies, most corporate reorganisations will also require updates to the statutory registers of the companies involved. These registers include the register of members, register of allotments, register of directors, register of company secretary and register of charges. Any issue by a company of new shares will require updates to its register of allotments and the register of members, while a transfer, repurchase or cancellation of a company's existing shares will require updates to the register of members.

Most reorganisations will also require the accounting records of individual group members to be updated, to reflect the transfer of assets and the changes to the cash and loan balances of the respective entities.

Post-reorganisation formalities may also be necessary to give legal effect to the transfer of certain other types of assets. In particular, if the assets transferred include land (including land that is held on a registered leasehold title) or registered intellectual property, prescribed legal steps must be followed to give legal effect to the transfer of those assets, and to arrange for the relevant registers to be updated with the details of the transferee.

In some cases, transactions that form part of a corporate reorganisation are of a nature that would typically attract transfer taxes such as stamp duty, stamp duty reserve tax and stamp duty land tax. Where such transfers are made between members of the same group, and are unrelated to any plan to transfer the relevant assets out of the group, exemptions may apply to these taxes, but an application will need to be made to HMRC within 30 days of the transaction taking place. If no exemption is available, then the applicable taxes must be paid within 30 days.

Additionally, if any transaction within the corporate reorganisation is subject to VAT, the relevant VAT should be paid by the transferee to the transferor, and the transferor should account for the relevant VAT on its VAT return for the period in which the transaction took place.

Other tax implications may arise from a corporate reorganisation, or from individual steps that form part of it, and sometimes advance clearance to the transaction should be obtained from HMRC. In many cases, there will be no requirement to make any special tax filings other than as part of the participating companies' usual corporation tax returns, but in certain other circumstances (including where the reorganisation includes a disclosable tax avoidance scheme), there may be some requirements to notify HMRC before the corporation tax returns are due.

Specialist tax advice should always be sought prior to undertaking any corporate reorganisation, so that it can be planned in such a way as to minimise the tax liabilities that might arise, and so that all parties remain fully compliant with all their filing and payment obligations at all times.

Law stated - 8 April 2025

UPDATE AND TRENDS

Hot topics

> What are your predictions for next year and how will these impact corporate reorganisations in your jurisdiction (for example, expected trends or pending legislation)?

It is likely that the forthcoming year will be stable in terms of the regulatory environment for corporate reorganisations. As mergers and acquisitions activity increases in the UK, corporate reorganisations are likely to increase commensurately, since reorganisations commonly precede or follow a disposal or acquisition.

There may be changes to the tax treatment of some reorganisation transactions, particularly as the UK government seeks to increase tax revenues to fund public spending. Transactions that can be characterised as tax avoidance are likely to come under particular scrutiny, though intra-group transactions where there is a genuine commercial purpose and no impending disposal are likely to remain tax-neutral for the time being.

Law stated - 8 April 2025

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Summary

LEGAL AND REGULATORY FRAMEWORK

Types of transaction

1 What types of transactions are classified as 'corporate reorganisations' in your jurisdiction?

In the US, 'corporate reorganisations' encompass a wide range of transactions, including mergers, consolidations, spin-offs, carveouts, recapitalisations and changes in corporate identity. The term also applies to the transfer of shares, assets or entire businesses within the same corporate group. Additionally, corporate reorganisations may involve liability management exercises, such as debt restructurings or refinancings, to enhance financial stability and flexibility. In some cases, companies may pursue reorganisation through a Chapter 11 bankruptcy filing, which can facilitate debt restructuring, operational changes, asset sales or an orderly wind-down. Other transactions under this umbrella include intercompany debt restructurings, receivables management and cash repatriation strategies.

Law stated - 15 April 2025

Rate of reorganisations

2 Has the number of corporate reorganisations in your jurisdiction increased or decreased this year compared with previous years? If so, what are the key drivers for such change in the number?

Although non-bankruptcy related corporate reorganisations remain relatively consistent year over year, last year saw a significant uptick in liability management exercises, along with other creative reorganisation strategies and investment structures aimed at providing liquidity to investors. Companies increasingly turned to debt restructurings, refinancings and other capital structure optimisations to navigate financial pressures. Additionally, businesses explored innovative corporate reorganisations, such as asset divestitures, joint ventures and strategic restructurings, to unlock value and improve financial flexibility. The overall demand for corporate reorganisations remains steady, but these trends highlight a growing emphasis on adaptability and liquidity-driven solutions in response to evolving market conditions.

Law stated - 15 April 2025

Jurisdiction-specific drivers

3 Are there any jurisdiction-specific drivers for undertaking a corporate reorganisation?

In the US, businesses undertake corporate reorganisations for a variety of reasons, often driven by a mix of internal strategic goals and external economic pressures. Some key US-specific drivers include:

- Supply chain disruptions and tariff uncertainty – Ongoing shifts in trade policy, tariff unpredictability and supply chain bottlenecks have forced companies to restructure operations. Businesses may engage in reorganisations to relocate production, optimise supply chains, or restructure ownership of foreign subsidiaries to mitigate the impact of tariffs and trade restrictions.
- Interest rate volatility – Fluctuating interest rates influence corporate debt strategies. Rising interest rates can lead to increased borrowing costs, prompting liability management exercises such as refinancings, debt restructurings or capital structure adjustments. Conversely, lower rates may encourage businesses to optimise financing arrangements to take advantage of cheaper capital.
- Consumer confidence and market demand – Shifts in consumer confidence impact corporate revenues, particularly in sectors such as retail, hospitality and manufacturing. Companies facing declining demand may undergo operational reorganisations, including cost-cutting measures, divestitures or business model shifts to remain competitive.
- International trade wars and geopolitical uncertainty – Trade conflicts between the US and major economies, such as China and the European Union, create financial and operational uncertainty. Businesses may restructure to reduce exposure to geopolitical risks, relocate key operations or adjust corporate structures to comply with shifting trade regulations.
- Regulatory and tax changes – US companies frequently reorganise in response to evolving federal and state regulations, including tax reforms, antitrust enforcement and industry-specific compliance requirements. Changes in corporate tax policies may lead businesses to restructure intercompany transactions, repatriate earnings or modify legal entity structures.

While corporate reorganisations remain a constant feature of business strategy, these US-specific drivers shape the nature and urgency of restructuring efforts, pushing companies to adapt to an evolving economic and regulatory landscape.

Law stated - 15 April 2025

Structure

4 | How are corporate reorganisations typically structured in your jurisdiction?

There are many ways to structure a corporate reorganisation in the US, including sales, distributions, contributions, redemptions, liquidations, mergers and spin-offs. Additionally, corporate reorganisations may involve liability management exercises or even bankruptcy filings under Chapter 11 of the United States Bankruptcy Code. Certain corporate reorganisations can be structured to be tax-free under US tax law. Section 368 of the Internal Revenue Code (IRC) allows for tax-free reorganisations when specific criteria are met. The chosen structure depends on the specific facts and circumstances, the desired objectives of the reorganisation, and the federal, state and local laws governing the relevant entities or assets.

Law stated - 15 April 2025

Laws and regulations

5 What are the key laws and regulations to consider when undertaking a corporate reorganisation?

When undertaking a corporate reorganisation in the US several key laws and regulations must be considered, depending on the nature of the transaction:

- State Corporate Laws – Corporate reorganisations are primarily governed by state laws, such as the Delaware General Corporation Law for entities formed in Delaware. These laws dictate procedures for mergers, dissolutions, redemptions and other structural changes.
- Federal Securities Laws – If the reorganisation involves a public company, compliance with US securities laws is essential. The Securities Act of 1933 and the Securities Exchange Act of 1934 regulate disclosures, shareholder approvals and reporting obligations for transactions affecting investors.
- IRC – Tax considerations play a crucial role in structuring reorganisations. Section 368 of the IRC provides for tax-free stock and assets reorganisations if specific requirements are met, while other provisions govern taxable transactions and debt restructurings.
- Bankruptcy Code (Chapter 11) and Fraudulent Conveyance Laws – If the reorganisation involves financial distress or insolvency, the US Bankruptcy Code provides a legal framework for restructuring debt, selling assets or executing an orderly wind-down. Additionally, transactions must comply with fraudulent conveyance laws, which prohibit transfers of assets made with the intent to hinder, delay or defraud creditors. Under both federal and state fraudulent transfer statutes, certain transactions may be unwound if they were made without receiving reasonably equivalent value in return while the company was insolvent or became insolvent as a result.
- Antitrust Laws – The Hart–Scott–Rodino (HSR) Act requires pre-merger notification and regulatory review for certain transactions to ensure compliance with antitrust laws enforced by the Federal Trade Commission and the Department of Justice (DOJ).
- Employment and Labour Laws – Workforce restructuring may trigger obligations under the Worker Adjustment and Retraining Notification Act (WARN ACT), which requires advance notice for mass layoffs and plant closures. Additionally, employee benefits and compensation plans must be reviewed for compliance.
- Regulatory and Industry-Specific Laws – Certain industries, such as healthcare, financial services and telecommunications, have additional regulatory requirements that may impact reorganisations, including licensing, capital requirements or government approvals.

Law stated - 15 April 2025

National authorities

6 What are the key national authorities to be conscious of when undertaking a corporate reorganisation and what role does each authority play?

When undertaking a corporate reorganisation in the US, businesses must be aware of several key national authorities that oversee various aspects of the process. These authorities include:

- Securities and Exchange Commission – Governs corporate reorganisations involving public companies, ensuring compliance with securities laws, disclosure requirements and investor protections.
- Internal Revenue Service– Regulates the US federal tax treatment of corporate reorganisations, including eligibility for tax-free treatment under section 368 of the IRC, US federal tax implications of mergers, spin-offs and restructurings, and compliance with US federal withholding and reporting requirements.
- Federal Trade Commission and DOJ – Antitrust Division – Review mergers, acquisitions and other restructurings for potential antitrust concerns. Under the HSR Act, certain transactions require pre-merger notification and approval.
- US Department of the Treasury – Plays a role in reviewing corporate restructurings that involve foreign investment or ownership, particularly through the Committee on Foreign Investment in the US, which examines transactions for national security risks.
- US bankruptcy courts – Oversee corporate reorganisations involving financial distress under the US Bankruptcy Code.
- Financial Industry Regulatory Authority (FINRA) – If the reorganisation involves broker-dealers or securities firms, FINRA ensures compliance with industry regulations and reporting obligations.
- Department of Labour and Pension Benefit Guaranty Corporation – Regulate employment and benefits-related aspects of reorganisations, including compliance with the Employee Retirement Income Security Act and obligations related to pension and retirement plans.

Law stated - 15 April 2025

KEY ISSUES

Preparation

7 What measures should be taken to best prepare for a corporate reorganisation?

Thorough due diligence is essential for a successful corporate reorganisation, particularly regarding assets and liabilities, contractual obligations, employees, IT systems and financial controls. A structured approach should be taken to assess these key areas before implementing any transactions.

First, a comprehensive review of assets and liabilities should be conducted to determine ownership, encumbrances, and any potential risks associated with transferred assets. This includes verifying whether assets are subject to liens, security interests or other restrictions that could impact the reorganisation. Similarly, a detailed assessment of liabilities is critical to understanding any outstanding obligations, debt covenants or contingent liabilities that could affect post-reorganisation operations.

Second, a review of contracts is necessary to identify agreements that may need to be assigned, renegotiated, or terminated as part of the reorganisation. Key considerations include identifying change-of-control provisions, required third-party consents and exclusivity clauses that could restrict business operations after the reorganisation. Intellectual property licences, supplier agreements and customer contracts should be carefully analysed to ensure compliance with contractual obligations.

Third, employee-related matters must be evaluated to determine if workforce restructuring, union consultations, or regulatory notifications are required. Employment agreements, non-compete clauses and benefits plans should be reviewed for compliance with labour laws and corporate policies. If employees are being transferred between entities, employment terms must be assessed to ensure a seamless transition and compliance with applicable employment regulations.

Fourth, IT systems and data infrastructure require careful review, especially in reorganisations involving multiple entities or jurisdictions. Ensuring continuity of IT services, data security and system integrations is crucial to minimising operational disruptions. IT due diligence should address data migration strategies, software licensing agreements and cybersecurity risks.

Fifth, accounting controls and financial reporting systems must be evaluated to confirm that post-reorganisation entities maintain proper financial governance, controls and operational capacity. This includes ensuring that financial statements reflect the new corporate structure, bank accounts and treasury functions are aligned, and internal controls remain effective. Auditors should be involved early to review financial reporting implications and ensure compliance with accounting standards.

Law stated - 15 April 2025

Key departments and operational issues

8 What departments of the concerned companies are most involved in corporate reorganisations and what are the most challenging operational issues?

Corporate reorganisations typically involve multiple departments, with the most critical being:

- Legal – Ensures compliance with corporate, tax, regulatory and contractual obligations.
- Finance and accounting – Manages financial structuring, tax implications and reporting requirements.
-

HR and employment – Handles workforce transitions, employee contracts and labour law compliance.

- IT and systems – Ensures continuity of technology infrastructure, data migration and cybersecurity.
- Operations and supply chain – Addresses logistical changes, vendor relationships and process realignment.

The most challenging operational issues include, securing approvals for key agreements and maintaining customer relationships; managing intercompany transactions, banking and financial controls, particularly where the company is multi-jurisdictional; managing workforce transitions; and navigating complex legal, tax and one-off jurisdictional requirements.

Law stated - 15 April 2025

Employment issues

9 What are the main issues relating to employees and employment contracts to consider in a corporate reorganisation?

A key consideration in a corporate reorganisation is whether employee talent is a critical factor driving the transaction. This is particularly relevant in reorganisations where knowledge, expertise or client relationships are valuable assets – such as in professional services, technology or life sciences. If retaining key employees is essential to the success of the reorganisation, the post-reorganisation entity may need to implement retention strategies, including stay bonuses, equity incentives or revised compensation packages to ensure continuity. Conversely, if employee retention is not a priority, the parties may negotiate pre-closing workforce reductions or determine which employees will transition to the post-reorganisation entity.

The structure of a corporate reorganisation significantly impacts employees, particularly in cases involving bankruptcy or insolvency:

- Share acquisitions – Because the employing entity typically remains unchanged, employees may continue under the same terms. Although formal employment transition may not be required, clear communication on any post-closing changes help ensure retention.
- Asset acquisitions and mergers – Employees transferring to a new employer generally require new employment agreements. Prior service recognition may affect benefits, and state laws on paid time off payouts must be considered. Smooth payroll and benefits integration reduces attrition risks.
- Workforce growth and compliance – Expanding headcount due to reorganisation may trigger new legal obligations, such as Family and Medical Leave Act compliance once the workforce exceeds 50 employees. Employers should assess regulatory impacts in advance.
- Reductions in Force & Worker Adjustment and Retraining Notification (WARN Act) – Layoffs may trigger federal and state WARN Act requirements, often mandating

60 days' notice to employees and government agencies. Legal review ensures compliance with varying state thresholds.

- Union considerations – Collective bargaining agreements must be reviewed to address obligations related to transfers, layoffs or contract modifications. Engaging labour counsel early helps prevent disputes and ensures compliance.
- Bankruptcy and insolvency considerations – In Chapter 11 reorganisations, companies may seek to reject, assume or renegotiate employment contracts under court supervision. The Bankruptcy Code allows for modifications to collective bargaining agreements and retiree benefits under specific legal standards. Additionally, severance obligations and unpaid wages may receive priority claims status, while employee incentive and retention plans must comply with bankruptcy court approval requirements.

Law stated - 15 April 2025

10 What are the main issues relating to pensions and other benefits to consider in a corporate reorganisation?

Key US considerations include:

- whether the target entity or its affiliates sponsor a single employer-defined benefit pension plan;
- whether they contribute (or were obligated to contribute) to any multi-employer defined pension plan;
- the use of employer securities or real property as assets in any defined contribution plan;
- whether the target sponsors an Employee Stock Ownership Plan; and
- whether 25 per cent or more of any class of the target's securities is held by retirement plans, individual retirement accounts (IRAs) or annuities.

If any of these issues are present, they can significantly impact the assessment of material liabilities and may even influence the structure or negotiation of the reorganisation.

Other benefits

Non-pension issues to assess include:

- the treatment of equity compensation (such as stock options, share schemes and restricted share units);
- change-of-control benefits, whether they involve 'single trigger' or 'double trigger' provisions;
- severance benefits, including provisions for 'good reason' or 'constructive termination';
- the potential for 'golden parachute' taxes under section 280G of the Internal Revenue Code (IRC); and

- key employee compensation arrangements, ensuring compliance with IRC sections 457A or 409A.

Law stated - 15 April 2025

Financial assistance

11 | Is financial assistance prohibited or restricted in your jurisdiction?

In the United States, there is no broad statutory prohibition on financial assistance in corporate reorganisations. US companies may provide such assistance – even for transactions such as share buybacks, recapitalisations or other restructuring activities – as long as the transactions are conducted at arm's length and comply with applicable state corporate laws, fiduciary duties, tax regulations and securities laws. Directors should carefully assess potential risks, including impacts on the company's financial health, insolvency status and any restrictions in existing debt covenants. Additionally, the tax implications of these transactions must be closely considered. Depending on the transaction's structure, potential tax consequences may include adjustments to cost bases, limitations on deductions or the triggering of taxable events under the IRC. Engaging experienced tax counsel early in the process is advisable to ensure that the financial assistance is structured in a tax-efficient manner while meeting all relevant legal requirements.

Law stated - 15 April 2025

Common problems

12 | What are the most commonly overlooked issues or frequently asked questions in a corporate reorganisation?

Due diligence on liabilities and assets

Companies may miss hidden liabilities (legal, environmental or contingent liabilities) or undervalue assets. Detailed due diligence – including intercompany agreements and valuation analyses – is important.

Tax implications and structuring

Overlooking the tax consequences of a reorganisation can result in unexpected liabilities. Questions often arise about optimising structure to avoid adverse tax events, ensuring compliance with IRC provisions (eg, IRC section 368 requirements for tax-free treatment) and analysis of other tax considerations, such as cost basis adjustments.

Employee retention and benefits

Reorganisations that involve employee transfers or layoffs often prompt questions about retention packages, integration of benefits and compliance with employment laws, including potential obligations under the WARN Act and union collective bargaining agreements.

Contractual and third-party consents

Many overlook the need to review and, if necessary, obtain third-party consents for key contracts, especially when change-of-control provisions or restrictive covenants are in place.

Regulatory and compliance challenges

Key questions include how to meet the requirements of state corporate laws, securities regulations for public companies, and antitrust considerations under the HSR Act, as well as the impact of potential bankruptcy or insolvency risks.

Operational integration and IT systems

Ensuring a smooth integration of IT systems, data migration and continuity of operational processes is often underestimated, yet critical to the post-reorganisation success.

Treasury and cash flow management

Overlooked issues may include the management of cash pools, currency hedging strategies and aligning intercompany financing arrangements to support the new corporate structure.

Law stated - 15 April 2025

ACCOUNTING AND TAX

Accounting and valuation

13 How will the corporate reorganisation be treated from an accounting perspective? How are target assets and businesses valued?

The treatment of a corporate reorganisation from a financial accounting perspective depends on the specific facts and circumstances of the transaction, which must be carefully analysed in each case. Financial accountants should be consulted early in the corporate reorganisation planning process to ensure that the relevant parties understand the accounting treatment of the transaction, including accounting-related valuation considerations.

Law stated - 15 April 2025

Tax issues

14 What tax issues need to be considered? What are the tax implications of carrying out a corporate reorganisation?

The US tax consequences of a corporate reorganisation depend on the specific facts and circumstances of the transaction, which must be carefully analysed in each case. For a reorganisation to qualify as tax-free in the US, detailed and often complex requirements must be satisfied (typically, related to section 368 of the Internal Revenue Code (IRC)). If a reorganisation is taxable, depending on the transaction structure, US tax may apply at the shareholder or corporate level (or both).

US tax advisers should be consulted early in the corporate reorganisation planning process, and be involved in ongoing document review, to ensure that the reorganisation's structure and terms achieve the desired tax results.

The following US tax matters also should be considered in connection with a corporate reorganisation:

- Transactions involving non-US related corporations: If the reorganisation involves non-US entities that are related to the US corporation, the US corporation could be subject to taxation as a result of the reorganisation under various US tax regimes, including the US global intangible low-taxed income, Subpart F and base erosion and anti-abuse tax (BEAT) rules.
- Arm's length terms: Transactions between related parties should be undertaken on arm's-length terms to avoid adverse tax results under the US transfer pricing rules of section 482 of the IRC (and related guidance). The transfer pricing rules under section 482 of the IRC establish permissible methodologies for determining the value, for US federal income tax purposes, of property transferred between related parties, as well as detailed documentation requirements.
- Tax reporting requirements: Special US tax reporting requirements may apply to certain reorganisations.
- Withholding taxes: US withholding taxes potentially could apply (particularly if any cross-border payments are to be made).
- Debt: US tax implications of debt issued or exchanged as part of the reorganisation should be reviewed for the potential impact on the tax treatment of the overall reorganisation, as well as the specific US tax rules applicable to such debt-related transactions (including the deductibility of interest).
- Compensation-based equity awards: US tax implications of compensation-based equity awards related to the reorganisation (such as, stock options, share schemes and restricted share units) should be reviewed.
- US state and local taxes: Tax consequences of the reorganisation for US state and local tax purposes should be reviewed.

Law stated - 15 April 2025

CONSENT AND APPROVALS

External consent and approvals

15 What external consent and approvals will be required for the corporate reorganisation?

External consents and approvals in a corporate reorganisation can vary widely depending on the structure of the transaction, the jurisdictions involved and the industry in which the companies operate. Common requirements include the following.

Contractual consents

Many key contracts – such as supplier agreements, leases, loan agreements and distribution contracts – contain change-of-control or transfer restriction provisions that require consent from third parties. Failure to obtain these consents can lead to breaches or termination rights under the contracts.

Regulatory approvals

Depending on the nature of the transaction, filings and approvals may be required from regulatory bodies such as the Securities and Exchange Commission for public companies, antitrust authorities under the HSR, and sector-specific regulators (eg, in financial services or telecommunications). In cross-border transactions, approvals from foreign regulatory authorities or compliance with the Committee on Foreign Investment in the United States may also be necessary.

Labour and union consents

If the reorganisation affects employees – such as in mergers or asset transfers – notifications or consents might be required under labour laws (including the WARN Act) or as stipulated in collective bargaining agreements.

Financial institutions and lender consents

Existing financing arrangements may impose covenants that limit certain actions without lender approval. This is particularly relevant if the reorganisation affects debt service capacity, asset composition or changes in control.

Other third-party approvals

In specific cases, external consents may be required from industry associations, licensing bodies or government agencies overseeing specific operational aspects.

Law stated - 15 April 2025

Internal consent and approvals

16 What internal corporate consent and approvals will be required for the corporate reorganisation?

Determining the necessary internal consents begins with a thorough review of the applicable corporate statutes, shareholder agreements, and the organisation's governing documents. Typically, the reorganisation must be approved by the relevant decision-making body – for example, a board resolution for corporations, a member resolution for member-managed limited liability companies (LLCs), or a manager resolution for manager-managed LLCs. In some cases, additional owner-level (shareholder or member) approval may also be required.

For larger or publicly listed companies, annual umbrella resolutions often cover a wide range of transactions, including corporate reorganisations. In these instances, it is advisable to verify whether the necessary approvals are already in place before drafting any transaction-specific resolutions.

Law stated - 15 April 2025

ASSETS

Shared assets

17 How are shared assets and services used by the target company or business typically treated?

Shared assets and services in a corporate reorganisation are generally addressed through fair value allocation, carve-out methodologies and, increasingly, transaction or transition support agreements (TSAs). Below are some key considerations.

Identification and allocation

Before finalising the transaction, the parties identify which assets or services (eg, IT systems, HR, facilities management) are shared across business units.

A carve-out or fair value analysis then determines how much of each asset or service should be attributed to the target entity, ensuring that allocations align with the business's operational needs and compliance requirements.

TSAs

When shared services are vital to the target's post-closing operations, a TSA may be employed to ensure business continuity. Under such an agreement, the selling entity (or another group company) agrees to continue providing critical services for a defined period typically at a defined cost.

TSAs typically detail service scope, service-level commitments, and cost-allocation mechanisms, allowing the target to stand up or replace these services gradually without a hard cutover.

Governance provisions in TSAs outline escalation procedures, performance standards, and each party's responsibilities, minimising disruptions and potential disputes as the target transitions to full independence.

Contractual adjustments and consents

If the shared assets or services are governed by existing intercompany agreements, these may require amendments or consents to accommodate the new structure.

New contracts, licenses, or service agreements might also be needed if the target will continue accessing shared systems or brands after closing.

Tax and transfer pricing considerations

When allocating costs for services under a TSA – or transferring shared assets outright – companies must ensure compliance with arm's-length standards, transfer pricing regulations and local tax requirements.

Law stated - 15 April 2025

Transferring assets

18 Are there any restrictions on transferring assets to related companies? If not, are there measures that can be taken to allow such a transfer?

In the US, transferring assets to related companies in the course of a corporate reorganisation is generally permissible. However, several legal, regulatory and practical considerations can effectively limit or restrict how such transfers occur, including the following.

Fiduciary duties and fair value requirements

Directors and officers owe fiduciary duties to the transferring entity's stakeholders. Transferring assets for less than fair value could breach these duties or be challenged as a constructive fraudulent transfer if it deprives the transferring company of reasonably equivalent value.

Fraudulent conveyance laws

Both federal (eg, section 548 of the Bankruptcy Code) and state (eg, versions of the Uniform Voidable Transactions Act) fraudulent transfer laws can apply if the transferring company is insolvent or near insolvency, or if the transfer is made with intent to hinder, delay or defraud creditors.

Corporate and shareholder approvals

Under state corporate laws (eg, the Delaware General Corporation Law), significant asset transfers may require board and, in some cases, shareholder approval. Company by-laws, operating agreements or shareholder agreements may impose additional procedural or notice requirements.

Third-party consents and contractual covenants

If assets are pledged as collateral under existing credit agreements or subject to restrictive covenants in commercial contracts, the consent of lenders or other contracting parties may be needed.

Tax implications

Certain tax-free reorganisations under the Internal Revenue Code (eg, section 368) require compliance with specific structural requirements, which may influence how the transfer is executed.

Minority shareholder rights

If there are minority shareholders, related-party transactions may be subject to heightened scrutiny or appraisal rights in some jurisdictions. Proper documentation and valuation help mitigate challenges from minority interests.

Industry-specific or regulatory Approvals

Certain sectors may have additional regulatory approvals for asset transfers, particularly if licences, permits or regulated businesses are being transferred.

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19 | Can assets be transferred for less than their market value?

There is no absolute prohibition on transferring assets for less than their market value; however, the transaction must be structured and documented to mitigate fraudulent conveyance, tax and fiduciary duty risks.

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FORMALITIES

Date of reorganisation

20 | Can a corporate reorganisation be backdated or deemed to have already taken place, for example, from the start of the financial year?

Under US law, corporate reorganisations cannot generally be made retroactive from a legal standpoint because the transaction is only effective on the date it is executed and any required filings are completed. There are scenarios, however, where a retroactive date may be used for accounting or tax purposes, subject to specific conditions.

Legal effective date v accounting/tax effective date

Legally, the reorganisation becomes effective on the date the required approvals, board resolutions or filings (eg, with the Secretary of State) take place. Most states do not allow 'backdating' these legal filings to a past date.

For accounting or tax treatment, however, companies sometimes designate an 'effective date' in financial statements or tax returns (eg, the start of the fiscal year), provided this is consistent with Generally Accepted Accounting Principles, International Financial Reporting Standards and/or Internal Revenue Service (IRS) regulations. This approach is often used to simplify reporting or consolidate post-transaction finances.

Tax elections and consolidated returns

In some cases, tax elections or consolidated return rules permit transactions to be treated as occurring at an earlier date – particularly if the entities involved have common ownership.

Any such retroactive election must comply with IRS regulations (eg, the Internal Revenue Code (IRC) and Treasury Regulations), and it may be subject to strict timing and filing requirements.

If a retroactive date is used for accounting or tax purposes, the relevant documentation (such as board resolutions, merger agreements or asset purchase agreements) and financial statements should make clear the legal versus economic or tax effective dates.

Proper disclosure ensures transparency for auditors, regulators and other stakeholders, helping to avoid potential misunderstandings or allegations of improper backdating.

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Documentation

21 | What documentation is required or advisable in a corporate reorganisation?

Documentation for a corporate reorganisation varies based on the transaction structure, applicable laws and industry considerations. However, common documents are the following.

Resolutions

Directors or managers resolutions authorising the reorganisation, detailing the transaction steps and approving related agreements or filings.

Depending on state law, significant transactions (such as mergers or large asset sales) may require shareholder or member approval.

Organisational documents and amendments

Articles of incorporation, by-laws and operating agreements may need to be updated to reflect changes in corporate structure or ownership.

Amendments must often be filed with the relevant Secretary of State or local registry.

Plan of Reorganisation or merger agreement

A Plan of Reorganisation (or Plan of Merger) outlines the transaction's legal and procedural details (eg, which entities are merging, assets or shares being transferred).

In Chapter 11 reorganisations, a formal Plan of Reorganisation is filed in bankruptcy court.

Purchase and sale agreements/asset transfer agreements

If the reorganisation involves asset transfers, these agreements specify the scope of assets and liabilities being transferred, the purchase price and representations and warranties.

Equity purchase agreements or equity exchange agreements

In equity acquisitions, this document stipulates the terms for transferring shares from one entity or equity holder to another.

Ancillary agreements

Transition services agreements (TSAs) or intercompany services agreements to govern ongoing shared services post-reorganisation.

Licences or intellectual property transfer agreements if intellectual property rights are involved.

Lease agreements or assignments for real property arrangements.

Banking and financing documents

Updated or new credit agreements, loan assumptions or security agreements if the reorganisation affects financing arrangements, triggers covenants or requires lender consent.

Regulatory filings and consents

HSR filings for antitrust clearances (if thresholds are met).

SEC filings for public companies (eg, proxy statements, Form 8-Ks).

Any industry-specific approvals (eg, for financial services, healthcare, telecommunications).

Tax filings and elections

IRS forms for tax elections or reorganisations governed by section 368 of the IRC.

Supporting transfer pricing documentation if intercompany transfers are involved.

Intercompany agreements

Intercompany loan agreements or promissory notes are often prepared to deal with cash transfers and accounting issues.

Employee related agreements/notices and benefit plan documents

Employment offer letter or employment agreement with the new employer should be issued or entered into with employees.

If WARN obligations are triggered due to a layoff or reduction in force, then proper notice should be prepared and provided to employees or their representatives, and state and local governments.

Updated benefit or stock option plans, reflecting changes in sponsoring entities.

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Representations, warranties and indemnities

22 Should representations, warranties or indemnities be given by the parties in a corporate reorganisation? If so, which are most common?

It is relatively uncommon for corporate reorganisation documentation to feature extensive representations and warranties. While it is important for agreements to reflect arm's-length terms, robust representations and warranties are typically associated with a level of due diligence more common in third-party transactions — a process generally not required for intragroup scenarios.

In most cases, representations and warranties focus on essentials such as the transferor's authority, the absolute transfer of title, compliance with applicable laws and confirmation of no ongoing litigation. When addressing title to equity or assets, these provisions are often split between economic ownership, which is under the transferor's control and can be timed to meet closing deadlines and legal title, which may require additional steps, such as formal filings or registrations, to finalise.

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Assets versus going concern

23 Does it make any difference whether assets or a business as a going concern are transferred?

The treatment of a transaction can differ significantly depending on whether individual assets or an entire business as a going concern are transferred. Successor liability considerations also vary under each approach, often influencing deal structure and negotiation. Key distinctions include the following.

Scope and complexity

- Asset transfer: Typically involves identifying, valuing and transferring each asset (eg, equipment, IP rights, receivables) through individual assignments or registrations. Acquirers often try to exclude certain assets or liabilities.
- Going-concern sale: Involves transferring a complete operational unit – including assets, liabilities, employees and contracts – in a single transaction.

Contractual consents, liabilities and successor liability

- Asset transfer:
    - Generally, liabilities remain with the seller unless specifically assumed by the buyer. However, successor liability may still arise in certain contexts, depending on state law or public policy exceptions.
    - Multiple separate consents may be required for each asset or contract (eg, IP licences, equipment leases, liens).
- Going-concern sale:
    - Liabilities are likely to transfer automatically with the business.
    - Fewer individual consents may be needed overall, but broader due diligence is critical to assess legacy liabilities and change of control provisions in contracts and agreements.

Employees and HR considerations

- Asset transfer:
    - Employees tied to transferred assets typically need new employment agreements with the buyer. Termination and rehire processes vary by jurisdiction and can trigger compliance obligations.
- Going-concern sale:
    - The workforce moves with the business as a package, often maintaining seniority and benefits. This can be more seamless from an operational standpoint but might impose additional obligations under labour laws or collective bargaining agreements.

Operational continuity

- Asset transfer:
    - Buyers and sellers may enter into TSAs to cover any gap in operations while assets are migrated.
- Going-concern sale:
    - The business continues relatively uninterrupted, reducing downtime but requiring careful coordination to ensure no break in contracts, supply chains or customer relationships.

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Types of entity

24 Explain the key differences between public, private, government or non-profit entities to consider when undertaking a corporate reorganisation.

When undertaking a corporate reorganisation, the nature of the entity – whether public, private, governmental or non-profit – has a considerable impact on the process and documentation.

Public companies must comply with federal and state securities laws, typically requiring filings with the SEC. Major reorganisations often trigger disclosures such as proxy statements, registration statements or Forms 8-K. These companies are also subject to more stringent corporate governance requirements set by stock exchanges (for example, NYSE or NASDAQ), and their boards must account for the interests of a broader investor base. Shareholder approval may be mandatory in certain transactions, and because market perception is critical, a robust communication strategy is essential to maintain investor confidence.

Private companies, on the other hand, enjoy greater flexibility in structuring reorganisations. With concentrated ownership and fewer mandatory disclosures, the approval process is often more streamlined. However, these entities must still consider any restrictions or obligations imposed by shareholder or member agreements, particularly where minority shareholders are involved. Private companies also need to secure lender consents and comply with applicable state corporate laws, which may require board or shareholder votes for certain significant actions.

Government entities (including state-owned enterprises) may operate under specific statutes or legislative frameworks that restrict their ability to reorganise freely. They often need approval from legislative or administrative bodies, and public bidding or procurement requirements can introduce further complexity. These reorganisations also face heightened scrutiny from media, constituents and oversight agencies, meaning political considerations can shape both the timing and scope of any restructuring.

Nonprofit organisations must ensure that any reorganisation aligns with their charitable purpose and preserves their tax-exempt status under section 501(c) of the IRC. Many states require advance notification to, or approval from, the attorney general's office for significant transfers of charitable assets. Additionally, non-profits often deal with restricted-use donations and grants, which require strict adherence to donor intent during a reorganisation. Boards of directors or trustees must act in accordance with their fiduciary duties to maintain stakeholder trust and protect the organisation's mission.

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Post-reorganisation steps

25 Do any filings or other post-reorganisation steps need to be taken after the corporate reorganisation?

From a corporate standpoint, the post-reorganisation filings and formalities required will vary depending on the transaction structure and the jurisdictions involved. In the United States, for example, equity transfers often entail several post-closing steps:

- cancelling old equity certificates and issuing new ones;
- filing or registering the equity transfer with relevant authorities; and
- updating the shareholders' register or limited liability company operating agreements.

In many jurisdictions, mergers may trigger additional post-merger notifications to employees, government agencies, counterparties or other third parties. Likewise, transferring a note from one creditor to another typically requires notifying the debtor. When creating a new entity, local requirements often include registration with tax, social security or labour authorities and the opening of new bank accounts.

If an acquirer in a corporate reorganisation assumes or continues the target's employee equity programmes, securities law filings may be necessary. Terminating or freezing retirement or pension plans in a reorganisation may also require government filings.

Finally, if employees move from one entity to another as part of the reorganisation, standard HR onboarding procedures – such as setting up payroll, enrolling employees in benefits, conducting orientations and distributing policies – should be completed to ensure a smooth transition.

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UPDATE AND TRENDS

Hot topics

26 What are your predictions for next year and how will these impact corporate reorganisations in your jurisdiction (for example, expected trends or pending legislation)?

Corporate reorganisations remain a consistent feature of business strategy across economic cycles, but recent years have seen a notable shift in the types of reorganisation activity and the underlying motivations driving them. Traditional reorganisations — such as spin-offs, share buybacks, asset carve-outs and internal entity simplifications — continue to be used to improve operational focus, unlock value and streamline corporate structures. These transactions are particularly common in periods of economic uncertainty, as companies seek to divest non-core assets or return capital to shareholders.

An increasingly prominent trend is the rise in liability management exercises as companies face elevated interest rates, tighter credit conditions and heightened refinancing risk. These exercises — such as debt-for-equity swaps, exchange offers, uptier transactions and covenant stripping — are being used more frequently to restructure balance sheets out of court. In many cases, they are pursued to buy time, either to avoid a Chapter 11 filing altogether or to position the company for a more controlled restructuring process down the line.

This shift reflects a broader market dynamic in which borrowers and sponsors are seeking creative solutions to manage debt maturities and liquidity constraints without triggering the formalities and costs of bankruptcy. Notably, the legal and commercial complexity of these transactions has increased, requiring close coordination among legal, financial and tax advisers, particularly where fraudulent conveyance risks or intercreditor disputes may arise.

In parallel, reorganisations now often include more robust planning around shared services, transition support arrangements and successor liability risks, especially where businesses are sold as going concerns or restructured across entity lines. Similarly, the treatment of employees, equity compensation and retirement plans has grown more prominent, especially where reorganisations trigger changes in employing entities or raise securities or labour law concerns.

Altogether, the current environment is marked by strategic realignment paired with balance sheet defence, with companies using reorganisations not just to improve efficiency or unlock value, but to actively manage financial and operational risk in a volatile market. This dual focus is likely to persist, especially as companies navigate refinancing cliffs, macroeconomic uncertainty and evolving regulatory scrutiny.

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