Corporate Reorganisations

in USA

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LEGAL AND REGULATORY FRAMEWORK

Types of transaction

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

In the US, the term 'corporate reorganisation' can be applied to a wide variety of transactions, but typically it refers to mergers, consolidations, spin-offs and split-offs, recapitalisation, identity change and transfers of shares, assets or entire businesses between entities in the same corporate group. Other transactions that may fall under the 'corporate reorganisation' umbrella include transactions related to intercompany debt and receivables as well as cash repatriation transactions.

Rate of reorganisations

Has the number of corporate reorganisations in your jurisdiction increased or decreased this year compared with previous years? If so, why?

All business activity is affected by fluctuations in economic conditions, but when it comes to corporate reorganisations, the variety of drivers means demand is relatively constant.

A reorganisation may be operational, whereby there is a change in how the underlying business operates; or financial, whereby the funding and capital structure changes but the business continues to operate in the same way.

The need to improve operational efficiency and remain competitive can motivate a business to undertake an internal reorganisation, regardless of the prevailing external economic circumstances. Of course, there are other external one-off factors not related to internal drivers of a company, such as changes in law or regulation or in the general economic environment or mergers and acquisitions (M&A) activity, that may trigger short-term increases or decreases in the number of reorganisations, as new opportunities or previously unavailable options open up.

However, on the whole, demand for corporate reorganisations is to some extent independent of external factors and exists throughout the economic cycle.

Jurisdiction-specific drivers

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

A one-off factor that has and may continue to drive demand for corporate reorganisations is the recent regulatory changes in the US. On 1 January 2018, the Tax Cuts and Jobs Act (TCJA) took effect; one of the most extensive reforms since the 1986 Tax Reform Act. The new law includes numerous amendments impacting M&A as well as internal reorganisations.

For example, the changes introduced by the TCJA may affect deal modelling, tax diligence and acquisition agreement negotiations. Generally, the new law - particularly the reduction of US corporate tax rates - may make the US a more attractive destination for inbound M&A activity, while also allowing many US companies access to foreign capital at a lower US tax cost, thus providing the opportunity to fund acquisitions. Such regulatory changes may have a significant effect on M&A activity, and hence the demand for corporate reorganisations.

In addition, separate and apart from any merger or acquisition, the TJCA has caused and may continue to cause companies to revisit their existing internal structure and trigger a restructuring of that structure.

Structure

How are corporate reorganisations typically structured in your jurisdiction?

There are many ways to structure a corporate reorganisation in the US (eg, sale, distribution, contribution, liquidation, merger or, in certain jurisdictions, legal demerger). The selected method will depend on the facts and circumstances and the desired goals of the reorganisation, and to some extent on the state laws which govern the relevant entities or assets.

When planning the proposed reorganisation structure, a number of key factors should be considered. First, care should be taken to ensure that a corporate reorganisation is feasible in all aspects. For example, prior to any distribution, attention must be paid to whether the involved entity has sufficient distributable reserves to make the distribution. If not, either the plan needs to be adjusted or an alternative approach, such as a capital reduction, must be undertaken. Timing is another key factor to consider; in many jurisdictions, there are often required waiting periods for particular corporate steps. There may also be delays in certain governmental filings, which may be difficult to predict in advance. In addition, organisational documents of the entities involved must be reviewed to determine what requirements apply to implement the proposed steps. For instance, in certain circumstances, shareholder approval in addition to board approval may be required, or parties may need to waive pre-emptive rights or otherwise comply with certain debt covenants.

It is sometimes possible to structure the reorganisation so that it is tax free for US tax purposes. Section 368 of the Internal Revenue Code (IRC) provides for tax-free reorganisations when structured under its provisions.

In all events, transactions between related parties should be at arm's length - namely, the terms should be similar to those between unrelated parties. It must also be noted that in the event the corporate reorganisation transactions involve a public company, the relevant US securities laws must also be complied with.

Laws and regulations

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

Generally, US laws regulating corporations are more permissive than most other jurisdictions, leading to typically lower regulatory hurdles for implementing reorganisations. For instance, the US capital protection laws are much more relaxed than most civil law countries. Typically, there are no statutory accounts to be filed, and no or minimal filings relating to the change of directors and shareholders. Additionally, US requirements for distributable reserves for dividend distributions may be more informal than requirements in most civil law countries.

One of the first regulatory hurdles parties may face when preparing to implement a post-merger integration is the 'gun jumping' rules enforced by the US federal antitrust agencies. These rules restrict parties to a proposed merger from engaging in certain anti-competitive conduct prior to the expiration of the regulatory waiting period. Banned activities include coordination on prices, allocation of customers, and exchange of detailed information concerning customers, prices and product plans. Fines for infringement in recent years have been in the millions of dollars. As a consequence, many parties have been hesitant to begin post-acquisition integration planning until the antitrust regulators have approved the merger. If performed properly, however, integration planning and preparatory steps can commence immediately to avoid the lengthy delay of waiting for final approval.

Notwithstanding the above, new company formations in the US will still need to be filed in accordance with state law, which will require proper filings relating to issues such as capitalisation, corporate names and management. Additionally, if a US company will have a non-US shareholder due to the reorganisation, or if a US company will have ownership in foreign subsidiaries, certain filings may need to be made with the US Bureau of Economic Analysis. There also might be certain compliance issues relating to privacy and cross-border customer or employee data sharing.

Finally, it is worth noting that in 2018 Delaware passed a law allowing limited liability companies to effect legal demergers. Under this law, Delaware LLCs may elect to divide into two or more Delaware LLCs and allocate their assets and liabilities among the entities as they choose, potentially avoiding transfer taxes and filing requirements. This new statute resembles the law in many common law jurisdictions and provides a valuable tool in corporate reorganisations in the US.

National authorities

What are the key national authorities to be conscious of when undertaking a corporate reorganisation?

There are no overarching national authorities in the US that are automatically involved in a corporate reorganisation. For internal reorganisations, a key US authority to keep in mind is the Internal Revenue Services (IRS). Companies that are part of a reorganisation should prepare documents with the expectation and assumption that the documentation will be reviewed by the IRS. Companies should ensure that all key terms are filled in, documents are appropriately authorised and executed and document dates correspond to the timelines contained in the master plans and related tax filings.

Other national authorities that could become involved relate to businesses that are highly regulated, such as financial services, pharmaceutical and defence industry companies. In these situations, governmental consents or approvals from the relevant authorities might be required.

Antitrust authorities, the Bureau of Economic Analysis, and in certain cases such as spin-offs by publicly held companies of their divisions, the US Securities and Exchange Commission should also be considered.

KEY ISSUES

Preparation

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

Internal communication with regional business leaders, finance controllers and local directors of the companies involved is key in reorganisation projects. Lines of communication and a lead team should be established before commencing a reorganisation to ensure the project is implemented efficiently and on time, particularly in relation to the information-gathering process. There are a number of key teams that need to be involved by the lead team from the start. The client's treasury team should arrange for bank transfers throughout the project to pay the purchase price of shares or assets being transferred, grant loans or promissory notes, settle accounts payable and receivable between subsidiaries, or make cash dividend distributions up the chain of companies. Consequently, having the treasury team on board early is key to ensuring necessary treasury planning is taken care of before implementation of the transactions, more so when there are payments in different currencies, cash pools arrangements, hedges to be put in place, etc.

Additionally, shares and assets must be transferred for arm's-length compensation. As a result, third-party economists, transfer pricing specialists or an internal team should get involved before commencing the reorganisation to perform the necessary valuations.

Auditors should also review, comment and approve the reorganisation. Typically, it is best to involve the auditors as early as possible in the process .

It is also advisable to begin due diligence early in the project to review shareholdings of subsidiaries, officers and directors, and other signatories, and the types of agreements that might need to be transferred in the reorganisation. If agreements or assets are being transferred or assigned, it is important to confirm if notifications to, or consents from, third parties are required before implementing the transfers. For example, in IP reorganisations, the transfer of licence agreements may require third-party consent. Alternatively, if shares of companies being transferred are pledged, the pledge may need to be temporarily released. In case the transactions in the project involve companies with employees, notifications to the same or consultation with unions could be required.

Employment issues

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

A main issue relating to employees in a corporate reorganisation is the assessment of whether employee talent is an important driver underlying the corporate reorganisation. This is usually the case if the reorganisation is driven by an acquisition involving knowledge acquisition (as opposed to, for example, acquiring patents, real estate or commodities). Depending on the answer, an acquirer may need to focus on employee retention, and require an increase in total deal value by inclusion of retention packages (possibly including acquirer equity) for continuing employees, or may wish to negotiate that it will only acquire a limited number of employees and others are to be laid off pre-closing or continue with the target.

The corporate reorganisation's ultimate structure also determines potential employee issues. A share acquisition generally does not involve a change of employer, and, therefore, the impact on employees and their terms and conditions of employment is usually limited. As a good practice, an informal welcome letter may still be issued to notify employees of the change in ownership of their employing entity. Assuming employment with the target entity was at-will, changes to terms and conditions are usually easily implemented.

An asset acquisition or merger often involves transferring employees from one entity to another. A new employment-offer letter or employment agreement should be issued or entered into to document the change in the employing entity. The transferee entity will often recognise employees' prior service years at the transferor entity. Because employment transfer technically involves a termination of employment with the transferor entity, in some states, accrued vacation or paid time off is required to be paid out at the time of the transfer unless the employee consents to carrying over the vacation or paid time off balance to the transferee entity.

When employees are transferred from one entity to another, the total headcount at the transferee entity, after the reorganisation, may reach or exceed certain thresholds triggering additional employer obligations. For example, employee transfers in connection with a corporate reorganisation could cause the transferee entity to have 50 or more employees in total and render the transferee entity subject to the federal Family and Medical Leave Act and state statutes providing similar leave to employees.

A corporate reorganisation is sometimes accompanied by a reduction in force (RIF). Special attention should be paid to determine whether the RIF could trigger obligations under the federal Worker Adjustment and Retraining Notification Act or its state equivalent statute (the WARN Act). The obligations include providing advance notice of the RIF (for example, 60 days' notice under the federal WARN Act) to the affected employees or their representative (for example, union representative), and to state and local governments. Usually a loss of 50 employees at a single employment site during a 30-day period is a good indicator that federal WARN obligations are triggered, although state law may have a lower job loss threshold for triggering state WARN obligations.

When a corporate reorganisation involves the transfer or reduction of union employees, the applicable collective bargaining agreement or agreements should be reviewed and counsel should be involved early in the process to ensure the reorganisation does not breach the CBA, and to identify and plan for potential labour relations issues.

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

With regard to pensions, the main issues in the US are determining if any of the following are present:

- if any single employer-defined benefit pension plan is sponsored by the target entity or its affiliates;
- if the target entity or its affiliates contributes (or has been obliged to contribute at any time in the past five calendar years) to any multi-employer defined pension plan;
- use of employer securities or employer real property as a plan asset within any defined contribution pension plan sponsored by the target;
- whether the target company sponsors a retirement plan that is an employee stock ownership plan (ESOP); or
- whether 25 per cent or more of any class of securities of the target company is, in the aggregate, held by retirement plans or individual retirement accounts or annuities.

If any of the foregoing pension issues are present, they will likely play a significant role in assessing material liabilities in the US and may even alter the structure or negotiation of the corporate reorganisation.

In terms of non-pension issues, in the US we suggest assessing the following main issues:

- treatment of equity compensation (eg, stock options, share schemes, restricted share units) in the reorganisation;
- change-of-control benefits (either 'single trigger' or 'double trigger');
- severance benefits, including 'good reason' or 'constructive termination' rights; and
- whether the transaction will give rise to any 'golden parachute' taxes under section 280G of the IRC. We would also suggest looking into key employee compensation arrangements and confirming compliance with section 457A or 409A of the IRC.

Financial assistance

Is financial assistance prohibited or restricted in your jurisdiction?

The US does not have strict prohibitions against companies using their own funds to acquire shares in themselves or another company, as is seen in civil law jurisdictions; however, we would advise looking at the particular tax rules that may impact any such arrangement. In the US, there are laws against fraudulent transfers (transfers with either the intent to deceive or defraud creditors, or that have the constructive effect of leaving a transferor insolvent or unable to continue its business at the time of the transfer). The fraudulent transfer laws are typically applied in a bankruptcy scenario, however, and would be unlikely to be applied in an intercompany project. Nevertheless, in order to avoid any such claims, and to comply with arm's-length requirements, companies should confirm receipt of fair market value in exchange for their transfers.

Common problems

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

Commonly overlooked issues relating to employees include obligations under the WARN Act when a RIF is involved, and additional obligations for the transferee entity when its headcount is increased because of the reorganisation.

There are also considerations from a more practical point of view. In post-merger reorganisations where employees are important to the acquirer, a commonly overlooked issue is blending employee cultures and how to integrate acquired employees. Acquirers perform reorganisations to shape the business of the combined company going forward, but if the acquired employees leave or are not enthusiastic about the path of the combined company, the transaction may fail to achieve the acquirer's ultimate business objective.

As already indicated, another overlooked issue is the need for valuations, which in turn requires that any internal books and accounts are up to date. Additionally, reorganisation plans will often require that cash is moved around the organisation chain, but subsidiaries will often not have separate bank accounts, so pre-planning is required.

Signatory availability can also be an issue, especially when an organisation has only appointed three to four persons as signatories for all subsidiaries in the organisation, or in post-acquisition integration scenarios, when the target's signatories have already been terminated.

ACCOUNTING AND TAX

Accounting and valuation

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

The accounting treatment depends on all the facts and circumstances surrounding the reorganisation. The company's accounting team should review and comment on the contemplated reorganisation beforehand.

Section 482 of the IRC follows the arm's-length standard to value property and provides specific methodologies for determining the value to be used for the transfer of property between related parties for federal tax purposes. The taxpayer must use the method that provides the most reliable estimate of the arm's-length price. State and local tax authorities generally follow the valuation rules set forth in section 482.

Tax issues

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

The federal, state and local tax implications of a reorganisation depend on all the facts and circumstances and should always be considered before implementing a reorganisation. Generally, both taxable and tax-free reorganisations are possible in the US. If taxable, tax may apply at shareholder or entity level.

If a US taxpayer's non-US subsidiary or assets held by such non-US subsidiary are transferred in the reorganisation, then US tax may be triggered because of the Subpart F or global intangible low-taxed income (GILTI) rules. If a US taxpayer makes a payment to a related party located outside of the US as part of a corporate reorganisation, they should consider the base erosion and anti-abuse tax (BEAT) implications of the payment.

The following should also be considered when implementing a reorganisation:

- arm's length: transactions between related parties should be arm's length;
- document review: tax advisers should always review the draft, governing documentation in advance to ensure it aligns with the desired tax treatment;
- interest: if debt is issued as part of the reorganisation, care should be given to ensure the interest is deductible for tax purposes. If interest will be paid across borders, consider whether withholding tax will be triggered; and
- reporting: certain types of transactions must be reported to the taxing authorities.

With regard to employee benefits, we recommend reviewing how compensation-based equity awards (eg, stock options, share schemes and restricted share units) are treated in the reorganisation transaction to ensure that the tax implications for the corporate entities, individual executives and key employees are considered and appropriately structured.

CONSENT AND APPROVALS

External consent and approvals

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

Often, external consents and approvals are overlooked in corporate reorganisations. It is critical, however, to evaluate each entity participating in the reorganisation to identify any external facing arrangements and their impact on the transaction. Attention should be paid to whether the entity:

- holds or leases any real estate;
- is party to any intellectual property licences from outside the company group;
- is party to any financing or debt arrangements, such as a company group cash pool;
- is party to third-party contracts, including third-party loans, which might contain negative covenants on transfers, or include liens or pledges; or
- holds permits or other operating licences.

For any of these factors, change-of-control provisions or notifications to (or consents from) external parties should be considered. If a participating entity has employees, labour or union issues also need to be evaluated.

When a participating entity engages in a regulated industry (such as energy, telecommunications or financial services), mandatory consent or notification to the regulatory body may be required prior to implementing the reorganisation. Failure to obtain such consent or provide notice may incur monetary penalties or cause operational disruptions.

Internal consent and approvals

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

The specific corporate approvals required for a participating entity should be determined by reviewing the applicable corporate statutes, any shareholder agreements, and the entity's organisational documents. Generally speaking, board (for corporations), member (for a member-managed limited liability company) or manager (for a manager-managed limited liability company) resolutions should be passed authorising the overall corporate reorganisation. For certain actions, owner (shareholder or member) approval may also be required.

For larger companies, especially those that are publicly listed, approvals for corporate reorganisations are often included in standing umbrella resolutions that are passed by the company each year to cover a variety of transactions. For clients of this sophistication, it is useful to check whether the company already has appropriate corporate approvals in place before drafting transaction-specific approvals.

ASSETS

Shared assets

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 made as to the impact the reorganisation may have. Often, within a company group, internal agreements for assets or services are drafted in such a way as to allow flexible corporate reorganisations without significant formalities. Any such agreements should be reviewed to determine whether any amendments or updates are required because of the reorganisation, or if any formalities should be attended to in implementing the reorganisation. For instance, new licences or services agreements may need to be entered into following the reorganisation to reflect the new flow of services or newly formed entities. Additionally, business leases are sometimes used to allow affiliates to continue sharing services or assets during the interim phase prior to full implementation. Any contracts covering shared assets and services should also be reviewed from a tax and transfer pricing perspective.

If a participating entity holds contracts with third parties on behalf of the group, the factors set forth in paragraph 14 above must also be considered and any required consents or notifications provided.

Transferring assets

Are there any restrictions on transferring assets to related companies?

Generally, US companies are free to transfer assets to related companies, so long as they receive arm's-length consideration for such transfers. Nevertheless, companies should review the assets to confirm they are not subject to liens or encumbrances, or otherwise require third-party consent for transfer. Additionally, some assets might be subject to a specific regulatory regime that would require governmental approval for transfer (or require the transferee to obtain a licence).

Can assets be transferred for less than their market value?

Regulations require that the transferred assets be valued according to the arm's-length standard. The chosen method and the inputs used have a significant bearing on the valuation, however. As such, the value of assets transferred may be different based on the valuation method and inputs. Recent tax reforms aim to tighten the rules to eliminate this difference.

In some cases, net book values may be used to approximate the market value. For instance, where depreciable tangible assets have to be transferred, the net book value could be used to approximate the value of transferred property although care must be taken to ensure the net book value approximates the market, arm's-length value.

FORMALITIES

Date of reorganisation

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

In most cases, transactions must be implemented before or on a target effective date (eg, by the end of a financial year). Most transactions (such as share transfers, contributions, distributions, assignments, novations, loans, etc) cannot be deemed to have taken place before the respective documents are finalised and executed (ie, they do not have retroactive effect). This makes it crucial - and sometimes challenging - to prepare and execute the transaction documents before the deadline. However, certain reorganisation steps allow for retroactive effect. For example, check-the-box elections under US tax law allow for filings with retroactive effect back to 75 days before the filing date. Additionally, US law allows a transaction to have different effective dates for legal and tax or accounting (or 'economic') purposes. For example, a merger transaction can have one effective date for tax and accounting purposes and another effective date for the transfer of legal title.

Documentation

What documentation is required in a corporate reorganisation?

From a corporate perspective, the board of directors or managing body of the companies involved must approve the transactions and the documents required to implement the transaction steps. Additional to board approvals, it may be advisable (or required to achieve the desired tax treatment) to document approval of transactions in a reorganisation plan executed by the companies involved. On or near the same day as board approvals, the specific transactions may occur and these are recorded in agreements, such as contribution agreements in exchange for shares or share premium of the transferee, sale and purchase agreements in exchange for cash or promissory notes, assignment agreements and distribution agreements. In certain circumstances, actions taken before board approvals may be ratified by the board. However, ratification is generally not available to approve a distribution retroactively. When the values used in the transaction need to be adjusted after the transaction has taken place, an adjustment agreement can be prepared and mistakes in the values assigned can be corrected in a clarification agreement.

To reduce cash transfers, intercompany loan agreements or promissory notes are often prepared. When an amount of cash should be transferred through certain companies in a group, the parties may prepare a settlement agreement to ensure all claims are settled between the parties through the chain. Sometimes, payment direction letters are also drafted with this same purpose.

If the reorganisation involves a change of employer or employees, then an 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 RIF, then proper notice should be prepared and provided to employees or their representatives, and state and local governments.

Depending on the desired go-forward intercompany transactions, written and executed intercompany services agreements, licence agreements, etc, should be put in place. Each company involved should keep the original documentation at its business or registered address, together with its books and records, and should update the minutes books and shareholder ledgers, and cancel share certificates and issue new ones in the name of the new shareholder.

Representations, warranties and indemnities

Should representations, warranties or indemnities be given by the parties in a corporate reorganisation?

It is uncommon to include extensive representations and warranties in reorganisation documentation. While there is an emphasis for documents to retain arm's-length characteristics, lengthy representations and warranties require additional due diligence (not typically required in intragroup scenarios).

Most representations and warranties focus on due authority of the transferor, absolute transfer of title, absence of litigation proceedings and compliance with applicable laws. Representations related to title to shares or assets may typically be bifurcated between transfer of economic ownership (which is usually under the control of the transferor and can be timed to meet deadlines) and transfer of legal title (which often requires additional steps, such as filings and registrations).

Assets versus going concern

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

From a corporate perspective, a business as a going concern is akin to an equity transfer, in that the business will continue to operate as normal without a threat of liquidation or dissolution for the foreseeable future. In this situation, it is important to determine whether the business has any contracts with change-of-control provisions and to coordinate any third-party notices or consents. For assets, it is important to evaluate whether they are subject to potential third-party consents or notifications, which can be found in leasing or pledge arrangements, co-ownership agreements, liens, etc. If there is a difference between the two transactions for federal income tax purposes, that difference would carry over to the states, most of which would use federal taxable income as a starting point.

For sales and use tax purposes, states offer an occasional sale exemption. In some states, for example Texas, the exemption requires the sale of the business's entire operating assets. There is no requirement to include intangibles in the sale, nor is there a requirement for the buyer to continue to operate the business post-acquisition.

Types of entity

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

Publicly held companies should coordinate with their securities law counsel to ensure all investor communications requirements, and any other stock exchange requirements, are met in relation to a reorganisation. Additionally, contrary to most privately held companies, public company boards cannot be contacted at short notice to sign resolutions. If transactions involved in a reorganisation are not already addressed in the company's standing umbrella resolutions, additional resolutions might be required. Lawyers should assume they will only have one chance to obtain resolutions from the top board, so the resolutions should be as broad as possible.

With regard to privately held companies, other than the securities laws regulating publicly held companies, few laws differentiate between public and private companies in a reorganisation. However, from a practical standpoint, corporate information of a private company is often not easily available through public means, and private companies are often concerned that any public filings required as part of a reorganisation could reveal more information than they are comfortable disclosing.

Non-profit organisations operate under a different regulatory regime in the US; different states have their own laws regulating the formation and operation of non-profits. With regard to reorganisations, all new companies should conform to the filing requirements and ensure activities assumed by non-profit organisations are allowed under the relevant statutes.

With regard to governmental entities, these entities are typically domestic, and we seldom see them involved in cross-border reorganisations. Most governmental entities are regulated by additional laws that do not apply to private companies, so any reorganisation projects would also require an examination of any necessary licences or permits. Finally, in our experience, most contracts involving governmental entities require consent for assignment, even between related parties.

Post-reorganisation steps

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

From a corporate perspective, whether or not any filings or other post-reorganisation steps are applicable depends on the type of transaction and jurisdiction. In the US, share transfers may require some post-closing steps. Such steps may include:

- cancellation of the old share certificate and issuance of the new share certificates;
- filings or registrations of the share transfer with applicable authorities; and
- updating the shareholders' register or limited liability company operating agreements.

In many jurisdictions, after a merger takes place, certain post-merger notifications to employees, government authorities, counterparties and other third parties may be applicable. The transfer of a note from one creditor to another normally entails sending a notification to a debtor after such transfer takes place. After a new entity is formed, it may need to be registered with local authorities (eg, tax authorities, social security or pension funds and labour authorities) depending on jurisdiction, and bank accounts may need to be opened for this entity.

If an acquirer in a corporate reorganisation assumes or otherwise continues the employee equity programmes of the target entity, securities law filings may be required. Filings with government agencies may also be required if retirement or pension plans are terminated, or otherwise 'frozen' in a corporate reorganisation.

If employees are transferred from one entity to another in connection with the reorganisation, then the usual HR tasks required for onboarding new hires would need to be performed, including payroll setup, benefits enrolment, new employee orientation, policy distribution and acknowledgement, etc.

UPDATE AND TRENDS

Recent developments

Are there any emerging trends or hot topics regarding corporate reorganisations in your jurisdiction?

UNPROCESSED QUESTIONS

All questions

Updates and trends

No updates at this time.