



Corporate M&A

Cross-Border Group

Restructuring within Europe:

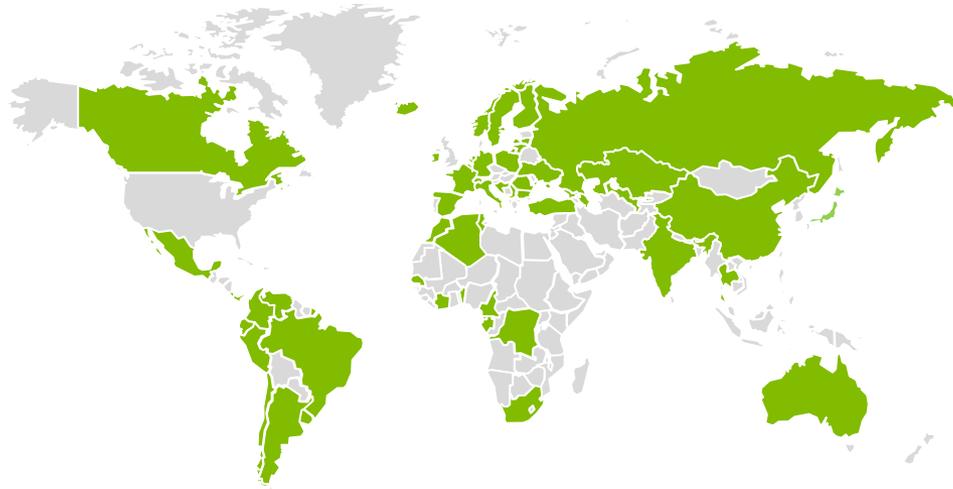
Exploring the Legal Framework

Michiel Lampe

Maarsse, March 26th 2015



About Deloitte Legal



Countries where legal services are provided by 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

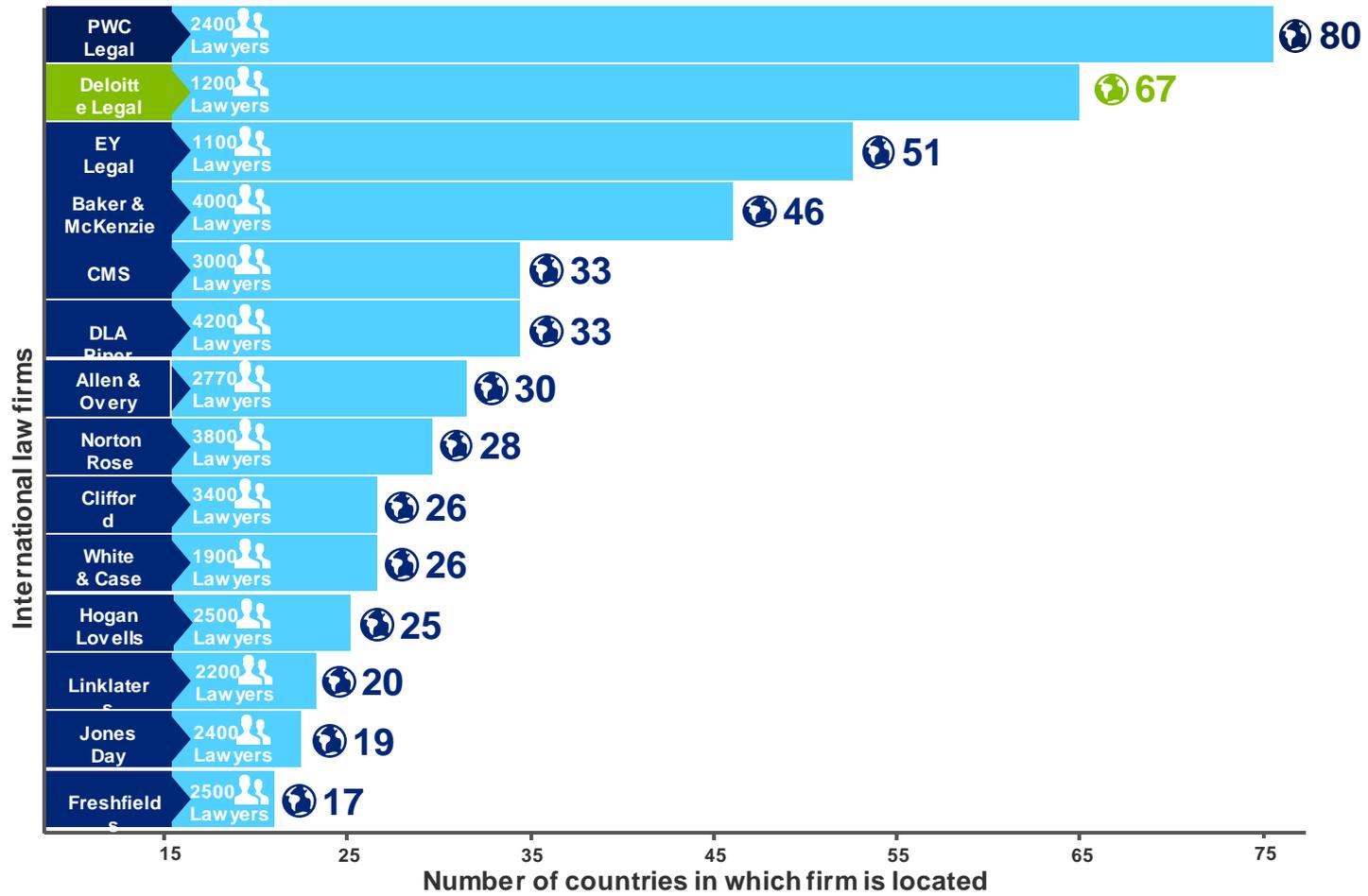
Country
1. Algeria
2. Australia
3. Argentina
4. Azerbaijan
5. Belgium
6. Benin
7. Brazil
8. Bulgaria
9. Cameroon
10. Canada
11. Chile
12. China
13. Colombia
14. Congo, Rep. of
15. Costa Rica
16. Croatia
17. Cyprus
18. Czech Rep.
19. Denmark

Country
20. Dominican Rep.
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

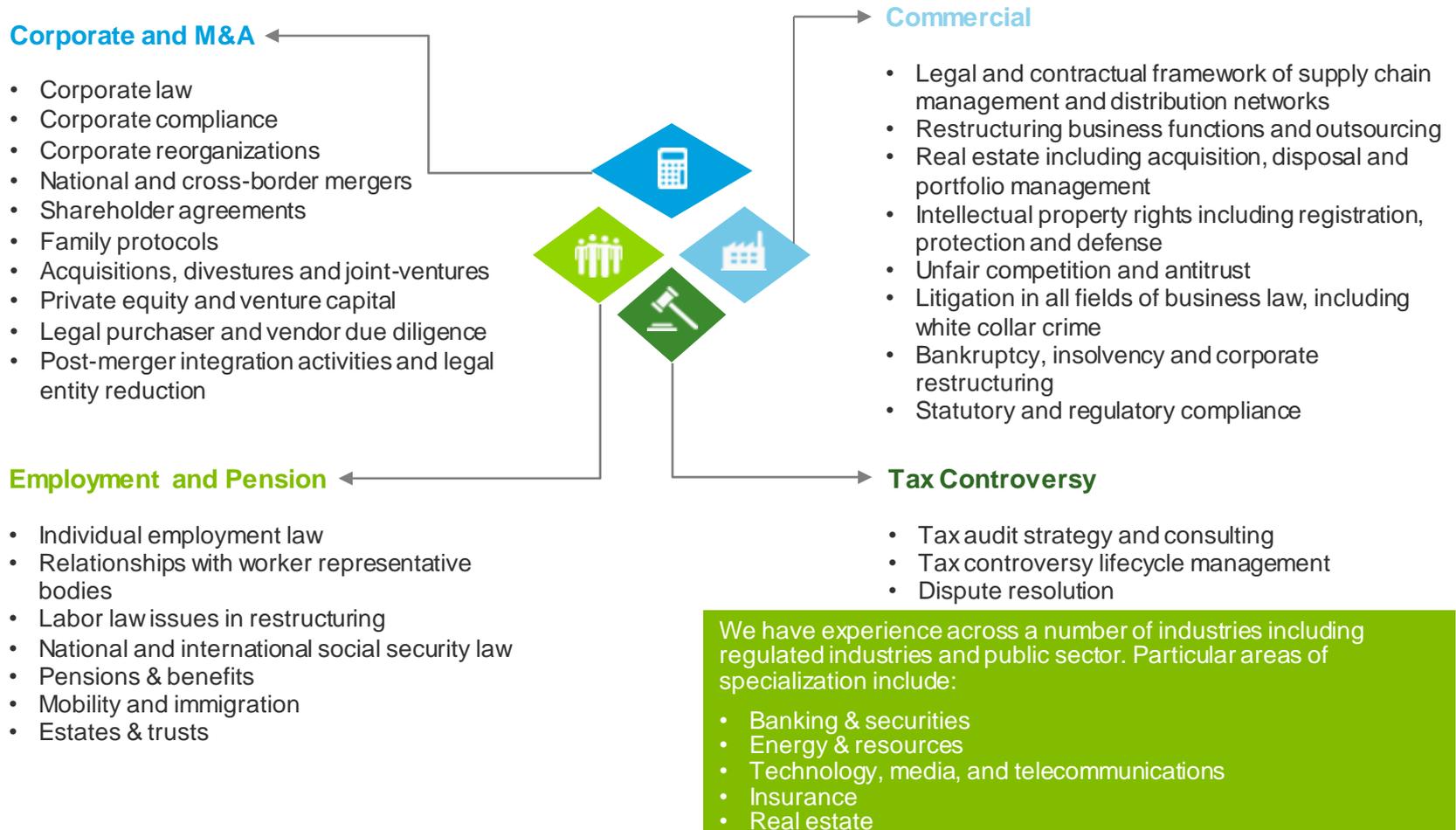
Country
39. Kazakhstan
40. Latvia
41. Lithuania
42. Luxembourg
43. Malta
44. Mexico
45. Morocco
46. Netherland
47. Nicaragua
48. Norway
49. Panama
50. Peru
51. Poland
52. Romania
53. Russia
54. Serbia
55. Senegal
56. Slovakia
57. Slovenia

Country
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

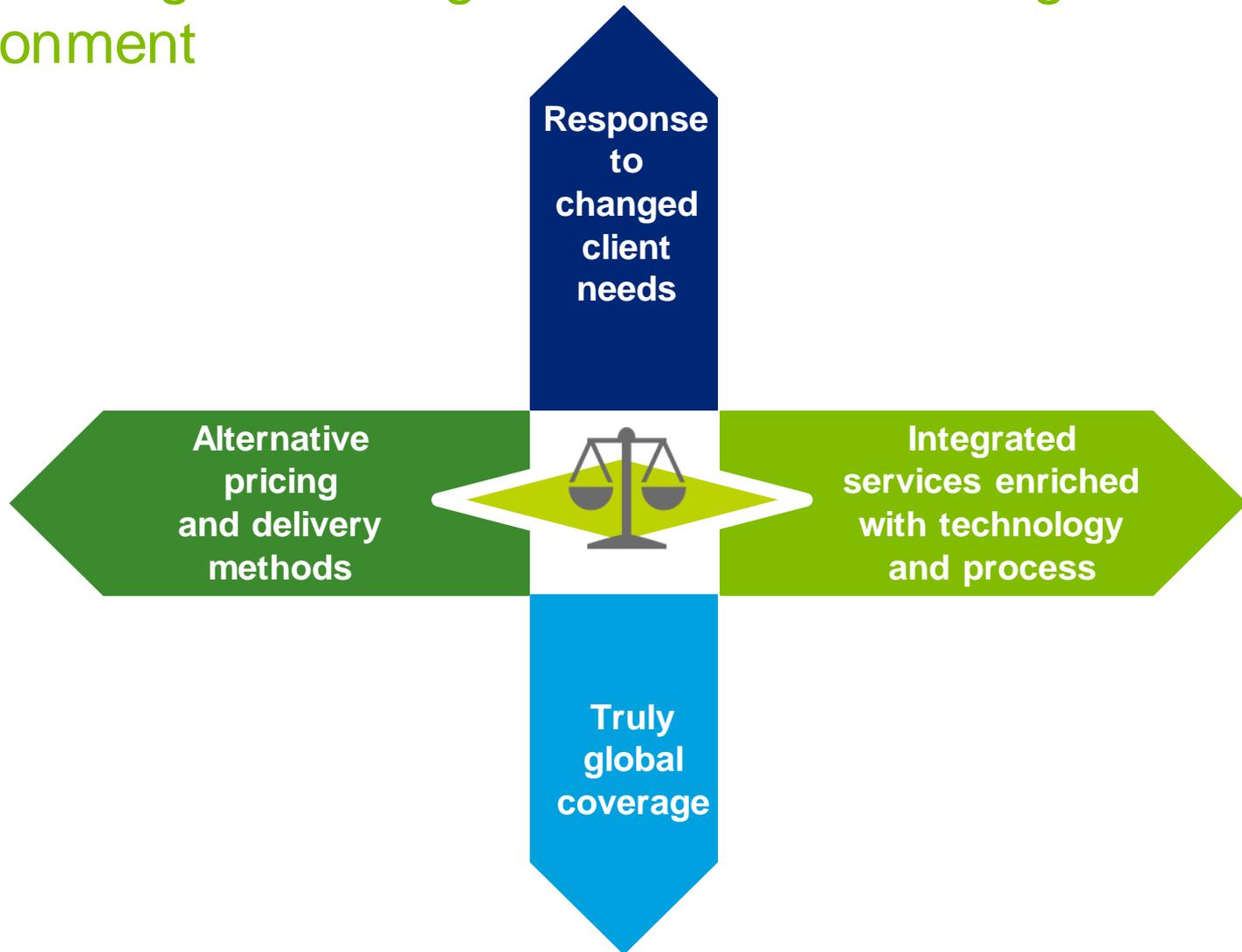


Deloitte Legal has capabilities in both day-to-day legal operations as well as business life events



Why Deloitte?

Deloitte Legal challenges the established legal environment



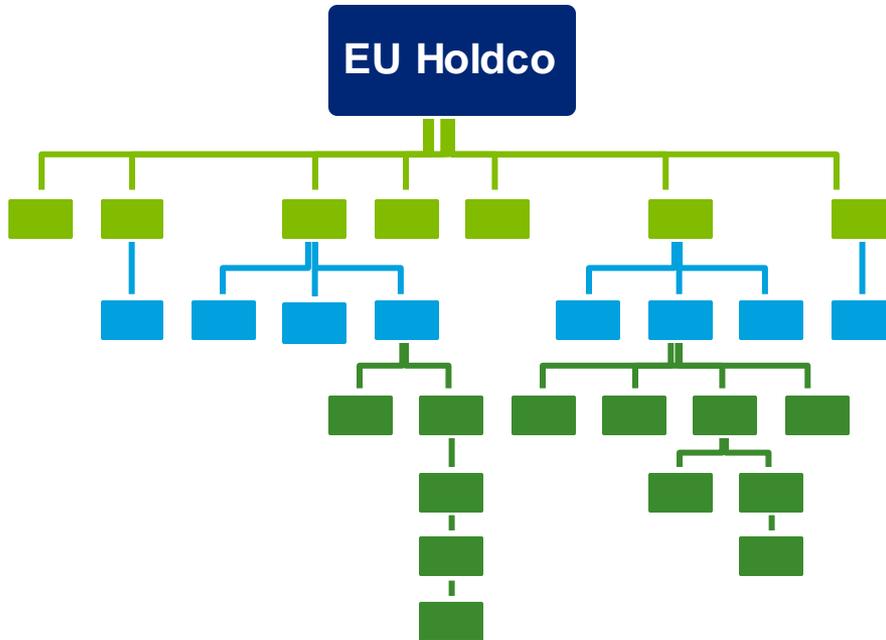
Introduction

Drivers of entity reduction by migration of entities

- Synergies and business strategy
- Reducing organisation costs
- Minimising of regulatory compliance
- Tax planning
- Business-friendly environment

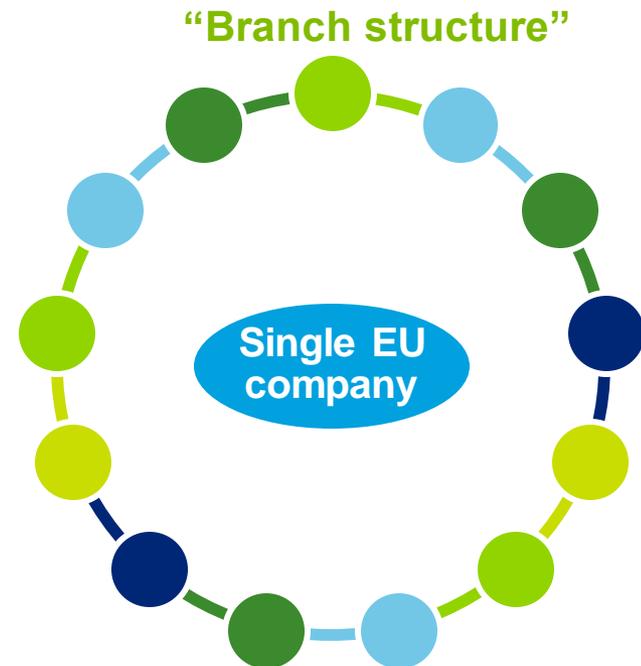
Entity reduction, before and after

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

Entity reduction by migration within the EU

Options, examples, and pitfalls

SE and SCE

- 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

Entity reduction by migration within the EU

Options, examples, and pitfalls (cont'd)

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

- Centros (1999), Uberseering (2002), Inspire Art (2003)
- Cartesio (2008), Vale (2012)

Pitfalls

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

Entity reduction by migration within the EU

Options, examples, and pitfalls (cont'd)

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)

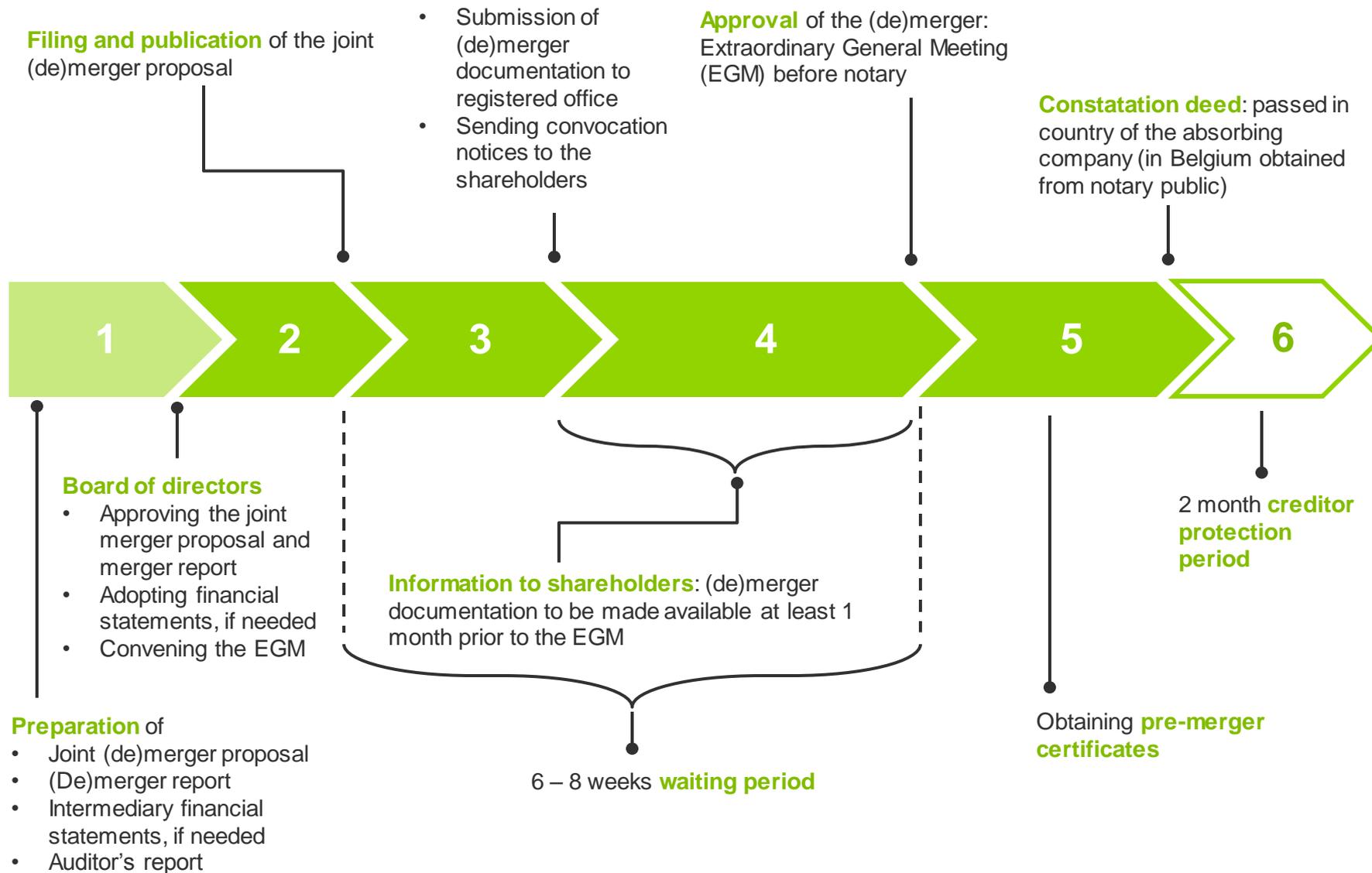
Examples

- 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

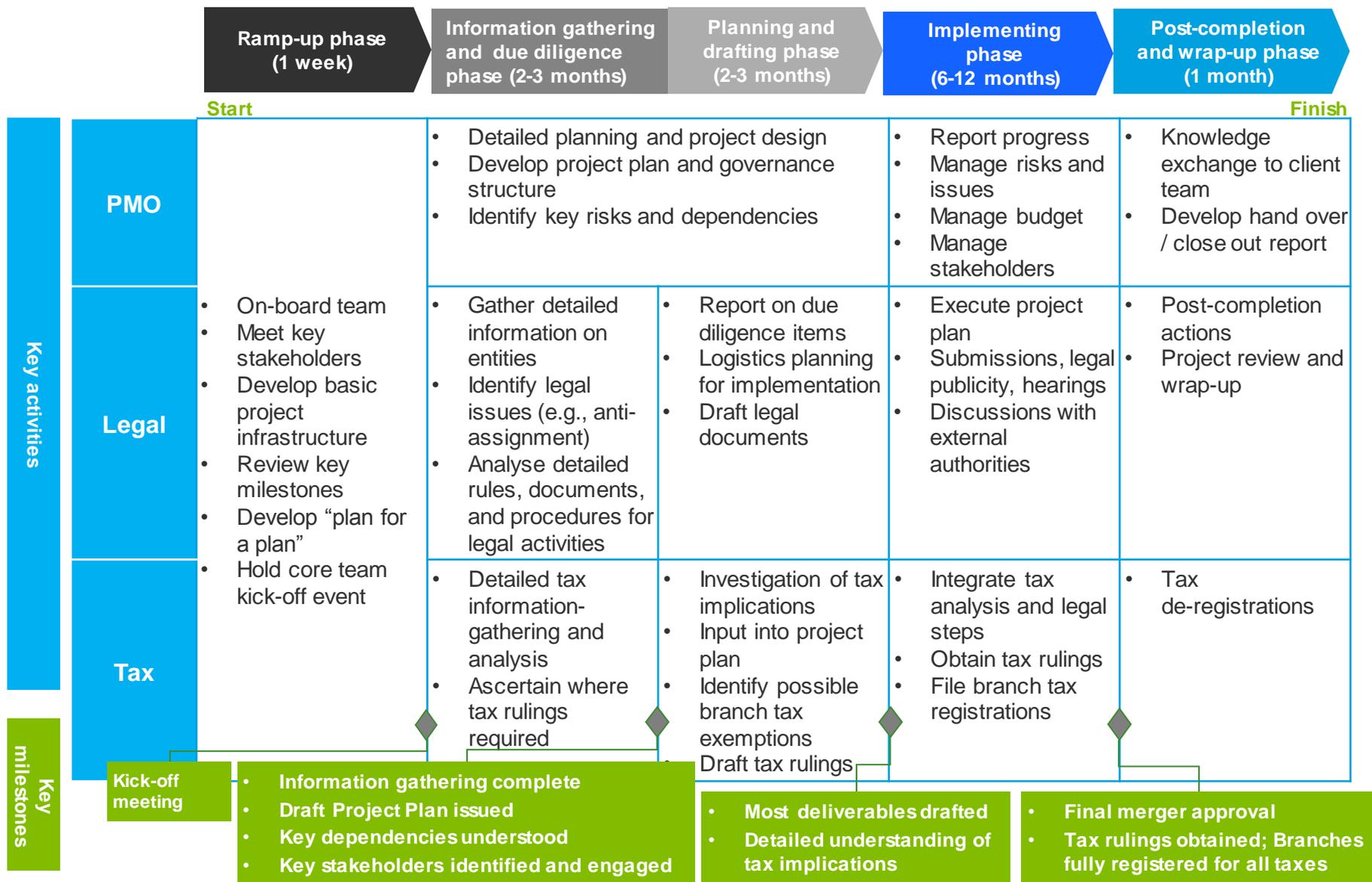
Pitfalls

- Different procedures in different countries
- Different employee approval procedures
- Exit tax

Overview: legal process and formalities



Suggested timescale



Some points to consider

Planning	Due diligence – 1	Due diligence – 2
<ul style="list-style-type: none"> Establish project governance structure early Establish clear team structure and communication lines Develop clear project plans Take a long term view 	<ul style="list-style-type: none"> Real estate: review of local real estate registry filings essential Real estate: early engagement with landlords / tenants recommended Real estate: release of local charges 	<ul style="list-style-type: none"> 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
Other		Employment / HR
<ul style="list-style-type: none"> Do not underestimate the impact on IT and systems Monitor pending or outstanding litigation Bookkeeping and accounting 		<ul style="list-style-type: none"> Consistent, change management approach, led from the centre Sensitivity to unionisation (some countries) Continuous monitoring and support Senior management contracts
Creditor protection	Implementation	Drafting
<ul style="list-style-type: none"> Engage with major creditors Be aware that creditor protection rules vary from country to country 	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> Less is more Plain language Powers of attorney

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



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