Corporate M&A
Cross-Border Group
Restructuring within Europe: Exploring the Legal Framework

Michiel Lampe
Maarssen, March 26th 2015
About Deloitte Legal

Really global
With deep roots in local communities, Deloitte Legal does not use a traditional hub and spoke delivery model. Deloitte Legal is one of only a few truly global legal providers with over 1,300 lawyers located in practices in over 67 countries.

Countries where legal services are provided by Deloitte Legal

Country
1. Algeria
2. Australia
3. Argentina
4. Azerbaijan
5. Belgium
6. Benin
7. Brazil
8. Bulgaria
9. Cameroon
10. Canada
11. Chile
12. China
13. Colombia
14. Congo, Rep. of
15. Costa Rica
16. Croatia
17. Cyprus
19. Denmark
21. DRC
22. Ecuador
23. Estonia
24. Equatorial Guinea
25. Finland
26. France
27. Gabon
28. Georgia
29. Germany
30. Guatemala
31. Honduras
32. Hungary
33. Iceland
34. India
35. Ireland
36. Italy
37. Ivory Coast
38. Japan
39. Kazakhstan
40. Latvia
41. Lithuania
42. Luxembourg
43. Malta
44. Mexico
45. Morocco
46. Netherlands
47. Nicaragua
48. Norway
49. Panama
50. Peru
51. Poland
52. Romania
53. Russia
54. Serbia
55. Senegal
56. Slovakia
57. Slovenia
58. South Africa
59. Spain
60. Sweden
61. Switzerland
62. Taiwan
63. Thailand
64. Tunisia
65. Turkey
66. Ukraine
67. Venezuela
Our global footprint in relation to competition

Number of countries in which firm is located

- PWC Legal: 2400 Lawyers (80)
- Deloitte Legal: 1200 Lawyers (67)
- EY Legal: 1100 Lawyers (51)
- Baker & McKenzie: 3000 Lawyers (46)
- CMS: 33 (33)
- DLA Piper: 33 (33)
- Allen & Overy: 2770 Lawyers (30)
- Norton Rose: 3800 Lawyers (28)
- Clifford: 3400 Lawyers (26)
- White & Case: 26 (26)
- Hogan Lovells: 2500 Lawyers (25)
- Linklater: 2200 Lawyers (20)
- Jones Day: 2400 Lawyers (19)
- Freshfields: 2500 Lawyers (17)
Deloitte Legal has capabilities in both day-to-day legal operations as well as business life events.

**Corporate and M&A**
- Corporate law
- Corporate compliance
- Corporate reorganizations
- National and cross-border mergers
- Shareholder agreements
- Family protocols
- Acquisitions, divestures and joint-ventures
- Private equity and venture capital
- Legal purchaser and vendor due diligence
- Post-merger integration activities and legal entity reduction

**Employment and Pension**
- Individual employment law
- Relationships with worker representative bodies
- Labor law issues in restructuring
- National and international social security law
- Pensions & benefits
- Mobility and immigration
- Estates & trusts

**Commercial**
- Legal and contractual framework of supply chain management and distribution networks
- Restructuring business functions and outsourcing
- Real estate including acquisition, disposal and portfolio management
- Intellectual property rights including registration, protection and defense
- Unfair competition and antitrust
- Litigation in all fields of business law, including white collar crime
- Bankruptcy, insolvency and corporate restructuring
- Statutory and regulatory compliance

**Tax Controversy**
- Tax audit strategy and consulting
- Tax controversy lifecycle management
- Dispute resolution

We have experience across a number of industries including regulated industries and public sector. Particular areas of specialization include:
- Banking & securities
- Energy & resources
- Technology, media, and telecommunications
- Insurance
- Real estate
Why Deloitte?
Deloitte Legal challenges the established legal environment

Response to changed client needs

Alternative pricing and delivery methods

Integrated services enriched with technology and process

Truly global coverage
Introduction

Drivers of entity reduction by migration of entities

• Synergies and business strategy
• Reducing organisation costs
• Minimising of regulatory compliance
• Tax planning
• Business-friendly environment
Entity reduction, before and after

Traditional Holding Structure

- European Holding
- Separate legal entities
- Each with their own corporate / directors’ responsibilities

Single European Company

- Single European Company
- Branch structure / no separate legal entities
- Central (legal) management / centralisation of legal responsibilities
- Alignment with operating structure
Terminology

- Entity reduction by migration
- Common law vs. civil law
- Real seat vs. incorporation theory, statutory seat
- Ancillary jurisdictions
What is an SE (European Company) and a SCE (European Cooperative Society)?

- Were not very popular, but there is increase in use
- 79 SEs have changed their registered office over the 2004 – 2014 period

Examples

- Allianz SE, BASF SE, Porsche Automobil Holding SE, Swiss RE
- Airbus Group N.V., Christian Dior S.A., Schneider Electric SA and LVMH (Louis Vuitton Moët Hennessy) S.A. have announced their intention to transform into an SE

Pitfalls

- National law still applies to regulatory supervision, tax, accounts, and insolvency matters
- Extensive labour law protection measures
- Complex set of articles of association
Inbound and outbound migration

- Inbound – situation of the host member state (MS) when a company moves its seat from another MS into the jurisdiction of the host MS
- Outbound – situation of the home MS when a company moves its seat outside the jurisdiction of that MS

Examples

- Cartesio (2008), Vale (2012)

Pitfalls

- Real seat vs. incorporation seat theory
- Absence of clear common rules
- May be time-consuming and costly
Cross-border merger

- Harmonised and non-harmonised mergers
- EU vs. EEA, Switzerland, ancillary jurisdictions
- Legal benefits

Examples

- Belgian company A merges with Dutch Company B by which company A ceases to exist in Belgium
- Automatic transfer of assets and liabilities under universal title of succession

Pitfalls

- Different MS – different procedures
- Merger procedures in different MS may differ in time and complexity
- Common law
- Not all assets are automatically transferred!
Migration of entities within the EU
Options, examples, and pitfalls (cont’d)

Options
• Combination of different options discussed earlier, (e.g., inbound / outbound transfer of seat followed by a cross-border merger)

Examples
• Company A registered in third country (non-EU) moves its office to Luxembourg (real seat theory applies). New LuxCo is established, and Company A merges with New LuxCo under domestic rules in Luxembourg, New LuxCo merges with Dutch BV

Pitfalls
• Different procedures in different countries
• Different employee approval procedures
• Exit tax
Overview: legal process and formalities

1. **Filing and publication** of the joint (de)merger proposal
   - Submission of (de)merger documentation to registered office
   - Sending convocation notices to the shareholders

2. **Board of directors**
   - Approving the joint merger proposal and merger report
   - Adapting financial statements, if needed
   - Convening the EGM

3. **Information to shareholders**: (de)merger documentation to be made available at least 1 month prior to the EGM

4. **Approval** of the (de)merger:
   - Extraordinary General Meeting (EGM) before notary

5. **Constatation deed**: passed in country of the absorbing company (in Belgium obtained from notary public)

6. **2 month creditor protection period**

   - **Preparation** of
     - Joint (de)merger proposal
     - (De)merger report
     - Intermediary financial statements, if needed
     - Auditor’s report

   - **6 – 8 weeks waiting period**
# Suggested timescale

<table>
<thead>
<tr>
<th>PMO</th>
<th>Legal</th>
<th>Tax</th>
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<tbody>
<tr>
<td><strong>Key milestones</strong></td>
<td><strong>Key activities</strong></td>
<td><strong>Key activities</strong></td>
</tr>
<tr>
<td><strong>Start</strong></td>
<td><strong>Ramp-up phase (1 week)</strong></td>
<td><strong>Information gathering and due diligence phase (2-3 months)</strong></td>
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<tr>
<td>On-board team</td>
<td>On-board team</td>
<td>On-board team</td>
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<tr>
<td>Meet key stakeholders</td>
<td>Meet key stakeholders</td>
<td>Meet key stakeholders</td>
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<tr>
<td>Develop basic project infrastructure</td>
<td>Develop basic project infrastructure</td>
<td>Develop basic project infrastructure</td>
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<tr>
<td>Review key milestones</td>
<td>Review key milestones</td>
<td>Review key milestones</td>
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<tr>
<td>Develop &quot;plan for a plan&quot;</td>
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<tr>
<td>Hold core team kick-off event</td>
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<tr>
<td><strong>Planning and drafting phase (2-3 months)</strong></td>
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<tr>
<td>Detailed planning and project design</td>
<td>Gather detailed information on entities</td>
<td>Detailed tax information-gathering and analysis</td>
</tr>
<tr>
<td>Develop project plan and governance structure</td>
<td>Identify legal issues (e.g., anti-assignment)</td>
<td>Ascertain where tax rulings required</td>
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<tr>
<td>Identify key risks and dependencies</td>
<td>Analyse detailed rules, documents, and procedures for legal activities</td>
<td>Investigate tax implications</td>
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<tr>
<td><strong>Implementing phase (6-12 months)</strong></td>
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<tr>
<td>Report progress</td>
<td>Report on due diligence items</td>
<td>Investigation of tax implications</td>
</tr>
<tr>
<td>Manage risks and issues</td>
<td>Logistics planning for implementation</td>
<td>Input into project plan</td>
</tr>
<tr>
<td>Manage budget</td>
<td>Draft legal documents</td>
<td>Identify possible branch tax exemptions</td>
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| Manage stakeholders | **Imple}
Some points to consider

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<thead>
<tr>
<th>Planning</th>
<th>Due diligence – 1</th>
<th>Due diligence – 2</th>
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| • Establish project governance structure early  
• Establish clear team structure and communication lines  
• Develop clear project plans  
• Take a long term view | • Real estate: review of local real estate registry filings essential  
• Real estate: early engagement with landlords / tenants recommended  
• Real estate: release of local charges | • Contract: change of control / anti-assignment provisions  
• Business licensing: early investigation essential  
• Banking and finance: early engagement with banks recommended  
• IT / systems: early impact assessment recommended |

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<tr>
<th>Other</th>
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| • Do not underestimate the impact on IT and systems  
• Monitor pending or outstanding litigation  
• Bookkeeping and accounting | | |

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<tr>
<th>Creditor protection</th>
<th>Implementation</th>
<th>Drafting</th>
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| • Engage with major creditors  
• Be aware that creditor protection rules vary from country to country | • Effective project management is vital to maintain momentum  
• Regular meetings / updates – 3D communication  
• Escalation process and adoption of appropriate strategies and counter-measures to resolve issues | • Less is more  
• Plain language  
• Powers of attorney |

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Entity reduction by migration within the EU
Migration of entities

Concluding remarks

Comparison
- Entities vs. persons
- Migration is people’s business

Progress
- Matured procedures lead to reduction of fees and timing
- Anticipated legislation

Conclusions
- Cross-border migration of entities becomes more common
- Amalgamation of legal systems