Post-Acquisition Integration Handbook

Closing the deal is just the beginning

IMPORTANT DISCLAIMER

All of the information included in this Handbook is for informational purposes only and may not reflect the most current legal and regulatory developments. This information is not offered as legal or any other advice on any particular matter, whether it be legal, procedural or otherwise. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Similarly, it does not address any aspects of the laws of jurisdictions outside the specific jurisdictions described, to which a company may be subject. All summaries of the laws, regulation and practice of post-acquisition integration are subject to change and, unless otherwise noted, are current only as of 31 March 2017.

Baker McKenzie, the editors and the contributing authors expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents herein. No client or other reader should act or refrain from acting on the basis of any matter contained in this Handbook without first seeking the appropriate legal or other professional advice on the particular facts and circumstances.

This Handbook may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Baker & McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm.

Similarly, reference to an "office" means an office of any such law firm. References in this Handbook to "Baker McKenzie" include Baker & McKenzie International and its member law firms, including Baker & McKenzie LLP. This Handbook itself does not create any attorney/client relationship between you and Baker McKenzie nor does it create a contractual relationship between you and Baker McKenzie.

© 2017 Baker & McKenzie LLP
www.bakermckenzie.com
All rights reserved

Introduction

It is a time of relentless volatility and ambiguity, with the complexities of globalization, economic and political uncertainty, disruptive new business models, cyber insecurity and multiplying layers of regulation causing a constantly changing business landscape. Our clients want a new breed of lawyers who can look a decade or more ahead and can offer a fresh approach to helping them navigate a challenging market. At Baker McKenzie our people work across borders and sectors to simplify complexity and give our clients confidence in doing business in today's unpredictable world.

We have a strong track record of working successfully with multinationals to integrate and restructure their business operations. As one of only a handful of law firms with a dedicated Global Reorganizations Practice, we are in a unique position to assist companies in planning and implementing post-acquisition integration projects. By strategically addressing all legal and tax implications with an integrated approach, we help our clients to manage change effectively in order to deliver better value from their acquisitions with less business risk.

This Handbook serves as a practical reference tool for any company contemplating, or in the process of executing, a multinational business acquisition and integration. Key topics such as tax, corporate law, employment and compliance are considered and regional comparison tables summarize the main tax, employment and corporate aspects of integrations in more than 40 countries.

Table of Contents

Section	Title	Page
Section 1	Overview	7
Section 2	Post-Acquisition Integration: Developing and Implementing a Plan	9
Section 3	Process: Process Map, Timeline and Checklist	25
Section 4	Antitrust/Competition Considerations in the Pre-Merger Integration Phase	52
Section 5	Tax Considerations	56
Section 6	Employment	100
Section 7	Employee Benefits/Equity Awards	145
Section 8	Compliance and Risk Management	153
Section 9	Cross-Border Mergers in the EU	169
Section 10	Summary of Local Integration Methods	181
Section 11	Baker McKenzie Offices Worldwide	250

Section 1
Overview

Closing the deal is just the beginning. The majority of acquisitions fail to meet pre-deal expectations, and the real challenge for any company acquiring a business is ensuring that the acquisition delivers the value that motivated the decision to do the deal in the first place. In a low growth environment, management are under increasing pressure from shareholders to focus more attention on how they achieve this.

Synergies can be elusive. Where the acquirer and target businesses operate in the same or complementary fields, it is almost always the case that the acquirer will want to integrate the two businesses with a view to saving costs and generating value for its shareholders through meeting synergy targets. But bringing together businesses with different trading relationships, histories and cultures inevitably poses substantial challenges, which can hamper the achievement of those synergy targets — particularly in the short and medium term. Where the businesses of the acquirer and target are multinational, the scale and number of those challenges increase significantly.

The aim of this Handbook is to provide a practical reference tool for any company contemplating, or in the process of executing, a multinational business acquisition and integration. Providing a guide to the process of identifying the issues to be addressed, and of planning the integration and its legal implementation, it seeks to assist acquirer companies to develop the best strategies to overcome the challenges and deliver maximum value to shareholders from the acquisition. Every acquisition will bring its unique business, operational and cultural challenges and this Handbook is designed to be used in conjunction with the planning that a multinational group will do to address these specific challenges.

The issues raised in this Handbook are likely to be of general application to acquiring groups headquartered in any jurisdiction, though a number of examples highlight issues particularly relevant to acquirers headquartered in the United States.

This Handbook is built around a customary situation where the parent company of one multinational group acquires all of the shares or assets of the parent or intermediate holding company of another multinational group. This ordinarily creates a corporate structure containing two separate chains of international subsidiaries, with the likelihood that in many territories the newly enlarged group will have duplicate operating and holding companies. These individual companies will have their own separate management structures, IT systems, trading relationships and intra-group arrangements. Integrating these structures, relationships and arrangements in the post-acquisition environment can prove to be one of the most significant challenges that management will have to face.

Experience has taught us that the key to developing an effective post-acquisition integration plan, implementing it successfully, and overcoming the inevitable challenges, is the early identification of the overriding strategic and business objectives of the acquisition and subsequent integration. Provided that these objectives are realistic and supported by management, and that proper and prioritized attention is given by the right people at the right time to the planning and implementation of the integration, the likelihood of delivering on pre-deal expectations will be significantly increased.

Section 2
Post-Acquisition Integration: Developing and Implementing a Plan

This section:

- provides an overview of the ways in which a global integration process can be managed to maximize the chances of success
- summarizes the more common substantive issues companies are likely to encounter in planning and implementing integration projects
- sets out an Indicative Sample Timeline and Summary Overview for an integration project

Several of the key issues covered in this Section 2 are expanded upon in subsequent sections of this Handbook.

1 An Open and Collaborative Process

Any large post-acquisition integration project raises issues of business strategy, process management and technical expertise. Once a theoretical integration plan has been developed, practical implementation issues will prove critical in determining how quickly the plan can be implemented and how soon the benefits of the integration can be realized. Human resource considerations, corporate and tax law issues, and regulatory approval and filing requirements should all be built into the planning process itself and not be left to the implementation phase. The project team should give particular focus at an early stage to navigating road-blocks that might otherwise delay or frustrate the realization of integration goals in many jurisdictions.

A well-run integration process can customarily be broken down into seven phases:

- identification of key strategic objectives
- information gathering
- preliminary analysis and development of overall plan
- initial evaluation of overall plan
- development of detailed step lists
- evaluation and approval of detailed step lists
- implementation of steps in final detailed step lists

Outside advisers are typically engaged throughout the life of the project because of their technical and project management experience and expertise, and because the company's own staff need to focus on day to day business operations. Outside advisers may also be necessary when competitors are prevented by antitrust laws from sharing competitively sensitive information. For example, outside advisers can help to establish clean teams — see Section 4.

However, internal staff are the best (indeed, for the most part, the only) source of the detailed information that is critical to creating an effective implementation plan. In particular, they understand the historical perspective of the tax, corporate and business planning background of the existing structures and how the existing business works in practice, not just on paper. And ultimately, as these projects are frequently transformational for the business, the internal team must be sufficiently familiar with the new plan so that they can both be an integral part of the change management process required for its implementation and be in a position to manage and sustain the structure that results at the end of the process.

The best outcomes are achieved when outside advisers and management work closely together to strike a balance that makes the best use of internal resources but layers on the particular experience and expertise of the outside advisers and relieves the strain on already scarce management time. Frequently, however, this balance is not struck and advisers and management adopt one of two extreme approaches: the "black box" approach, whereby outside advisers gather data, disappear for some period of time and then present proposals in a vacuum. This approach fails to take advantage of existing background knowledge possessed by management and, by excluding them from development of the plan, does not put management in a position to manage or promulgate the end structure; or the "shotgun" approach, whereby outside advisers gather minimal data, and then subject management to a barrage of ideas that "might" work, effectively putting too much of the onus on management to place the ideas into the context of the group's actual circumstances and assess resulting risks.

Although there is no "one-size-fits-all" integration process, a happy medium can be achieved if it is first understood that identifying the group's strategic objectives is predominantly a senior management task and that the process is necessarily an iterative one. Rather than disappearing from view after the initial strategic discussions, designated members of senior management should continue to be involved in both the in-depth information gathering phase and in the strategic and tactical decision making during the ensuing analysis phase, in particular to navigate competing priorities across the various functions and constituencies within the business.

1.1 Identification of Key Strategic Objectives

At this first stage of the integration process, the senior management team will need to decide the relative significance of business goals, timing and implementation, and prioritize accordingly. It may be that certain geographic regions or lines of

business warrant first attention due to their significance for high severances or as "low hanging fruit" due to their relative ease of integration and the integration would then proceed on a staggered basis. Alternatively, what may be required is a comprehensive solution that pursues all regions or business units simultaneously with, to the extent possible, a single effective "big bang" date for the entire integration.

The key questions for management to focus on at this first stage are:

- what key business goals and priorities is the group seeking to achieve by the acquisition and integration?
- what are the group's plans for employee transfers and workforce reductions, if any?
- what are the principal legal regulatory operational and IT constraints on moving assets, entities and people?
- what are the timing and sequencing priorities?
- which constituencies/functions need to be involved in the initial planning process and how will any competing priorities between them be navigated?
- how will compliance risks be identified and addressed?

1.2 Information Gathering Phase

The information gathering phase requires planned, structured input from all relevant constituencies, for example, human resources, tax, legal, compliance, treasury, strategic business development, finance and IT. While this adds some time to the process of developing a plan, it will pre-empt problems that could otherwise arise in the implementation phase. It is often the case, for example, that IT compatibility issues can delay the integration of newly acquired entities into an acquiring group's existing or newly designed commercial structure and the time required to resolve these issues will need to be built into the overall integration plan. On the basis of a clear understanding of the goals of the integration, the objective of the information gathering phase is to gather sufficient information and documentation about the entities and assets that are to be integrated in order to allow the planning and execution phases to proceed efficiently.

If this exercise begins prior to the deal closing and the parties are competitors, they should put in place guidelines on the exchange of information required for the integration planning process for the period between signing and closing. This is the case irrespective of whether the deal is subject to a merger control standstill period — see further description in Section 4.

The initial information gathering phase typically involves seeking answers to the following key questions:

- in which jurisdictions do the companies within the scope of the proposed integration operate?
- which are the operating companies, what business lines are they operating and how do they "go to market"?
- where are revenues being generated/bound?
- where are taxes being paid?
- what are the tax attributes of the companies?
- where are the tangible assets?
- where are the intangible assets?
- which are the employer companies, and are there works councils/unions/collective bargaining agreements?
- are there any non-core businesses or operations?
- what are the current transfer pricing policies?

To ensure consistency across jurisdictions and to minimize the workload for the internal team, the information gathering phase needs to be carefully planned by the central project team with the outside advisers. A comprehensive set of core questions and document requests should be prepared, with additional tailored questions for particular jurisdictions where relevant. This should be accompanied by guidance for the local teams on timing priorities and materiality thresholds. It will be key at this stage that the project management tools used are fit for purpose, not only to serve as a well-ordered repository for the documents and data collated but also to enable progress to be tracked and information to flow between the central and local teams in real time.

1.3 Preliminary Analysis and Overall Plan Development

Once the initial information gathering process has been carried out, it is necessary to conduct a preliminary analysis of the information in order to develop an overall integration plan. The focus in this phase is on developing a plan that will achieve the integration goals in the most efficient manner from a tax, legal and commercial perspective.

A primary objective from a tax perspective is to ensure that none or as few as possible of the steps of the integration trigger material income and capital gains taxes in any jurisdiction, or notable capital duty, local transfer and documentary taxes. The following tax objectives also often come to bear:

- the integration of the corporate structure may be combined with a change in the inter-company commercial relationships of all or some of the combined group companies so as to manage the group's overall tax profile
- the acquired companies may have favorable tax attributes, such as tax incentives and unused foreign tax credits, and the integration should be conducted in a manner designed to preserve those attributes, where possible
- the integration may be structured in a way to take advantage of existing tax attributes, such as using net operating losses in the acquired entities to offset taxable income in the existing structure
- in the United States, there may be opportunities for domestic state and local tax minimization planning
- there may be opportunities for minimizing other governmental costs (for example, customs and VAT planning)

In the preliminary analysis phase, management and the outside advisers will consult with one another to develop a high-level integration plan. To the extent possible at this stage, the plan will specify which entities will survive and which will be eliminated. It will also, where possible, specify the method of integration (for example "Target France SARL will merge into Parent France SAS," or "Target UK Limited will sell all assets and all liabilities to Parent UK Limited and will then be dissolved"). The overall plan document will be revised and expanded into a detailed step list as the planning continues.

1.4 Initial Evaluation of Overall Plan

Once the high-level integration plan has been developed, it is important to have the key constituencies (for example, operations, tax, finance, legal, human resources, IT, treasury) evaluate it and provide input on any issues the plan presents for them and any refinements that they wish to propose. Depending on the scale of the integration project, this evaluation may take place in a single meeting or over several days or weeks.

It is important to note that developing the overall integration plan needs to be an iterative process because, as more information is learned about the entities to be consolidated, new issues and opportunities may present themselves and the integration goals may need to adapt to the specific circumstances. As the goals change, more fact gathering may be required to assess their feasibility and implications. With each iteration, however, the objectives of the integration and the best way to achieve those objectives should come more sharply into focus, producing a more detailed and refined plan.

1.5 Development of Detailed Step Lists

As the overall integration plan becomes more refined and settled, it should be expanded into a fully detailed list of each step necessary to execute the assigned tasks. The end product will be a comprehensive step list and timetable for executing the assigned tasks with the names of those responsible for each step and, in the case of legal documents, the identity of the signatories. From a project management perspective, the detailed step list will be a critical tool for the implementation phase of the project, particularly when it has been carefully developed to take detailed account of issues such as interdependencies across business functions, correct necessary sequencing of steps, and to flag aspects of the process that may be outside of the company's control, such as obtaining third-party consents or liaising with trade registries to complete filings. Ideally the step list will be hosted on a website rather than in a static document, so that updates and amendments can be shared among all interested parties in real time and to enable different "views" of the step list (for example, summary or comprehensive form, or showing only those steps attributable to a particular function).

1.6 Approval of Detailed Step List

As with the overall integration plan, it is important to have the key constituencies within the business and other relevant external advisers evaluate the detailed step lists and provide their input. Sometimes issues that were not apparent in the overall plan become apparent when a representative of a specific function sees the details of the steps that will need to be taken and considers their role in implementing those steps in the timeframe outlined.

1.7 Implementation of Steps

Management of the implementation of the detailed step list will necessarily vary from project to project. The best approach will depend on the size of the project, the nature and geographical scope of the tasks involved and even the management styles and personalities of the individuals involved. The key to success in this phase is maintaining open and clear channels of communication about how the implementation is progressing and what issues are surfacing, and making sure that there is a central decision maker available who can make executive decisions as and when required. As these issues arise, it is helpful to revisit the overriding business objectives and design principles that were articulated by senior management at the earlier stage of the planning process.

Throughout the execution phase, the detailed step list is a living document that serves to track the status of tasks and interdependencies. Regular scheduled status calls with the key members of the internal project team and the external advisers keep the integration process on track, focusing minds on any open issues and allowing advisers

and management to help identify what needs to be done to complete a particular step. Post-acquisition integrations can take many years to implement and continued and ongoing management support and guidance is frequently a key determinant to overall success.

2 Substantive Legal and Tax Issues

Set out below is a summary of the most common legal and tax issues arising in a post-acquisition integration. The following discussion is by no means exhaustive, as each project will undoubtedly face its own particular issues, many of which may be specific to the group and/or its industry sector.

2.1 Due Diligence

As part of the information gathering phase of the project, the company should undertake a legal and tax due diligence investigation of each of the legal entities involved (for example, subsidiaries, branches, representative offices) in order to identify legal, tax and employee relations issues that need to be dealt with before or during the integration. This investigation should not just delve into the target group entities, but also — albeit in a measured way — into the existing entities from the acquirer group with which they will be consolidated. Experienced legal counsel should be able to provide a detailed due diligence checklist, including such items as:

- determining what assets (tangible and intangible) the entities own
- confirming which entities have employees (and in what numbers), and the existence of works councils/unions/collective bargaining agreements or significant pension liabilities
- identifying contracts that may need to be re-negotiated, assigned or are subject to change of control triggers in connection with a share transfer
- identifying governmental permits/licenses/authorizations required for the business
- identifying ongoing litigation or compliance issues (eg, data protection issues or export control matters)
- identifying valuable tax attributes that should be preserved on integration where possible

Section 3 sets out a sample checklist covering these and other key due diligence matters.

The deal team for the acquirer group often overlooks opportunities to begin the due diligence process for the integration phase before the acquisition is complete (ie, during the acquisition due diligence itself). Ideally, integration diligence should start

upon reaching deal certainty. It typically becomes increasingly difficult to gather the information and documentation needed to conduct an effective and efficient integration if it is entirely left until after the acquisition closes. As time passes, people who worked for the acquired companies often depart, taking institutional knowledge with them, and those who remain are often not as highly motivated for the task of gathering required documents and facts as they were during the pre-acquisition phase. Furthermore, it is often much more cost effective to leverage off of the, often considerable, resources marshalled for the acquisition due diligence to address consolidation due diligence issues. However, it is important to bear in mind that, if integration planning is set in motion before completion of the acquisition of a competitor, attention must be paid to antitrust restrictions on the sharing of information. See Section 4 for more details.

2.2 Evaluating Local Statutory Mergers vs. Asset Transfers

In many jurisdictions, the local corporate laws provide for legal entities to be consolidated by way of statutory mergers. In these jurisdictions, the alternative approaches of merger versus asset sale and liquidation should be compared to see which one best achieves the integration goals. Statutory mergers are often advantageous because the assets and contracts of the non-surviving entity generally transfer automatically upon the merger, whereas an asset sale involves the separate transfer of assets and contracts. Asset sales can therefore be cumbersome, for example, where there is a requirement to register any change of ownership of certain categories of assets or where the approval of a third party or governmental body may be needed for the transfer of an asset or contract. Local merger regimes often also have tax benefits. Indeed, even if the only benefit of the local statutory merger regime is that the transaction is tax-neutral for local tax purposes, this benefit can be substantial.

Some jurisdictions have specifically introduced merger legislation; one such jurisdiction is Singapore, where pursuant to the Singapore Companies Act two or more Singapore incorporated companies can be amalgamated. Ireland implemented new merger legislation in 2015 and Hong Kong introduced a simplified domestic merger process the year before.

However, a number of jurisdictions do not have a merger statute that allows local companies to merge. The UK, for example, does not have legislation providing for domestic mergers. In these jurisdictions, the only effective choice available for combining two local companies may be some variation on the theme of selling (or otherwise transferring) the assets of one company to the other and then liquidating or dissolving the seller entity. From a tax perspective, these jurisdictions often allow for a business transfer between group companies resident in the same jurisdiction for tax purposes to be effected without triggering a taxable gain and therefore achieve the objective of consolidating the two local businesses in a manner that is

functionally equivalent to a merger from a local tax perspective. Whether a particular transfer is tax neutral may depend on the nature of the assets to be transferred and so the specific rules should be considered in each case.

If a business transfer or merger is not possible or desirable, two further ways in which the businesses of two legal entities can be effectively consolidated are by utilizing local tax consolidation/group rules or by having one company operate the other's business under a management contract, or business lease, during an interim period. However, these options do not result in full integration with a single entity in the jurisdiction. Further details are set out in Section 5.

2.3 Transferring Assets

Where the local integration method chosen or available requires the transfer of assets, the steps to be taken to effect the transfer will vary depending on the category of assets in question, and in some cases will involve registration formalities. For certain categories of assets, a simple asset sale and purchase agreement will suffice to transfer title. In the case of other assets, such as real estate, certain types of intellectual property or vehicles, the change in legal title may have to be recorded with governmental or regulatory authorities to be effective. The transfer of shares in subsidiaries will, in almost all cases, give rise to certain formalities in the jurisdiction of incorporation of the subsidiary. In some cases, approval of a governmental agency must be obtained before transferring governmental licenses, permits, approvals or rulings. In certain jurisdictions, even a general asset transfer agreement between the transferor and transferee companies may have to be filed with local authorities and drafted in the local language. Bulk sales laws may apply to significant asset transactions with the effect that liabilities and creditors' rights transfer by operation of law with the assets.

In any case, local insolvency and creditor protection laws should be taken into consideration (for example, those laws prohibiting transactions at an undervalue) when planning and implementing the asset sale, particularly if there is a plan to subsequently wind up the transferor entity. In addition, consideration should be given to corporate benefit issues and directors' statutory or fiduciary duties in respect of both the transferor and transferee entities.

A key issue in asset transfer jurisdictions is ascertaining the purchase price to be paid for the assets to be transferred. Often the interests from tax, corporate law, accounting and treasury perspectives will compete. For example, a sale by a subsidiary to its parent at less than market value may be an unlawful return of capital to the shareholder. However, a sale at market value may result in significant goodwill being recognized by the parent company for local statutory accounting purposes. Depending on the group's or local entity's goodwill amortization policy, a "dividend blocker" could be created at the level of the parent, as the amortization created by the acquisition is expensed through the parent's profit and loss account.

2.4 Novating and Assigning Contracts

In a local asset sale or merger, existing contracts, such as customer agreements, office leases, equipment leases, service agreements, distributor agreements, supplier agreements and a host of other operational agreements, will have to be transferred to the surviving entity. In a merger, these assignments almost always occur automatically by operation of law, but in other cases steps have to be taken to effect the novations or assignments (see Section 10 for a summary by jurisdiction). These steps may range from giving a simple notice of assignment to all third parties to obtaining written consent from the relevant counterparty to permit the novation (by way of a tripartite contract) of all of the rights and obligations of the transferor entity to the transferee entity. These steps should be part of the overall communications plan. As noted above in the discussion of the due diligence process, it is prudent to review contracts, particularly those that are material to the business, in order to determine whether they are freely transferable or whether consent is required.

Even where the entities in question are being consolidated by way of a merger, it may be advisable to review the (material) contracts of both entities to determine whether they contain any provisions that may be triggered by the merger, such as provisions giving the counterparty the right to terminate upon a merger or change in control. If the surviving and disappearing entities use different suppliers for the same product or raw material and it is intended to rationalize the supply chain, it will be necessary to identify the likely cost of cancelling those supply contracts which will not be continued and/or to consider whether the third party has the bargaining power to impose new contractual terms that consist of the best of both pre-existing arrangements.

2.5 Preserving Tax Attributes

Favorable local tax attributes, such as current year's net operating losses or carried forward tax losses (Net Operating Losses, "NOLs"), can provide a significant cash tax benefit to the company if they can be preserved. In many jurisdictions, how a consolidation is executed (including any share pre-positioning steps) will have an impact on whether such losses survive. The desire to preserve tax attributes may not only drive how the consolidation is effected but also which entity will be chosen to be the surviving entity. Further information relating to NOLs preservation is provided in Section 4.

2.6 Minimizing Corporate and Shareholder Level Taxes

A primary tax objective is to minimize the tax cost of effecting the consolidation otherwise these can have a significant adverse impact on the integration budget. Corporate income taxes can be levied at each step of the consolidation, both from a

local and shareholder perspective. The potential tax cost of consolidating is likely to be a key driver in how the consolidation is effected.

In addition to corporate income taxes, it is important to assess whether any real estate transfer taxes, stamp taxes or transfer taxes could be levied. Although such taxes may not be significant, they are a true out-of-pocket cost to the company and should be avoided where possible. For that reason, it should be considered whether the relevant entity can avail itself of any exemptions for intra-group transactions and, in particular, whether the conditions for such relief are satisfied in a specific case. Some countries, such as Austria tax the transfer of real estate where the entire issued share capital of a company is transferred, which can result in tax arising both on the share transfer and the subsequent merger. Further information is provided at Section 4.

2.7 Severance and Restructuring Costs

Most integrations result in some severance or other restructuring costs. In most jurisdictions, provided appropriate precautions are taken, these costs are deductible for local income tax purposes. There are nevertheless often a number of strategic considerations that should be taken into account when deciding when and how, and which entity should be used, to incur restructuring costs such as those arising from the elimination of employees. Domestic and foreign tax consequences are among these strategic considerations.

2.8 Tax Optimization Strategies

A variety of foreign tax planning opportunities may arise in connection with any international integration. For instance, in many jurisdictions there could be an opportunity to obtain a tax basis increase or “step up” in the assets of the local company transferring its assets, sometimes without any local tax cost. It may be possible to insert debt into the surviving company in connection with the integration and use the interest deductions to reduce the surviving company’s taxable profit (subject to the application of any local tax rules restricting deductibility of interest rules).

Further information in relation to tax optimization strategies is set out at Section 4.

2.9 Pre-Integration Share Transfers

It is often preferable, as a pre-step to a merger in a particular jurisdiction, to first create a share ownership structure whereby the shares of the entities to be consolidated are in a direct parent/subsidiary or brother/sister relationship with each other. In most jurisdictions, such as the state of Delaware or Germany, short-form merger procedures apply if such a structure is in place, meaning that they are cheaper and easier to implement.

A further benefit to a parent/subsidiary or brother/sister relationship being established for the integration is that, following the merger, the surviving subsidiary will have a single shareholder rather than a split ownership structure — making future distributions, redemptions and restructurings easier to implement. If the subsidiaries are not in a parent/subsidiary or brother/sister relationship prior to the merger, each shareholder will usually need to receive its pro rata portion of the shares in the consolidated entity. This requirement creates practical, financial and timing issues as comparable financial information will be required for the merging entities.

Even where the integration is to be achieved by way of an asset transfer rather than a merger, creating a parent/subsidiary relationship between transferor and transferee as an initial step can be beneficial from the perspective of enabling a more straightforward clean-up of any consideration debt, if the intention is to subsequently dissolve the transferor entity. Whether this structure is desirable from a tax perspective will depend on the specific facts that must be considered in the round, eg, whether the pre-positioning of the shares triggers a stamp tax that could otherwise be avoided by leaving the shares in situ, or whether the transferor entity is required to withhold tax from any distribution under the new holding structure that would not otherwise be triggered under the existing structure.

A number of methods can be used to achieve a parent/subsidiary or brother/sister relationship prior to an integration, including contribution, distribution, sale, or cross-border merger, as discussed in more detail at Section 9.

Most pre-integration share transfers involve the contribution of subsidiaries downstream raising various issues, including tax. One corporate law consideration is whether the company which is receiving a contribution consisting of shares in another company has to issue one or more new shares for local company law purposes. Another consideration which may affect how the group is restructured will depend on the ultimate destination of the company being transferred. If this destination is several tiers down, transferring through each of the shareholding tiers may create considerable work. A direct contribution to the ultimate destination will invariably involve the issue of new shares by the company receiving the contribution. In some situations this is undesirable since it can complicate the group structure; in other situations it can be an advantage. For example, a direct shareholding by a parent company in a lower tier subsidiary may give rise to a more tax efficient dividend flow. Alternatively, it may enable the parent company to access profits of a subsidiary that previously have been "blocked" by an intermediate subsidiary company that was unable to declare and pay dividends because of an earnings deficit on its balance sheet.

2.10 Employment Law Considerations

Where the integration involves an asset transfer, it will normally be necessary to take some additional steps to transfer employees. Commonly this will be by termination and rehire of the transferring employees, but in some jurisdictions, mainly in the EU, the employees should transfer automatically by law. In a merger or asset transfer (and very occasionally on a share transfer) there may also be obligations to inform and potentially consult with employee representatives such as works councils, trade unions or bodies elected specifically for this purpose. In some cases, those bodies have a right not only to be informed and consulted but also to deliver an opinion on the plans for the local integration before they are finalized and implemented. It may be a significant violation of local law to make changes in the management of the local company or undertake an integration transaction prior to conclusion of a formal information and consultation process. Due diligence should therefore obtain details of all employee representatives, unions, etc. and input as to the employee relationship environment in each country, as appropriate time for information and consultation processes will need to be built into the step list. Depending on the key strategic objectives and, importantly, the desired timing of the integration transaction, consultation requirements can have a material impact on the transaction structure. Commercial concessions (including moratoriums on dismissals or guaranteed severance terms or an agreed social plan) may be necessary in order to secure works council or trade union cooperation.

One of the common objectives of a business acquisition followed by an integration is to eliminate duplicate functions, thereby streamlining the operation of the combined businesses. In addition, there is often a desire to harmonize the compensation packages, benefits, and working conditions of the workforce.

In many jurisdictions, workers have significant protection from changes to working conditions and benefits and protection against dismissal. In those countries, if an employer changes an employee's working conditions or terminates an employee in connection with an acquisition and the subsequent local integration, the employee can be entitled to compensation or reinstatement. It may even be the case that changes to employment terms are simply ineffective, allowing the employees to demand their rights under the old terms at any time. In addition, any such proposals to change working conditions or dismiss employees in connection with an integration transaction would be key areas for consultation with employee representative bodies and are likely to have a material impact on timescales for the transaction.

2.11 Losing Directors and Officers

In the aftermath of an acquisition, it is very likely that some of the executives of the target company, and possibly also of the acquiring company, will leave. These departures will likely result in the loss of institutional knowledge. In addition, these individuals will need to be replaced as directors of subsidiaries (if they have been serving as such) so that it is possible to continue to take corporate actions at the subsidiary level to effect the integration. A similar issue arises with respect to individual employees who are serving as nominee shareholders to satisfy minimum shareholder or resident shareholder requirements in a particular jurisdiction. If these individuals have left employment with the company, they may have to be tracked down to sign share transfer or other documents.

2.12 Waiting Periods and Notices

In many jurisdictions, government or tax clearances are required prior to the merger or liquidation of the local entities. Even in jurisdictions where government clearances are not required, public notices are often necessary and statutory waiting periods may apply. These formalities can delay the integration. Accordingly, it is important to identify the jurisdictions where immediate integration is desired so that the required applications and notices can be filed as soon as possible. In cases where there are statutory or practical delays in implementing the integration, alternative strategies may be available for dealing with the delays to minimize operational inconvenience or tax exposure, including: (i) having one company operate the other's business under a management contract during the interim period; (ii) selling the business to the surviving company, with a subsequent merger to eliminate the empty company; and (iii) making the merger retroactive for tax and/or accounting purposes under local law. In any case, where the delay is significant or there is a particular strategic objective, for example, to have the local businesses integrate on a certain date, these alternatives should be explored.

2.13 Corporate Compliance Status

The due diligence exercise may highlight deficiencies with the corporate compliance status of the group and so it may be necessary to take corrective action before integration can be started or concluded. For example, if acquired subsidiaries are technically insolvent or have not complied with their annual corporate filing or other maintenance requirements, it will typically be necessary to remedy these deficiencies before any significant integration steps, such as mergers or liquidations, can be undertaken. Integrations are frequently delayed because the entities that are to be eliminated have not been properly maintained and there is a need to create statutory accounts, hold remedial annual meetings and make the necessary outstanding tax and corporate filings. These problems can be compounded if local company directors have left, and it can be difficult to persuade management to

serve on the boards of local subsidiaries that are not in compliance with their obligations. Further details of these issues are set out in Section 8.

2.14 Branches, Business Registrations and Subsidiaries

It is important not to overlook any branches, representative offices and other business registrations of entities that are disappearing in the integration. In many cases, it would be a mistake simply to merge one subsidiary into another on the assumption that any branches of the disappearing entity will automatically become branches of the merged entity. Most government authorities view a branch as being a branch of a specific entity and, if that entity disappears in a merger, the survivor will have to register a new branch to account for its assets and activities in the jurisdiction. In some cases, merging an entity before de-registering its branch or representative office can cause great difficulties with the authorities in the jurisdiction where the branch was registered, as these authorities will treat the branch as continuing to exist, and therefore having ongoing filing and other obligations, until it is formally de-registered. Furthermore, the process of de-registration may be greatly hindered or may be technically impossible if the entity no longer exists.

Similar complications can ensue if it is assumed that shares of subsidiaries will automatically transfer when the original parent company is merged into another group company. Effecting the local legal transfer of the shares of the subsidiaries can be problematic if not identified and planned in advance.

2.15 Corporate Approvals

Integrations typically involve non-routine transactions (for example, the sale of all of a subsidiary's assets to an affiliate). The individual directors or officers of the entities involved in the project will not usually have the necessary corporate authority to effect those transactions. Therefore, it is necessary to consult applicable local law and the articles of association or other constitutional documents of the entities involved to determine if there are any corporate restrictions on the proposed transactions that may require the constitutional documents to be amended, and in any case to take appropriate steps to authorize the transactions, such as passing board resolutions and/or shareholders' resolutions. Thorough documentation recording corporate decisions also assists in memorializing the background to decisions and can be helpful where the transactions are reviewed later as part of accounting or tax audits.

2.16 Post-Integration Matters

Once the integration steps are completed in a particular jurisdiction, the process will begin of completing the relevant accounting entries to reflect the various

transactions both at a group and local statutory level, updating legal books and records, making any post-integration legal filings as required, and, for example, making any applications to obtain relief from stamp taxes. In order to keep a clear paper trail of the steps and the decisions taken, comprehensive "closing binders" of the legal documents should be compiled (most often now in electronic form). This will prove invaluable in the event that the impact of a particular transaction is challenged by any authority in the future.

2.17 Communication Plan

Communication plays a critical role in the development and implementation of a robust integration plan and is a key thread underpinning and supporting many of the legal and tax issues to be considered and addressed.

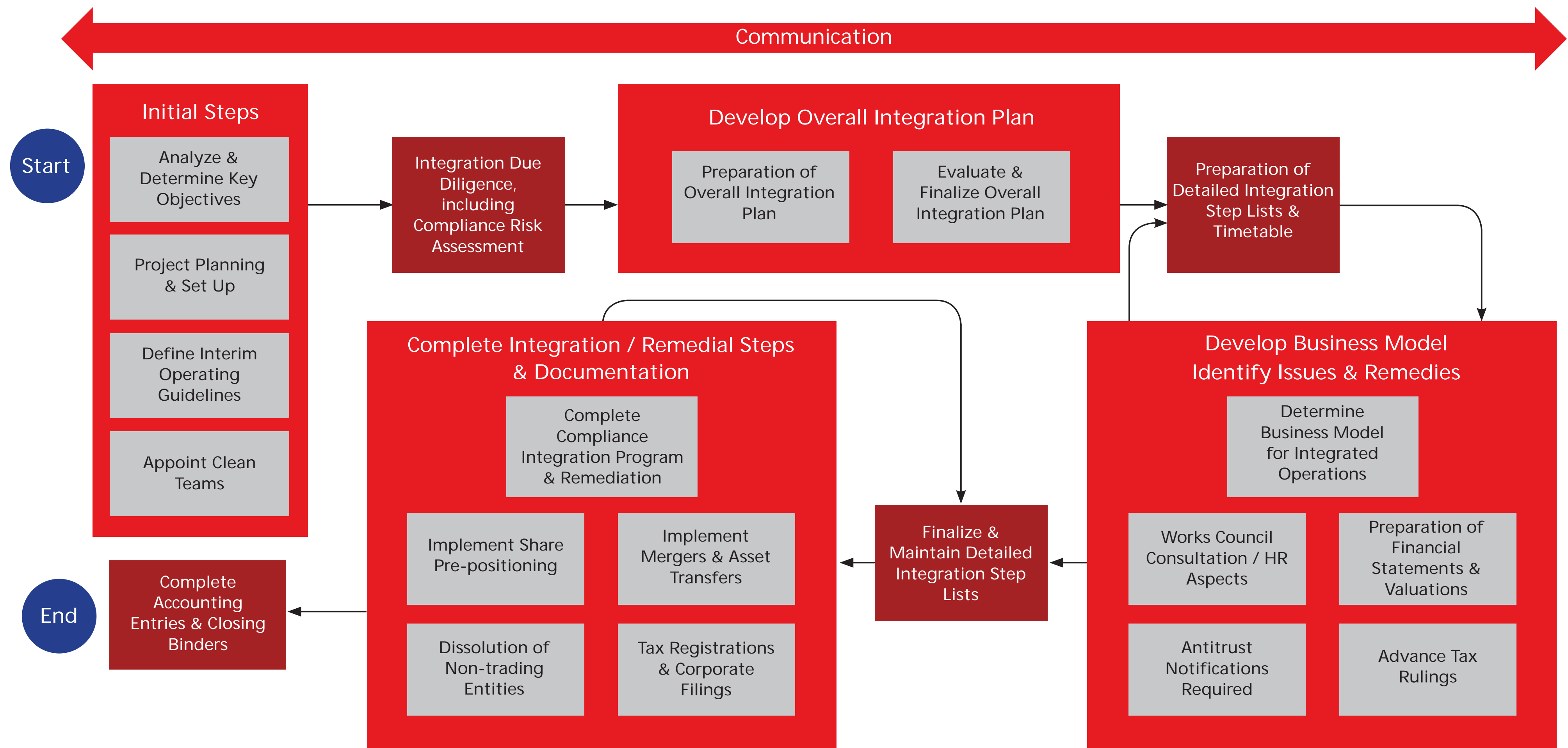
All integrations should have a well-developed communication plan which runs through the life of the project, though clearly more activity might be expected in the initial stages of the process. The communication plan should address internal communications to all staff, legally required communications to works councils, unions and employee representatives, as well as external communications, which can include government authorities, suppliers, customers and joint venture partners. Given the breadth of the potential audience, ie, the number of parties that could be affected by or have an interest in the integration, a well-structured plan is a valuable resource and important element of an effective integration process.

Section 3
Process: Process Map, Timeline and Checklist

This section focuses on the process of a post-acquisition integration. The process map illustrates the key planning steps and actions involved and highlights the iterative nature of certain parts of the process; the sample timeline shows an indicative schedule for an integration project; and the checklist sets out the main focus areas for the information gathering and planning processes. Together, these resources provide a robust starting point for any post-acquisition integration project.

Post-Acquisition Integration — Summary Overview

NB. Some steps may commence prior to closing Acquisition.



Post-Acquisition Integration — Indicative Sample Timeline

Tasks	Mth 1	Mth 2	Mth 3	Mth 4	Mth 5	Mth 6	Mth 7	Mth 8	Mth 9	Mth 10	Mth 11	Mth 12
1 Initial steps (may commence prior to closing of acquisition)												
(a) Analyze & determine key objectives	■	■										
(b) Project planning & set up	■	■										
(c) Define interim operating guidelines	■	■										
(d) Appoint clean teams	■	■										
2 Integration due diligence, including compliance risk assessment		■	■									
3 Develop overall integration plan												
(a) Preparation of overall integration plan			■	■								
(b) Evaluate & finalize overall integration plan					■	◆						
4 Preparation of detailed integration step lists & timetable						■						
5 Develop & determine business model for integration operations						■						
6 Identify issues & remedies relating to:												
(a) Works Council / HR aspects					■	■						
(b) Preparation of financial statements and valuations					■	■						
(c) Antitrust notifications required					■	■						
(d) Advance tax rulings					■	■						
7 Finalize & maintain detailed integration step lists												
(a) Finalize detailed integration step lists							■	◆				
(b) Maintain detailed integration step lists								■	■	■	■	
8 Complete integration / remedial steps & documentation												
(a) Complete compliance integration program and remediation								■	■	■	■	
(b) Implement share pre-positioning								■	◆			
(c) Implement mergers & asset transfers								■	■	■		
(d) Dissolution of non-trading entities											■	
(e) Tax registrations & corporate filings											■	
9 Complete accounting entries & closing binders												■ ◆
10 Communication	■	■	■	■	■	■	■	■	■	■	■	■

Integration Checklist

A. Information Gathering

1. Identification of Strategic and Key Objectives

1.1. What are the group's business goals and priorities?

1.2. Which entities and jurisdictions will be involved in the integration?

1.3. What are the overall integration objectives?

1.4. Are there any key country-specific integration objectives?

1.5. Are there any timing and sequencing priorities?

1.6. What are the group's plans for employee transfers and reductions in the workforce?

1.7. Are there any entities that should not be integrated and/or liabilities that will need to be isolated (for example, environmental liabilities or potential subsequent disposal to employees/pensions)?

1.8. What are the constraints on moving assets, entities and people?

1.9. How will compliance risks be identified and addressed?

2. Key Information Gathering

2.1. Which countries does the business operate in?

2.2. Where are revenues being generated/booked?

2.3. Where are taxes being paid?

2.4. Where are the tax attributes located (for example, NOLs, tax credits)?

2.5. Where are the tangible and intangible assets?

2.6. What are the company's and the newly acquired target's current operating models and transfer pricing policies?

2.7. What are the regulatory regimes governing the business?

2.8. Are there any restrictions arising from past transactions or restructurings?

2.9. Where are the employees (and employing entities) located?

2.10. Are any of the relevant entities subject of litigation proceedings or disputes (eg, tax authority disputes) that could be an impediment to integration?

2.11. Do any of the relevant entities have beneficial tax rulings?

3. Proposed Day One Action items

Is the group proposing immediate changes to:

- directors and/or officers
- financial year end
- registered offices
- powers of attorney/bank mandates
- entity conversions (eg, from corporation to check-the-box entity)

4. Local Due Diligence Review

Following the identification of the high-level strategic objectives and characteristics of the group, the next stage is a more detailed information gathering phase. This process will require extensive input from the local teams of both the acquiring and the target business. A local due diligence questionnaire is a helpful tool for obtaining the necessary information. See Exhibits A and B at the end of this Section 3 for checklist examples for both companies and branches.

4.1. Identify information obtained as part of the due diligence process conducted for the acquisition of the target business.

4.2. Collate company information (see Exhibit A at the end of this Section 3 for a detailed sample checklist).

4.3. Collate branch and representative/liaison office information (see Exhibit B at the end of this Section 3 for a detailed checklist).

4.4. Obtain details of any works council/union/employee representation, including regional forums such as European Works Councils, and any employee change in control/severance plans that may trigger benefits on an integration.

5. Technology

5.1. Evaluate IT systems and the requirements of the participating entities, including the impact of the integration on financial reporting and supply chain arrangements.

5.2. Carefully plan IT integration.

5.3. Prepare the groundwork to ensure that the ERP (enterprise resource planning), invoicing and accounting IT systems are capable of, and are properly

configured to begin, processing transactions for the newly integrated entities. For example, if the acquired subsidiaries are using a different order processing and invoicing software, ensure that after the integration the acquired company products can be properly invoiced using the pre-existing order processing and invoicing software.

5.4. Ensure IT systems are configured to accommodate any changes in the order flow or other intercompany commercial arrangements that may be planned as part of the integration, for example, switching to a buy-sell distributor arrangement from a commissionaire structure.

5.5. Confirm that IT systems will continue to fulfill regulatory compliance requirements.

6. Regulatory and Antitrust Issues

6.1. Is the transaction subject to any suspensory merger control approval? If so, the parties may not close their transaction until the end or expiration of the merger control review or waiting period. Parties who “jump the gun” and begin to consolidate operations may be subject to significant financial penalties.

6.2. If merger control approval was obtained prior to closing the acquisition, does this cover post-acquisition integration? In some countries intra-group transactions themselves may also be subject to merger filings.

6.3. Are the parties to the transaction competitors? (See Section 4 for further details.)

6.4. Does integration require any foreign investment approvals or registrations (for example, registration of new shareholders)?

6.5. Does integration require any exchange control notices or approvals?

6.6. Do local laws require the surviving entity to obtain:

- general
- asset-specific
- industry specific
- governmental

permits, licenses or approvals in relation to continue the merging/transferring entity’s business, for example, general laws and regulations governing general business licenses and permits, transfer of intellectual and real property, or industry-specific laws and regulations covering areas such as defense, media, food and drug, health, safety, pharmaceutical, utilities, nuclear, brokering, banking, securities?

6.7. Has the merging/transferring entity received any governmental subsidies, grants or other incentives?

If so, does the integration require notice to or approval by the relevant government agency?

7. Compliance Risks and Programs

7.1. Building on any pre-acquisition due diligence, conduct risk assessment as to target's key risks across areas such as anti-bribery and corruption, antitrust/competition law, export controls and sanctions, exposure to liability, eg, environmental and customs legislation, as well as any sector-specific risks. See Section 8 for further details.

7.2. Review and consolidate compliance programs for example:

- local compliance and corporate governance regimes (including auditor independence, certification and reporting, directors' loans, ethics, whistleblower protection and document retention issues)
- boycott
- export controls
- bribery/corruption
- money laundering
- antitrust/competition
- data protection
- tax, including customs

B. Planning the Integration

8. Integration Method

The information gathered through due diligence will allow planning to commence in respect of the appropriate local integration method(s).

8.1. Identify which entity should be the surviving entity in each jurisdiction, after careful consideration of all relevant factors, for example:

- preservation of tax attributes
- liabilities of each entity

- impact on employees and employee representative bodies
- third-party contracts of each entity
- internal operational and "political" considerations

8.2. Identify local integration method:

- does local law provide for a statutory merger?
- will the integration have to be accomplished by means of a business/ asset transfer with subsequent dissolution and liquidation of the transferring entity?
- which method of integration is the most tax efficient?

8.3. Should the entities pre-integration be structured as:

- brother/sister
- parent/subsidiary

8.4. What documentation is required to effect the proposed integration? Documents may include:

- asset transfer agreements
- corporate resolutions
- notarial deeds
- registrations with the local commercial registry

8.5. Will the chosen integration method require the establishment of new entities? If so, consider the impact on timing. In some jurisdictions the establishment of a new entity may take several months and may also require new tax registrations, bank accounts, leasehold/freehold premises, etc.

8.6. Will the chosen integration method require the registration of new branches? Branches of the merging entity may not automatically transfer to the surviving entity in a merger. If new branches are required, consider the timing. For example, in China, the establishment of a branch may take between two to three months in total and if the branch carries out manufacturing activities, the branch may also need to apply for an environmental impact assessment which can take up to six to eight weeks. Further, a branch may require additional pre-approvals if operating in certain industries, for example, retail or logistics.

8.7. What is the approximate timeline for the chosen integration method, from the initial instructions or from the date on which all information (including financial statements) becomes available, to the effective date of the integration?

8.8. If the integration method is a merger, can the merger be made effective retrospectively for tax and accounting purposes? If so, what is the deadline for filing the merger application, for example, in Germany, the filing must be made within eight months of the date of the merger accounts?

9. Financial Requirements

9.1. What financial statements or valuations are required for the chosen integration method (including any share transfers)?

9.2. What are the requirements with respect to valuations (eg, are independent valuations required)?

9.3. Are there audit or auditor review requirements in connection with the integration steps?

9.4. Will the auditors of the target group be changed? If yes, how will this impact the timetable for preparation of accounts required for integration?

9.5. What is the proposed basis for calculating the purchase price for asset transfers?

9.6. Anticipate and plan for funding of costs and integration.

10. Transferring Assets

10.1. What types of assets will be transferred? For example:

- tangibles
- intangibles
- contracts, including leases
- real estate
- vehicles

10.2. Should any problematic or onerous contracts be retained?

10.3. What documents/steps are required to transfer each type of asset?

- is inclusive wording in a general asset or business transfer agreement sufficient?
- is an additional form or deed and/or registration required, for example, notarial deed to transfer title to real estate?

10.4. What, if any, are the consideration requirements under local law? For example, is there a need to reflect a cash purchase price in the transfer agreement, or a specific currency requirement?

10.5. Does the consideration need to be allocated among assets? For example:

- for exchange control purposes
- for income tax purposes
- for VAT purposes
- for stamp duty/transfer tax purposes

10.6. Do any of the contracts (for example, office leases, equipment leases, service agreements, customer agreements, licenses, supplier agreements) contain:

- notice requirements?
- approval requirements for assignment or, for example, change of control clauses?

10.7. Will governmental or regulatory licenses/permits transfer automatically or do local laws require prior approval or any registration?

10.8. Does the integration trigger income taxes and/or are transfer taxes, VAT or real estate taxes payable?

- if yes, are intra-group exemptions available and if so, does relief arise automatically or need to be claimed?
- if not, is it possible to mitigate the tax cost?

11. Employment

11.1. Consider:

- local employment laws
- employment agreements (or forms thereof)
- employee policies
- works councils, collective bargaining or other labor agreements
- requirements for notice, consultation or other steps in relation to employees and their representatives

11.2. Identify effect of local employment law and collective bargaining or other labor agreements requirements on timing of chosen integration method.

11.3. If workers' representatives, works councils, trade unions or other employee collective bodies exist, determine whether prior notification, consultation or approval is required.

- If so, analyze any notice and waiting periods required by law or by collective bargaining agreements. In addition, consider the employee representation environment, for example, is it positive, hostile or neutral?
- Are there any concessions that can readily be made to assist consultations (for example, a moratorium on dismissals or agreed terms for a social plan)?

11.4. Determine whether the integration method will result in any changes of employment relationships.

11.5. If employees will be transferred from one entity to another:

- does the employment transfer automatically on the same terms and conditions?
- is an offer and an acceptance by the employees, termination and rehire or a tripartite agreement required?

11.6. If an offer and acceptance, termination and rehire or tripartite agreement is required:

- when
- how (nature of written offer and any termination/resignation requirements)
- upon what terms (for example, is a severance payment mandatory in any event?)

must such offers be extended?

11.7. If employees do not accept any new offer of employment, object to the transfer of their employment, or are to be terminated, what are the:

- local notice requirements?
- severance/termination indemnities payable?

11.8. Identify opportunities for planning redundancy terminations to minimize notice and severance liabilities and maximize the deductibility of such costs.

11.9. If there is no entity or branch present in a jurisdiction, determine which entity will be the employer of the assumed or hired employees.

11.10. Determine whether local law requires a local employer and, if so, consider establishing a subsidiary, branch or other legal presence in such jurisdictions.

11.11. Confirm payroll transfer requirements and whether the new employer of the assumed or hired employees has to register as an employer, for example, for tax or social security purposes.

11.12. Confirm whether the change in employer impacts any visas and work permits and the timing of the transfer of such visas and work permits.

11.13. Confirm whether there are any independent contractor or outsourcing agreements and determine impact of the post-acquisition integration on such agreements.

12. Employee Benefits/Equity Awards

12.1. What are the employee benefit/equity award considerations in connection with employee transfers? For example how will:

- outstanding equity awards be treated?
- employee benefit plans be harmonized?

12.2. Identify all employee benefit and equity plans covering employees involved in the integration.

12.3. Identify any intercompany agreements related to the cost allocation of employee benefit/equity awards.

12.4. Identity any plan prospectuses or summary plan descriptions.

12.5. Identify any trustees, share plan administrators or brokers associated with the employee benefit and equity plans.

12.6. Identify all governmental approvals related to employee benefit and equity plans

12.7. Identify KPIs (key performance indicators) and bonus schemes and possible changes, amendments or other steps which will be required.

12.8. What are the required annual employer contributions, if any, for the employee benefit plan? Are such contributions current?

12.9. What are the required annual, tax, regulatory or other filing and reporting requirements, if any? Have these requirements been met?

12.10. Have assets been set aside to fund or finance the employee benefit plan obligations?

- are such plans fully funded?
- do such assets appear on the balance sheet of the business?

12.11. Will the integration trigger any funding obligation? For example, in relation to pension schemes that are in deficit.

12.12. Will there be a transfer of assets or insurance policies to fund or finance the employee benefit plan obligations?

12.13. Which employee benefit/equity plans will be consolidated or terminated at the closing of the local reorganization?

- identify and assess any contractual impediments (for example, notice requirements, early termination penalties, negotiated benefits) as well as any tax or regulatory requirements (for example, regulatory filing and reporting requirements)
- revise any plan prospectuses or summary plan descriptions to reflect the consolidated plans
- ensure any blackout windows or trading restrictions are considered when consolidating or terminating equity plans
- obtain any necessary corporate authorization or approvals to consolidate or terminate plans

12.14. What terms apply to outstanding equity awards?

- how do these terms differ from the company's other equity grants?
- ensure that different terms can be administered appropriately

12.15. Determine whether works councils have co-determination or consultation rights with respect to any equity plans.

12.16. Are any tax/regulatory or other filings or governmental approvals required with respect to the integration of the employee benefit/equity plans?

- were outstanding awards subject to tax-qualified status and can such status be preserved in the integration?
- are additional regulatory filings required?

13. Intellectual Property

13.1. What is the current intellectual property:

- ownership structure (legal and beneficial)?
- licensing structure?

13.2. What is the desired intellectual property:

- ownership structure?
- licensing structure?

13.3. Evaluate tax optimization strategies arising in connection with restructuring intellectual property holding and licensing structure.

13.4. Analyze intercompany license and other intellectual property agreements for overlap and inconsistencies and reconcile them.

13.5. Where appropriate, transfer existing trade marks and other intellectual property to reflect the integration and record transfers, if required.

13.6. Are any third-party consents required for the contemplated transfers?

13.7. Consider the availability and protection of new trademarks.

14. Director, Officer and Other Management Positions

14.1. What director or officer resignations or new appointments will be required? Confirm any nationality, residency and/or qualifying shareholding requirements under local law.

14.2. Have any of the directors, officers or other signatories left or will any of them leave the organization following closing?

14.3. What are the employment issues, if any, related to any changes in position and/or scope of authority as a result of the realignment of management (for example, constructive termination)?

- evaluate the need to replace any directors, officers or other signatories whose position will change to ensure that authorized signatories are available for the execution of the restructuring documentation
- consider change of reporting lines/delegated authorities

14.4. Identify updates to directors' and officers' insurance policies and consider update to any contractual indemnities.

14.5. Review existing powers of attorney and other delegations of authority (including bank account signatories) and identify any changes required.

15. Claims and Litigation

15.1. Review any pending claims and litigation of the entities involved in the integration and identify impact of assignment of claims (by operation of law in the case of a merger or otherwise) on ongoing litigation.

15.2. Identify notification requirements with regard to the opposing side and, in case of litigation, relevant courts, arbitrators or mediators.

15.3. Make appropriate notifications of changes as required under contracts to which merging/transferring entities are a party.

16. Banking, Finance and Treasury

16.1. Review credit and financing agreements to determine whether notice of, or approval for, the proposed integration is required.

16.2. Do any of the credit arrangements provide for mandatory waiting periods?

16.3. Have any assets, such as plant and machinery or shares in subsidiaries, been provided as security to any financial institutions?

16.4. How will the integration impact pre-existing cash pooling or other group treasury services?

16.5. Update security arrangements where required.

16.6. Review banking arrangements for the business and consider rationalization.

16.7. Are any original share certificates deposited with a bank?

17. Data Protection

17.1. Identify target's privacy policies and compliance structure.

17.2. Is personal data (for example, customer accounts, employee records, marketing databases) held by the target entity to be integrated with data held by the acquiring entity?

If yes, are the acquiring entity's uses of personal data broader than those of the target entity or vice versa?

To the extent that the merging/transferring entities are subject to the data protection laws of EU countries, the following issues will generally be relevant (although each EU country will have its own specific requirements based on these general points). In countries outside the EU, the laws governing data protection vary greatly.

17.3. Will post-integration uses of personal data by each entity be lawful, based on the limited justifications legally available?

If processing has previously been justified by obtaining consents from individuals, are these consents sufficient to cover additional uses of the data following integration (for example, marketing of new affiliates' products or services)?

17.4. If, prior to the acquisition, express consents were considered unnecessary due to the limited uses and disclosures of personal data, re-consider the position in the light of any wider uses or disclosures following the integration.

17.5. Have individuals whose personal data is processed by each entity been provided with sufficient information (including information about any new uses or disclosures) to ensure that the processing is lawful?

17.6. Is personal data transferred outside the European Economic Area ("EEA") by either entity?

- if so, obtain revised individual consents, to include new recipients of data outside the EEA (for example, new parent company in the US)
- if new consents are not obtained, target entity should only transfer data outside the EEA if transfers can be legally justified without consent (for example, safe harbor, intercompany agreements, adequacy of protection in recipient jurisdiction)

17.7. Update any data protection registrations with regional/national authorities.

17.8. Where consents are required or appropriate, these should be obtained or updated to the extent personal data is going to be processed for different purposes, by different entities and/or in different locations than the subjects of the data might reasonably have expected, or specifically consented to, when they first disclosed the data.

18. Third-Party Trading Model and Relationships

18.1. Review structure of current trading relationships with third parties of both businesses:

- identify common relationships
- identify conflicts and inconsistencies
- consider compliance risks, eg, under anti-bribery and corruption, antitrust/competition law, and export controls and sanctions

18.2. Consider which are the key commercial contracts and identify potential impact of integration on these relationships.

18.3. Decide upon trading relationship structure of combined group:

- terminate any redundant or non-compliant third-party suppliers
- review and update third-party contracts

18.4. Identify:

- business name of combined group
- transition period for branding changes
- whether there is value in the acquired name and if it should be protected

18.5. Identify changes to:

- invoices and other trading disclosures
- customs applications (will generally need to be made prior to transfer, otherwise goods may be held up at borders if paperwork is defective)
- packaging and sales materials

19. Intercompany Trading Model

Review existing intercompany trading models and determine what should be the future trading model. Management should be aware of how the outcomes of the G20/OECD base erosion and profit shifting project ("BEPS") will shape any decisions relating to the group's future trading model particularly in view of the changes to the permanent establishment definition which will mean that certain operating structures (eg, commissionaire) may not be sustainable going forward.

19.1. Review intercompany agreements and identify renewal or termination requirements. Consider notice periods and any termination compensation required under local law.

19.2. Prepare or update intercompany agreements implementing the chosen trading model.

19.3. Identify and plan the implementation of operational changes, for example:

- accounting
- VAT transactions
- customs and exports
- sales documentation, including order forms, invoicing, etc.

20. Real Estate

20.1. Evaluate the need for local real estate and leased office, manufacturing, warehouse and other space.

20.2. Will the integration result in physical integration of operations and relocation of employees?

20.3. If so, review local leases to determine which leases will need to be terminated and identify:

- timing of the termination
- notice requirements for termination
- costs of termination

20.4. Plan ahead for physical moves of people, offices, equipment, etc.

20.5. Review leases of all local entities to identify landlord consent requirements triggered by integration (for example, assignment of lease, change of control).

21. Communications

21.1. Identify persons, including employees, third parties, local and tax authorities, etc. who will need to receive a communication in respect of the project.

21.2. Prepare internal communication plan.

21.3. Prepare external communication plan and template materials for works councils and other employee bodies, suppliers, customers or other third-party communications.

21.4. Establish communication protocol for the project including whether communication forums are to be established, eg, regular meetings and other communication tools.

C. Implementation of the Integration

22. Pre-Integration Share Transfers

22.1. If share transfers are necessary to achieve the desired integration structure, how will the shares be transferred?

- for cash/debt?
- contribution?
- distribution or dividend?
- how will the purchase price or transfer value be determined (for example, market valuation, book or carrying value)?

22.2. What documentation is necessary to effect any share transfers? For example:

- share transfer forms
- notarial deeds
- endorsements of original share certificates
- amendments of articles or other constitutional documents
- registrations with the commercial registry
- notices to the transferring company from the transferor/transferee

22.3. If shares are represented by share certificates:

- where are the share certificates located?
- must the share certificates be endorsed or new share certificates issued?
- is a power of attorney needed?

22.4. Consider corporate law requirements applicable to:

- transferor
- transferee
- target

in relation to:

- statutory and fiduciary duties of directors
- unlawful returns of capital to shareholders
- financial assistance for the acquisition of shares
- corporate benefit

22.5. Consider tax implications of share transfers:

- for transferor
- for transferee
- for target

from a global perspective, eg, taking into account tax implications that may be triggered, for example, under any applicable "controlled foreign company" legislation.

22.6. Consider accounting treatment of share transfer transactions in:

- management accounts
- local statutory accounts

23. Corporate Approvals

23.1. What corporate approvals are necessary to effect the integration? For example:

- shareholders' approval
- board approval
- management or supervisory board approval
- audit committee resolutions

23.2. If the articles of association, by-laws or other constitutional documents restrict the integration method, can corporate approvals be simplified by effecting an amendment?

24. Dissolutions

24.1. List dormant, non-trading or otherwise surplus entities.

24.2. Identify any reasons to retain and not to dissolve dormant, non-trading or surplus entities.

24.3. Prepare dissolution timetables for surplus entities.

24.4. Identify compliance and audit requirements for period until dissolution.

Exhibit A

Consolidation of Companies — Merger or Business Transfer

Initial Information Request

The following information is required to analyze the commercial and tax issues involved in consolidating local subsidiaries and to advise on how best to structure the commercial relationships with the local companies after the consolidations.

1. General Corporate and Legal Information

The purpose of collecting this information is to ensure that the documentation necessary to achieve all of the corporate reorganizations can be completed accurately, efficiently, and in accordance with each company's organizational documents.

1.1. Organizational chart.

1.2. Corporate name, address, purpose, business activity, and date and place of incorporation.

1.3. Corporate documentation (for example, articles of incorporation, by-laws, share register, share certificates, resolutions of shareholders and directors).

1.4. Current corporate officers and directors, including their present location and employer.

1.5. Details of all intellectual property rights owned.

1.6. Details of any third-party licenses or development agreements.

1.7. Commercial agreements: sales agreements, distribution agreements, customer support agreements, non-disclosure agreements.

1.8. Leases: real estate leases, personal property leases, including information regarding leases to be terminated.

1.9. Loan agreements and financing documents.

1.10. Licenses, court decrees, or other legal restrictions which affect flexibility of reorganization.

1.11. List of each shareholder or quotaholder, number of shares/quotas held by such shareholders or quotaholders, and whether nominee or other minority shareholders exist.

1.12. If nominee shareholders exist, copies of nominee or trust agreements.

1.13. Copies of other agreements, if any, relating to the shares of the company (for example, option agreements, shareholders' agreements, pledge agreements, etc.).

1.14. Confirmation whether the company is party to any dispute or legal proceeding and whether there are any pending claims against the company.

1.15. List of any outstanding liabilities that have not been discharged in full, including any guarantees and indemnities.

1.16. Confirmation whether the company has any foreign or domestic branches, representative offices or other separate business registrations.

1.17. Service provider currently responsible for company records and corporate maintenance.

2. Tax Information

A. General Information

2.1. Most recent tax return for both disappearing and surviving entity.

2.2. Taxable year (for example, calendar year, 30 June, etc.) for parent and all local entities.

2.3. Financial statement tax reserve work papers.

2.4. Status of any tax audits.

B. Information Relating to Preservation of Tax Attributes

A significant key aim of the consolidation planning will be to ensure that any valuable tax attributes are preserved, eg, NOLs and tax credits. The following information principally relates to the disappearing and surviving foreign entities, but paragraph 2.10 should also be addressed for the parent country entities.

2.5. Local NOLs.

2.6. Local tax credits (including VAT).

2.7. Other tax attributes: tax holidays, incentives, grants, rulings, etc.

2.8. Expected taxable income/loss in current year.

2.9. For any entity that is insolvent on a book basis, confirmation on whether assets have value in excess of book value.

2.10. Expected restructuring charges (for example, employee termination costs, lease termination costs).

C. Pre-consolidation Dividend Planning

The purpose of requesting/reviewing this information is to determine whether dividends should be declared prior to the consolidation. If one of two entities has a materially higher effective foreign tax rate, a dividend distributed immediately prior to the local legal entity merger may bring relatively more foreign tax credits to the parent company's return than a dividend declared immediately after the merger. An analysis of deferred revenue and expenses is necessary here in order to determine whether any deferred revenue, for example, should be accelerated in order to increase the effective pool of taxed earnings to be distributed.

2.11. Tax earnings and profits (including deficits) of each entity.

2.12. Effective tax rate.

2.13. Where US parent, section 902 foreign tax credit pools.

2.14. Where US parent, expected section 904 limitation of the parent for the current year and the amount of excess (if any) in potential carryback years.

2.15. Deferred revenue and expenses, including mismatches between parent company and local tax accounting treatment.

D. Coordination with Acquisition

Example: some transactional routes to combine foreign entities require the liquidation of the target parent company, which could be inconsistent with the basis on which the original acquisition was tax free, for example, if the acquisition of a US target parent company were a section 368(a)(2)(E) merger.

2.16. Tax analysis of acquisition transaction.

2.17. Any representations made to selling shareholders as to continued existence of target parent.

E. Operational Information

The purpose of this information is to develop a strategy for establishing the commercial relationships among the entities after the reorganization.

2.18. Description of current commercial functions (for example, distributor vs. agent).

2.19. Intercompany agreements and nature of intercompany transactions.

2.20. Intercompany transfer pricing studies.

2.21. Intercompany debt.

3. Financial Information

3.1. Financial statements for the prior fiscal year and current year to date.

3.2. Revenues, assets, market shares for anti-monopoly or regulatory notification requirements.

3.3. Details of any security interests over assets.

4. Human Resources Information

This information is necessary in order to analyze the employment law implications of the consolidation. This information is also necessary to determine whether works council or other employee representative group participation will be necessary to achieve the reorganization or whether a works council or other employee representative group will be required in the future due to the increased size of the local entity after the consolidation. Details of the employee benefits programs should be analyzed in order to integrate the various benefit plans.

4.1. Employee headcount.

4.2. Employee benefits programs including pensions and funding status.

4.3. Stock option/employee stock purchase plan participation by employees.

4.4. Existence of works councils or other employee representative groups.

4.5. Collective bargaining agreements.

4.6. Standard employment agreements, employee offer letters and employee policies.

4.7. Employee invention and non-disclosure agreements.

4.8. Projected redundancies or terminations due to reorganization or already planned.

4.9. Details of expatriate employees and employee work permits, visas or similar immigration status that may be affected by a change in employer.

4.10. Any employees providing services to an entity other than their employer.

4.11. Details of any third-party arrangements which may be impacted, for example, if any outsourced services may be terminated and, if so, what liabilities may be triggered under local law or the commercial agreement.

5. Information Relating to Surviving Entity

The purpose of this set of information requests is to determine whether there are corporate preferences, other than tax and commercial aspects, which will determine the ultimate corporate structure and surviving entity.

5.1. Any preference as to which entity should survive.

5.2. Any preference as to the type of consolidation that should be used (for example, merger or amalgamation or asset transfer followed by liquidation).

5.3. Corporate officers and directors of the surviving entity.

5.4. Description of proposed commercial functions of surviving entity (for example, distributor vs. commissionaire).

5.5. Whether target parent legal entity will be liquidated.

5.6. Any preferences as to which entity is the holding company for the local subsidiaries taking into account commercial, legal and tax considerations.

Exhibit B

Branch, Representative Office or Liaison Office — Asset or Business Transfer

Initial Information Request

The following information is required to analyze the corporate, commercial and tax issues involved in transferring branch or representative office assets to a related company or branch. For simplicity, representative offices and branches are both referred to as branches below.

1. General Corporate and Legal Information

The purpose of collecting this information is to ensure that the documentation necessary to achieve the transfer can be completed accurately, efficiently, and in accordance with each entity's existing organizational documents.

1.1. Corporate and branch name, registered address, purpose, business activity, and date and place of incorporation/official establishment of the corporation and its branch.

1.2. Corporate documentation (for example, articles of incorporation, by-laws, resolutions of shareholders and directors) of the corporation which has established the branch (the "Company").

1.3. Branch documentation (for example, copy of the registration certificate or commercial extract evidencing the official registration of the branch) in respect of all registered branch offices in the jurisdiction.

1.4. Current Company directors (and officers, if applicable), including their present location and employer.

1.5. Current branch managers or other legal representative(s).

1.6. Details of all intellectual property rights owned by the branch that are to be transferred, including any third-party licenses and development agreements.

1.7. Commercial agreements: sales agreements, distribution agreements, customer support agreements, non-disclosure agreements to be transferred or assigned. Note that agreements not being transferred or assigned should also be reviewed to make sure that they do not contain terms that are triggered by the proposed branch asset disposition.

1.8. Leases: real estate leases, personal property leases, including information

regarding leases to be terminated.

1.9. Loan agreements and financing documents entered into by the Company and branch, or entered into by affiliates that may be secured by Company/branch assets or that contain terms triggered by a Company/branch asset disposition.

1.10. Licenses, permits, court decrees, or other legal restrictions or privileges which affect the flexibility of the asset disposition.

1.11. Confirmation whether the Company or branch is party to any dispute, legal proceeding or application process, and whether there are any pending claims or causes of action.

1.12. List of any outstanding branch liabilities that have not been discharged in full, including any guarantees and indemnities.

1.13. List any intercompany arrangements that may be affected by the asset transfer (for example, arrangements to provide general and administrative services to the branch by the head office or a parent company).

1.14. Confirmation whether the Company has any other foreign or domestic branches, representative offices or other separate business registrations.

1.15. Location(s) of, and person(s) presently responsible for, Company and branch records.

2. Tax Information

A. General Information

2.1. Most recent tax returns for relevant subsidiaries and their branches.

2.2. Accounting period for tax purposes for parent and all local entities.

2.3. Branch financial statements and asset lists.

2.4. Financial statement tax reserve work papers.

2.5. Status of any tax audits in parent jurisdiction or overseas.

2.6. Tax earnings and profits of relevant subsidiaries.

2.7. Existence of NOLs of foreign branches of parent company.

B. Operational Information

The purpose of this information is to develop a strategy for establishing the commercial relationships among the entities after the reorganization.

2.8. Description of current commercial functions (for example, marketing agent) and any limits or restrictions on the nature or scope of the local activities.

2.9. Intercompany agreements and nature of intercompany transactions.

2.10. Intercompany transfer pricing studies.

2.11. Intercompany debt.

C. Information Relating to Preservation of Tax Attributes

2.12. Please refer to section 22 of Exhibit A above.

D. Pre-transaction Dividend Planning

2.13. Please refer to section 20 of Exhibit A above.

3. Financial Information

3.1. Branch financial statements for the prior fiscal year and current year to date.

4. Human Resources Information

This information is necessary in order to analyze the employment law implications of the asset sale. This information is also necessary to determine whether works council or other employee representative group participation will be necessary to achieve the reorganization, or whether a works council or other employee representative group will be required in the future due to the increased workforce after the asset sale. Details of the employee benefits programs should be analyzed in order to determine how they will be transferred or assigned.

4.1. Employee headcount.

4.2. Employee benefits programs including pensions and funding status.

4.3. Stock option/employee stock purchase plan participation by employees.

4.4. Existence of works councils or other employee representative groups.

4.5. Collective bargaining agreements.

4.6. Standard employment agreements, employee offer letters and employee policies.

4.7. Employee invention and non-disclosure agreements.

4.8. Projected redundancies or terminations due to reorganization or already planned.

4.9. Details of expatriate employees and employee work permits, visas or similar immigration status that may be affected by a change in employer.

4.10. Any employees providing services to an entity other than their employer.

4.11. Details of any third-party arrangements which may be impacted, for example, if any outsourced services may be terminated and, if so, what liabilities may be triggered under local law or commercial agreement.

Section 4
Antitrust/Competition Considerations in the Pre-Merger Integration Phase

1 Suspension Period Between Signing and Completion

Global acquisitions necessitating post-acquisition integration are often subject to merger control approvals which typically prohibit the deal from closing until the notified regulator has approved the deal.

The purchaser is usually keen to commence the integration planning process as soon as an acquisition agreement is signed in order to achieve the earliest possible business integration.

However, it is essential that the parties to transactions that are subject to a suspension period under merger control rules comply with "gun jumping" rules during the period between signing and completion. "Gun jumping" issues are applicable to all transactions which are subject to a merger control suspension period, irrespective of whether the parties are competitors or not.

If the parties to the transaction are competitors, they should put in place guidelines on exchange of competitively sensitive information during the integration planning process between signing and closing. This is the case irrespective of whether the transaction is subject to a merger control suspension period or not.

1.1 "Gun Jumping" Issues

In cases where a pre-merger filing is required, the parties may not close their transaction until the end or expiration of the merger control review or waiting period. Parties who "jump the gun" and begin to consolidate operations may be subject to significant financial penalties.

Competition authorities worldwide are increasingly pursuing procedural violations of the merger control rules. The US antitrust authorities, in particular, have fined companies numerous times for engaging in unlawful activities prior to the expiration of the waiting period under the Hart-Scott-Rodino Act.

A similar pattern is developing in Europe. In 2014, the European Commission fined Marine Harvest EUR 20 million for acquiring control of Morpol without prior merger clearance. In 2016, the French competition authority fined Altice Group EUR 80 million for coordinating its commercial behavior with French telecoms provider SFR prior to obtaining merger control clearance. Regulators have been known to conduct unannounced inspections of company premises to check for unlawful integration.

Although the parties are entitled to start planning integration during the merger control suspension period, this must fall short of de facto implementation of the transaction. The parties must therefore avoid integrating their businesses until after merger clearance is obtained, even if the transaction is unlikely to raise any antitrust concerns. For example, there should be no transfer of assets or implementation of any company name change. Furthermore, the parties should not take any steps which amount to the buyer acquiring control over the target, such as acquiring legal title in shares with sufficient voting rights for it to have decisive influence over the target.

In addition, the buyer should not seek to influence the target's commercial decisions, including, but not limited to, pricing policies, new product launches, marketing plans, and customer/supplier relationships.

In many cases, questions will arise on a wide variety of fact scenarios as to whether a contemplated act is just "planning" or whether it could be construed by a competition authority as the taking of control/implementation. Companies can prepare themselves by putting in place pragmatic guidance on what sorts of steps may be taken. When tailored to the characteristics of the deal, these guidelines can ensure that (perceived) antitrust/competition issues are dealt with swiftly and do not unduly delay the integration planning process.

Effective gun jumping guidelines can empower employees to proceed without fear of violating the rules by covering the following areas:

- assets: what can be done to plan the combination of assets (as well as protect asset value in the interim)
- products and services: what can and cannot be done in relation to joint business plans; branding/product lines
- customers and suppliers: what can be communicated to customers and how it should be said
- personnel: what planning can take place in relation to employees' salaries and pensions
- systems (IT, finance, etc.): data is a key asset but what kind of systems integration planning is permitted

1.2 Guidelines on Exchange of Competitively Sensitive Information

The integration process will invariably involve the transfer (whether orally, electronically or in written format) of information between the parties to the transaction. Where the parties are actual or potential competitors it is always important to ensure that such information transfers comply with applicable competition laws. Prior to the closing of the transaction, the parties are still independent companies subject to all the antitrust prohibitions against collusion.

As such, whenever the parties are actual or potential competitors on any market or in respect of any commercial activity, the parties should ensure that information exchange guidelines are in place which reflect the following principles:

- **What?** Only exchange the minimum necessary to allow the parties to plan for integration and satisfy regulatory filings/requirements.
- **Who?** Limit disclosure to those individuals that have a genuine need to know. Recipients should not include employees responsible for the day-to-day running (or oversight) of the overlapping business.
- **For what?** Ensure recipients do not use the information for any other purpose (in particular, information should not influence the recipient's ongoing commercial decision making). The recipient should also be obliged to return or destroy documents if the transaction is not implemented, which should be covered by a confidentiality agreement in force between the parties.

To minimize the risk of liability claims under the competition rules, the parties should not provide any "competitively sensitive" information unless prior and specific clearance has been received from the parties' legal counsel. Competitively sensitive information would typically cover all information you would, in the ordinary course, want to keep from your competitors including, but not limited to, information concerning:

- current or future commercial or marketing strategies
- current or prospective pricing, unless pricing information is publicly available
- current individual employee salary or benefits information
- customer lists
- any other information that could influence commercial dealings or competition between the parties

If it is important to exchange competitively sensitive information, it will usually be necessary either to use an independent third party to review the sensitive information and provide the other party with a non-confidential summary of it (eg, by aggregating data or redacting certain parts), or to establish a "clean team" which may aggregate or redact the data. Any such information exchange should be monitored and cleared by the parties' antitrust counsel.

Some information may be freely exchanged between the parties, ie, without prior aggregation or redaction by a third party or by a clean team, such as:

- publicly available information
- general information regarding current products and services

- general information regarding existing joint ventures or other relationships with third parties
- information relating to the integration of the parties' IT systems
- facility descriptions (but no costs/cost-related data)
- environmental information of a non-competitively sensitive nature
- announced capital expansion/closure plans
- employee information (but not detailed cost/salary information)
- corporate structure and shareholding investments
- historic (generally more than one year old — though this may need to be older, depending on market conditions) regional sales by volume and product type

Section 5
Tax Considerations

1 Introduction

When planning a post-acquisition integration project it is imperative that management and advisers consider the tax issues at an early stage.

Management's key objectives from a tax perspective are likely to be to: (i) take advantage of any tax planning opportunities that arise from the integration; (ii) preserve the group's existing tax attributes; and (iii) minimize any tax leakage arising from the integration (both in terms of its implementation and in the future under the new consolidated structure). Each of these factors is considered in more detail below.

2 Tax Optimization

Management and advisers should consider at an early stage how tax planning goals will be balanced with business factors and any legal complexities when developing a plan for the structuring of the integration.

Many factors influence the tax structuring options available when planning an integration, for example: the existing tax attributes of the companies; tax planning already undertaken; the future strategic plans for the new group including the alignment of operating models; anticipated changes in the local and global tax environment; the tax audit profile of the companies; as well as any planned flotations, spin-offs or further acquisitions.

In some situations, management may wish to actively take advantage of tax planning opportunities the integration may create in order to enhance the after-tax cash flow. It may, for example, be the intention of management to reorganize the shareholding structure of the group to allow for tax efficient repatriation of earnings in foreign subsidiaries to the parent company, to create a global group cash management function. Another driver might be to minimize the group's global effective tax rate, which could be achieved by, for example, seeking to convert and allocate the purchase consideration to tax amortizable asset capitalization or funding the local consolidations by financing the local entities to the extent possible with interest bearing debt.

Intellectual property further represents an important and valuable asset for many groups. Where such assets are owned by entities in high-tax jurisdictions, this can have a significant effect on the group's overall effective tax rate. Post-acquisition integration often provides a good platform for a reconsideration and rationalization

of a group's IP holding structure, which in turn can create material tax efficiencies. Even where IP migration is not an option, it is sometimes possible to structure a merger or business transfer in a way that gives rise to goodwill that can be amortized for tax purposes by the acquiring entity.

Post-acquisition integration also often provides an opportunity to assess the most tax efficient holding company structure for the combined group and to rationalize or make more tax efficient the group's financing structure. For example, a company may assign an intercompany receivable as consideration for the purchase of an asset and/or shares, or may sell assets and/or shares across the group in exchange for debt, as discussed below. In all cases, it will be important to assess whether any interest expense would be deductible for tax purposes in light of the specific tax rules in the relevant jurisdiction that may otherwise restrict the company's ability to claim a deduction for interest expenses (eg, thin capitalization rules). Groups should also be acutely aware of how BEPS will shape the group's financing structure going forward. In particular, the BEPS recommendation that countries introduce a fixed ratio rule to limit an entity's net interest deductions to a fixed percentage of its EBITDA, and clamp down on hybrid mismatch arrangements employed by multinational groups to, for example, exploit differences in the tax treatment of debt under the laws of relevant jurisdictions to broadly achieve double non-taxation/an interest expense deduction with no corresponding taxable interest income, is likely to be a key concern.

Finally, it is important to consider the extent to which any future operational plans for the group could impact the structure of the integration and any tax planning opportunities, eg, any drivers to change/align the supply chain and operating structure of the combined group moving forwards. For example, any such changes to an entity's operating model could impact the availability of future tax attributes, whether coupled with the consolidation or on a standalone basis. Any planning to otherwise preserve such tax attributes in connection with the integration that would nonetheless be forfeited at a later stage would be a wasted exercise.

3 Preserving Tax Attributes

In many cases, either one or both local subsidiaries may have valuable tax attributes, such as accumulated tax losses (NOLs). Preserving these tax attributes is likely to be an important goal of any integration project. However, it will always be important to weigh the value of tax attributes (taking into account projected profitability of the integrated business and loss expiry rules) against the business costs of preserving the losses. In some jurisdictions, for example, a business lease between the two operating subsidiaries may have advantages over a merger from an NOL preservation perspective, but the lease can be a more difficult structure to manage from an accounting and business perspective. The structure that is chosen will also depend on the relative value of preserving tax attributes as against the cost of implementing and maintaining a more cumbersome integration structure.

Where preservation of tax attributes is an important objective of the integration structure, particular care must be taken to navigate local tax laws which, invariably, will contain anti-avoidance legislation which can limit the transfer of the existing NOLs from one group company to another or restrict their use within a group of companies. In the context of a post-acquisition integration project, the operation of these rules must be examined at each step of the integration plan, particularly in light of the concerns outlined in the following paragraphs.

The original acquisition of the target group by the acquiring group may mean that the existing NOLs have already been lost, are restricted in some way, or cannot be used against profits of the acquiring or a surviving company in the same jurisdiction. In the UK, for example, NOLs are forfeited where there is a change in the ultimate shareholder of a UK company combined with a major change in the nature or conduct of the trade of the company within three years of the acquisition. It is important to assess at the outset whether any such restrictions could apply, as any planning to preserve NOLs that are no longer available would be a fruitless exercise. Management should be able to leverage any tax due diligence performed on the acquisition to assist them in determining whether any such rules apply.

In some jurisdictions share pre-positioning steps can have an impact on tax attributes. In Germany, for example, the transfer of a direct or indirect interest in a German company can (absent a specific relief or exemption) result in the carry forward of NOLs being restricted, or even prohibited. This means that share transfers a long way up the ownership chain that do not involve any German companies directly can impact the preservation of tax attributes in the German companies.

In many jurisdictions the manner in which the consolidation (eg, asset transfer versus merger) is executed could have an impact on whether the NOLs survive. For instance, in several jurisdictions, the NOLs of the acquiring subsidiary are preserved, but the NOLs of the transferring company are restricted. These rules could ultimately drive which entity in the structure is chosen to be the acquirer or survivor (in other words, these rules would suggest that the entity with the most valuable NOLs should be the survivor).

In some jurisdictions, the manner in which the operations are consolidated (ie, asset transfer versus merger) may have an impact on the tax attributes that are available going forward.

One final point to note in this area is that it is often possible to obtain a binding advance ruling from the relevant tax authority confirming that NOLs will be unaffected by the integration steps (or, where relevant, can be utilized by the integrated entity). Indeed, in some jurisdictions and circumstances, obtaining a pre-transaction ruling is a prerequisite for NOLs to survive the integration.

The treatment of NOLs in various jurisdictions is summarized at the end of this section.

4 Minimizing the Actual Tax Cost of Integration

For planning purposes, it is normally straightforward to assess the indicative tax costs involved and tax savings to be made in achieving the business objectives of the integration. Tax costs (or tax planning savings) are treated like any other business cost (or benefit) and form part of the cost/benefit analysis that management undertakes when formulating the integration plans. An unexpected tax cost arising on an integration can be a bitter pill to swallow and emphasizes the need for careful and detailed planning, not only at a local level, but also with a view to the global picture.

One difficulty usually experienced by management not only during the early stage of an integration project but also as the project moves towards implementation, is quantifying the actual tax costs and benefits. It may not be until the fine details of the integration plans are settled that tax issues and costs can be accurately assessed. In particular, the need for fair market valuations of the relevant entities should be factored into the planning at an early stage given that the tax costs in a number of instances are likely to be determined by reference to fair market values.

It is also critical that the tax costs are assessed for each step of the end-to-end integration plan, both from a local and global perspective, and in light of the wider integration plan as a whole. For example, the indirect transfer of shares as part of a consolidation plan in another territory could trigger indirect transfer taxes and this cost should be captured at the planning stage.

4.1 Creating the New Group

As explained in more detail in paragraph 2.9 of Section 2, there are a number of advantages to reorganizing the acquiring and target companies into a parent/subsidiary or brother/sister subsidiary relationship (ie, under a direct common parent) prior to an integration. This could be achieved in one of the following ways:

- the acquiring company contributing its foreign subsidiaries downstream to the target company
- the target company distributing its subsidiaries upstream to the acquiring company (or very often a combination of upstream and downstream distribution and contribution steps)
- the shares of the subsidiaries being sold within the group
- one of the acquirer group's holding companies effecting a cross-border merger into one of the target group's holding companies (or vice versa)

4.1.1 Downstream Contributions

The immediate tax consequences of downstream contributions must be considered at three levels. The first level is the tax treatment in the home jurisdiction of the company making the contribution. In many jurisdictions, including traditional holding company jurisdictions such as Luxembourg and the Netherlands, participation exemptions should allow such contributions to be made tax free. In other jurisdictions the contribution may have to be structured as a tax-free reorganization either because the jurisdiction does not have a participation exemption or the participation exemption does not apply, where, for example, a qualifying holding period has not been satisfied — which can often be the case in post-acquisition integration projects. Such a tax-free reorganization would usually involve the issue of shares by the company which is receiving the contribution.

The second level to consider is the tax treatment for the company receiving the contribution, ie, is the receipt of the contribution a taxable event? For example, a contribution to a Japanese company without the issue of shares gives rise to a taxable receipt for the Japanese company equal to the fair market value of the shares contributed. In other jurisdictions, for example Switzerland, the contribution may be subject to capital duty.

The third level to be considered is the tax treatment in the jurisdiction of incorporation of the company being contributed and whether the transfer of legal ownership in the contributed company is subject to local transfer taxes or other transfer costs, including real estate transfer taxes, notarial fees and/or registration fees. For example, the transfer of a company incorporated in New South Wales, Australia is subject to a 0.6% stamp duty, but relief is granted where the transferor and transferee company have been associated for at least 12 months prior to the transfer. However, some jurisdictions (for example, Germany) have extremely limited exemptions. In these jurisdictions, it is often necessary to consider bespoke transfer tax mitigation structures to limit the incidence of real estate transfer tax.

Another issue to consider is whether the jurisdiction seeks to levy tax on a non-resident shareholder disposing of shares in a company incorporated in that jurisdiction. The taxing rights of the local jurisdiction may be limited under double tax treaties entered into with the jurisdiction in which the company making the contribution is resident, but this is not always the case. For example, Mexico taxes non-resident shareholders disposing of shares in Mexican companies, and the Mexico-Germany tax treaty allows the Mexican tax authorities to tax gains arising on a disposal of Mexican shares by a German company. Subject to limited exemptions, China, similarly, taxes non-resident shareholders on the disposal of shares in Chinese companies.

4.1.2 Upstream Distributions

It is usually easier from a corporate law perspective to contribute shares in companies downstream. However, for a variety of other reasons, it may be preferable to distribute shares in companies upstream. An upstream distribution can usually be achieved either by declaring a dividend out of distributable reserves or, in some jurisdictions, by effecting a capital reduction process (the latter usually being a more cumbersome, time-consuming and costly procedure). Again, tax effects may be seen at three levels. Firstly, is the distribution taxable in the jurisdiction of the company receiving the distribution? Secondly, at the level of the company making the distribution, there are two issues to consider: (i) is the distribution subject to withholding tax; and (ii) is the distribution a taxable disposal of the shares? This second issue can be difficult as many countries, such as the United States, have complex requirements which must be satisfied for an upstream distribution to be tax free. At the third level, the tax consequences in the jurisdiction of incorporation of the company being distributed must be considered.

4.1.3 Sale of Shares Within the Group

The third option is to sell the shares of the relevant company directly to another company, which can immediately achieve the relevant parent/subsidiary or brother/sister relationship. This method is sometimes the simplest, especially where a complicated group structure means distributions and/or contributions are impractical.

The tax issues discussed above are again relevant. In addition, it is important to consider the tax effect of subsequently extracting any debt/cash consideration from the transferor entity, eg, by way of dividend, both in terms of any withholding tax liability and whether the distribution is taxable in the hands of the recipient.

The sale method can also have other beneficial tax and non-tax effects, which can include cash repatriation and inserting interest-bearing debt into the relevant local entities.

A company in a particular jurisdiction may be cash rich. This situation may have arisen because current cash-generating operations are being used to reduce an earnings deficit on its balance sheet; the parent company has decided not to repatriate cash using dividends because it would become trapped in an intermediate subsidiary that has an earnings deficit (a so-called “dividend blocker”); or it is not tax efficient to distribute profits, either because of the effect of non-creditable withholding taxes or high tax charges in the home jurisdiction of the parent or any intermediate company.

It may also be tax efficient or commercially desirable to transfer the shares of the local entity for interest-bearing debt. The interest expense could then be available to shelter taxable income in the relevant jurisdiction. In these circumstances, it

is important to examine whether local law will permit a deduction in respect of interest paid in connection with a debt incurred in such a manner. Some countries disallow the deduction in certain circumstances. For example, Singapore does not permit deductions for debts incurred to acquire assets that produce income which is not taxable in Singapore. This includes shares in Singaporean and foreign companies.

The sale of shares across the group also provides an opportunity to rationalize or make more tax efficient the group's intercompany debt position. For example, a company may assign an intercompany receivable as consideration for the purchase of an asset and/or shares.

5 Basic Local Integration Structures

There are two basic methods available to integrate operations in most jurisdictions: either a statutory merger or amalgamation under local law; or the sale of business from one subsidiary to another in the same jurisdiction with a subsequent dissolution of the seller. A summary of these integration methods in 45 jurisdictions is set out in Section 10.

5.1 Business Sale and Dissolution

One approach to achieve the consolidation of operations is often to sell the business of one foreign subsidiary to another subsidiary in the same jurisdiction. The selling company is subsequently dissolved. In some common law jurisdictions, including the United Kingdom and Australia, either no simplified statutory merger regime exists or if a regime exists it is, for practical reasons, not commonly used. In these jurisdictions, a business sale and dissolution is the only available way to integrate the businesses. The tax goal in carrying out such transactions is to minimize or eliminate any tax charge and, if possible, to retain any valuable tax attributes of the local seller and the local buyer. To achieve this goal it is usually necessary to have the seller and the buyer either in a group arrangement or otherwise consolidated for local tax purposes. In certain jurisdictions this may only be possible if one local company directly owns the other or they are both owned by a common parent company in the same jurisdiction. In the United Kingdom and Australia, the tax rules allow for common ownership to be traced through foreign corporations, which can eliminate the need to undertake any share restructuring prior to the consolidation.

When transferring capital assets from one company to another, the assets could be treated for tax purposes as being sold for their fair market value unless the asset can be transferred from one group company to another on a tax-neutral basis pursuant to local tax group or consolidation rules. Management should always consider whether they wish to take advantage of these regimes or whether a better result can be achieved by ensuring that the rules do not apply.

The transfer of trading stock and work in progress from one company to another company in the same jurisdiction will normally give rise to a revenue profit. Local tax rules may allow for such assets to be transferred at their original acquisition cost, although consideration should always be given as to whether existing NOLs within the selling company might be used (to set off against any profits arising from a sale at fair market value). This also allows the buying company to achieve a step-up in its tax base cost in these assets and is a useful technique if it is not possible to transfer the NOLs from the local selling company to the local buying company.

The local selling company may have been depreciating its capital assets for tax and accounting purposes. The effects of any intercompany sale upon tax depreciation claims should be considered. In some jurisdictions, opportunities exist for pre-acquisition tax depreciation allowances to be disclaimed and deferred to a post-acquisition period. This can be useful to help mitigate the loss of NOLs, which can occur as a result of the original acquisition or the post-acquisition integration. In some situations, companies may not want NOLs or other tax attributes to transfer as part of an asset sale to the identified surviving company, for example, a US parent company may have been utilizing in the US the NOLs of a foreign branch. If the foreign branch NOLs transfer to a foreign subsidiary of the US parent company as a matter of local law, the US parent may be faced with the recapture of the US tax savings generated as a result of using its foreign branch's NOLs in the US.

In most jurisdictions, the sale of assets from one company to another will be subject to value added tax ("VAT") or a similar tax. Usually such tax charged by the selling company to the buying company is creditable to the buying company, however, this can give rise to a cash flow disadvantage to the group when carrying out such transactions in a large number of jurisdictions. In many jurisdictions, and this is certainly true for EU member countries, transfers of businesses as a going concern are ignored for VAT purposes.

Stamp duties can further considerably add to the cost of a local asset sale. Fortunately, relief from stamp duties is usually available in the intra-group context, although in certain cases, the relief may need to be claimed rather than automatically being available. Any such reliefs may dictate the manner in which the sale takes place, for example, it may be structured as an assets-for-shares sale or the sale may have to be delayed until a particular group relationship has been in place for a relevant holding period.

Many jurisdictions impose transfer taxes on the transfer of real estate. As real estate transfer taxes tend not to be deductible for tax purposes nor creditable in the jurisdiction of a parent entity, they generally represent a true out-of-pocket cost to the company. In practice, exemptions are often available where the real estate (or an interest in the real estate) is transferred within an associated group of companies, which limit the impact of real estate transfer taxes in the context of intra-group reorganizations.

The tax cost of extracting the consideration from the selling company (eg, any withholding taxes on a subsequent distribution, tax treatment of the distribution in the hands of the recipient) should also be considered. In particular, it is important to assess whether a pre-sale distribution or liquidation distribution would give rise to a better tax result from both the seller and shareholder perspectives.

The tax treatment on a global level should always be considered, eg, whether the particular transaction could create a taxable exposure higher up the chain, notably whether any of the holding companies operate a "controlled foreign company" regime which would seek to tax the income or gain realized on the consolidation.

5.2 Local Statutory Merger

When available, the recommended approach is often to use a statutory merger under local law. Such a transaction will typically (though not always) be tax free from a local tax perspective, although post merger conditions may also apply (eg, holding periods). Depending on the jurisdiction, the tax attributes of the target or absorbed company may or may not be available to the consolidated entity. In particular, in a number of jurisdictions the future availability of the NOLs of the absorbed company will be restricted or lost entirely.

Real estate transfer taxes are still chargeable on mergers in many jurisdictions, and these costs may dictate that the company with no real estate or the least valuable real estate is the disappearing company in a merger.

The tax treatment on a global level should always be considered, as in the case of a business transfer. Furthermore, when two local companies merge while in a brother/sister relationship, or a local parent company merges downstream into its local subsidiary, any foreign shareholder is likely to be treated as disposing of its shares in the disappearing company for foreign tax purposes. It may be that there is no foreign tax charge because of a relevant participation exemption, the application of the EU Merger Directive, foreign tax laws classifying the merger as a tax-free reorganization, the utilization of existing NOLs by the foreign company, or simply because the foreign shareholder has a base cost in the disappearing local entity equal to its market value as a result of the prior transfer to it of the shares in the disappearing company as part of the integration planning. This is likely to be relevant where the participation exemption has a minimum holding period that would not otherwise be satisfied at the time of the merger. In that case, it would be important to implement the merger as soon as possible following the share transfer in order to mitigate the risk that the fair market value of the shares may increase at the time of the merger. This may not, however, mitigate the risk of any potential FX exposure and so, in certain instances, it may be appropriate to wait until the minimum holding period has been satisfied before the merger is effected.

In many jurisdictions, the parties may meet a merger to have a retroactive effective date for tax or accounting purposes. A retroactive effective date can allow for earlier consolidation and utilization of favorable tax attributes, such as NOLs.

The desirability of utilizing merger regimes from a tax perspective must be weighed against operational objectives, which can sometimes be frustrated by the merger process. Merger regimes often require the preparation and filing of recent balance sheets or full accounts of at least the absorbed company and in many cases these accounts will need to be audited. The time required to prepare such accounts, combined with mandatory waiting periods to protect creditors after a public notification has been made, can frustrate the operational need to combine the local business of the target company with that of the acquirer quickly, so that business efficiencies and management control are achieved.

Finally, the EU cross-border merger process can be used to simplify corporate structures in the EU and economize on compliance costs. In this scenario, a company in one EU Member State can be merged cross-border into a company incorporated in another EU Member State, leaving behind a branch (for tax purposes a permanent establishment) with the assets and liabilities of, and the business formerly conducted by, the merged entity. In most cases such mergers can be effected without realizing taxable income, although other tax attributes such as NOLs may not remain available in some countries (for example, Germany), despite remaining available in others (for example, Austria).

5.3 Alternatives to Integrations by Business Sale or Merger

Many jurisdictions have some form of group or consolidated tax regime that can be used as an alternative to a tax-free asset sale or merger (for example, UK group relief, French consolidation and German Organschaft). Essentially, this approach allows the two operations to share NOLs and to obtain the benefits of consolidation from a tax perspective, but it does not consolidate activities on a business and operational level. Thus, this approach is not recommended where an actual consolidation is desirable and can be completed. This method can be effective if there are limited overlapping activities or redundancies, structural tax constraints or costs preventing operational consolidation.

Another alternative to an actual consolidation is a lease by one company of its entire business to the other company. This approach does allow the parties to consolidate on an operational level. For transfer pricing purposes the lessor must earn an arm's length profit on the leased business.

This structure may be useful in two particular circumstances. The first situation is where the surviving company in a jurisdiction wishes to use the assets of the disappearing company in its business, but cannot immediately acquire them. This may be because permits, licenses or leases cannot be assigned without consent,

or the companies are not yet in the optimum structural relationship from a tax perspective to consummate a business sale.

In France, Germany, Austria and certain other jurisdictions, the business lease is a method used to prevent the company which is identified as the disappearing company prematurely being treated as disposing of its assets to the surviving company as a result of the surviving company utilizing such assets in its business prior to their legal transfer.

Such a deemed disposal of assets can have unfortunate tax consequences if the companies are not in the correct relationship at the time and negate the benefit of a subsequent tax-free merger.

The second scenario is where trading NOLs in the disappearing company will not transfer to the surviving company. It may be possible to use these NOLs effectively by claiming a deduction for the leasing expense in the surviving company and offsetting the NOLs in the disappearing company against its leasing profits.

6 Other Considerations

Tax authorities in many jurisdictions make provision for binding advance rulings confirming the tax treatment of a transaction before its implementation. As tax rules around the world become increasingly complex, and the financial reporting requirements associated with the disclosure of uncertain tax positions become more onerous, obtaining certainty as to the tax treatment of a particular transaction as early as possible will often be hugely advantageous. On the other hand, rulings can be costly and time consuming to prepare. Moreover, applying for rulings can lead to audits by local tax authorities, which can impose additional burdens on internal resources that are already stretched by the integration planning and implementation process.

The following factors should be considered in determining whether or not to seek a ruling:

- Is an advance ruling necessary to achieve the intended tax result? In France, for example, NOLs will not transfer on a merger unless a prior advance ruling is obtained from the French tax authorities.
- How important is obtaining certainty in advance of the transaction? Groups that are subject to US financial reporting requirements may place a higher premium on certainty than groups that are not.
- Is a ruling the only way to obtain the level of certainty required? Where the tax rules relating to a particular transaction are fairly clear, an opinion from third-party advisers may provide sufficient comfort on any points of uncertainty.

- Is the tax ruling disclosable to other tax authorities?
- How much will the ruling cost? Tax authorities in some jurisdictions (for example, Germany) can charge a substantial fee for providing advance tax rulings.
- How long will it take to obtain the ruling? Tax authorities in some jurisdictions (for example, the United Kingdom) commit to providing a response to ruling requests within a certain timeframe, whereas others are not obligated to respond at all. This can lead to the ruling process holding up the timing of the transaction as a whole.
- How much disclosure is required? Most tax authorities require that the taxpayer fully disclose all of the details of the transaction before they provide a ruling. Where a new operating or transfer pricing structure is being implemented as part of the wider integration project, the group may feel that early disclosure may result in a less advantageous tax result (for example, where the advance agreement will be based on potentially unreliable forecast data).
- Can the ruling be relied upon? Some rulings bind the tax authority and therefore give a high degree of certainty and comfort while others are merely a written indication of the way in which the tax authorities are likely to view the transaction, which can be departed from on audit.

7 Conclusion

As the above discussion demonstrates, the steps for integrating duplicate entities are similar and follow established patterns. The patterns are relatively well known and thus planning typically focuses on the preparatory steps to the integrations. These preparatory steps should allow the taxpayer to maximize the benefit of the domestic and foreign tax attributes, avoid unnecessary costs such as stamp taxes, and take advantage of one-time benefits. More importantly, this process allows the group to structure itself in a tax efficient manner that yields benefits for years to come. Although every integration project involves some new and unique planning issues, this chapter should serve as a road map for approaching the process, identifying the opportunities, and avoiding the pitfalls.

Summary of Retrospective Effect and Tax Losses

When one multinational company acquires another company and its international subsidiaries, a key aspect of the integration of the two multinational groups is to consolidate duplicate operating companies so that there is only one operating company in each country. The following summary of integration methods has been prepared on the following assumptions.

1. Each company is a 100% subsidiary of the same parent company or one is a 100% subsidiary of the other (subject to any mandatory minority shareholding interests).
2. The surviving company of the integration will be one of the original operating companies, not a newly incorporated company (save where indicated otherwise below).

Alternative methods are available in many jurisdictions and this summary should not be relied on instead of obtaining specific legal advice.

1 Americas

ARGENTINA		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	The earliest the merger can be effective is the date the surviving company took over and commenced the activities previously conducted by the other company (the Merger Date) but only if the merger is fully compliant with the requirements applicable to a tax-free reorganization. Otherwise, the legally effective date of the merger is the date of its registration with the Public Registry of Commerce, which can take some time.	The earliest the asset sale can be effective is the date the buyer entity commences the activities previously conducted by the selling entity but only if the asset sale is fully compliant with the requirements applicable to a tax free reorganization. Otherwise, the legally effective date of the asset sale is the date of its registration with the Public Registry of Commerce, which can take some time.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, provided the merger meets all the requirements applicable to a tax-free reorganization.	Yes, provided the asset sale meets all the requirements applicable to a tax-free reorganization.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, provided the merger meets all the requirements applicable to a tax-free reorganization.	Yes, provided the asset sale meets all the requirements applicable to a tax-free reorganization.

BRAZIL		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No.	Yes, however, losses remain with selling entity. However, if the selling entity changes its corporate control **and** changes its line of business, it will lose the ability to utilize any tax losses.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, provided there is no change of corporate control and no change of line of business of the surviving company.	Yes, provided there is no change of corporate control and no change of line of business, the buyer entity may continue offsetting its own tax losses, but does not acquire the tax losses of the selling entity.

CANADA		Amalgamation	Asset Sale
1.1	Local integration method.	Amalgamation.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	There is no disappearing or surviving entity on amalgamation. Tax losses of both the amalgamating corporations generally survive and may be used by the amalgamated corporation. Note that following an acquisition of control of an entity, non-capital losses may only be used to offset gains to the extent that the entity carries on the same business following the acquisition of control as that which was carried on when the losses were incurred. Note: any deemed year ends of the amalgamating corporations resulting from the amalgamation will count towards the expiration of losses.	Yes, however, losses remain with selling entity until dissolution. Note that following an acquisition of control of an entity, non-capital losses may only be used to offset gains to the extent that the entity carries on the same business following the acquisition of control as that which was carried on when the losses were incurred.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	There is no disappearing or surviving entity on amalgamation. Tax losses of both the amalgamating corporations generally survive and may be used by the amalgamated corporation. Note that following an acquisition of control of an entity, non-capital losses may only be used to offset gains to the extent that the entity carries on the same business following the acquisition of control as that which was carried on when the losses were incurred. Note: any deemed year ends of the amalgamating corporations resulting from the amalgamation will count towards the expiration of losses.	Yes, subject to conditions. Note that following an acquisition of control of an entity, non-capital losses may only be used to offset gains to the extent that the entity carries on the same business following the acquisition of control as that which was carried on when the losses were incurred.

CHILE		Merger (1)	Merger (2)	Non-statutory Mergers	Asset Sale
1.1	Local integration method.	Merger (1): a new entity is created, both entities are dissolved.	Merger (2): one of the entities is absorbed and the other survives.	Non-statutory merger: stock corporation is dissolved when all its shares are fully owned by a single entity for at least 10 consecutive days.	Asset sale.
1.2	Can merger/ asset sale be retrospectively effective from tax and accounting perspectives?	Yes, from an accounting but not from a tax perspective.	No.	No.	Yes, with limited effects depending on the case (only within the same fiscal year).
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No.	No.	Yes.	Yes, however, losses remain with selling entity until its dissolution.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	No.	No.	No.	Yes.

COLOMBIA		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	Yes.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes. There are two requirements to be able to absorb losses in a merger: (i) the companies participating in the merger must have the same corporate purpose; and (ii) the absorbing company can compensate losses of the absorbed companies but limited to the participation percentage of the absorbed companies in the equity of the absorbing company. The offset of these tax losses must take into account the limitations in time and percentage that were enforceable at the time the tax losses were generated.	No.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes.

MEXICO		Merger	Asset Sale
1.1	Local integration method.	Merger, where two or more companies merge without creating a new entity.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No.	Yes, however, losses remain with selling entity until dissolution.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, to the extent they are used against income derived from the same activity that generated such tax losses.	Yes.

PERU		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No. However from a corporate perspective the parties may fix the legal effective date, which can be the same date as the approval of the merger agreements. For tax purposes, the companies participating in the merger need to notify the legal effective date to the tax authority within 10 days of the merger.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No.	No.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, but the tax losses will be limited to an amount equivalent to the value of the assets in the surviving company, before the merger takes place.	Yes.

UNITED STATES (DELAWARE)		Merger	Asset Sale
1.1	Local integration method.	Merger — Delaware corporations.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, in certain tax-free mergers or liquidations, the losses may survive and be transferred to the surviving company, subject to potential limitations.	Yes, in certain tax-free asset acquisitions, the losses may survive and be transferred to the buyer entity, subject to potential limitations. In a taxable transaction, the losses generally remain with the selling entity.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, subject to conditions.	Yes, subject to conditions.

VENEZUELA		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes. Losses are transferred by operation of law to the surviving entity. Because the fiscal year of the disappearing company will close on the date the merger becomes effective, and losses are subject to a three-year carry forward rule while inflation adjustment losses are subject to a one-year carry forward rule, the short fiscal year of the disappearing company will count towards the expiration of losses.	Yes, however, losses remain with selling entity until dissolution.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes. The buyer entity will be entitled to use the losses to offset any capital gain derived from the sale.

2 Asia Pacific Region

AUSTRALIA		Merger	Asset Sale
1.1	Local integration method.	No merger procedure is available in Australia. Court-sanctioned scheme of arrangement rarely used.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	N/A.	Generally no, but parties can agree that the sale be economically effective prior to completion (but not before the date the sale is agreed).
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	N/A.	Yes, however, losses remain with the selling entity until dissolution.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	N/A.	Yes, subject to satisfying the "continuity of ownership" or "same business" test.

CHINA		Merger (1)	Merger (2)	Asset Sale
1.1	Local integration method.	Two companies combine to form a new entity ("Merger by Consolidation").	One company merges into another existing company ("Merger by Absorption").	Asset sale. Buyer entity: can be an existing company or a newly established company.
1.2	Can merger/ asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Under the normal tax treatment, where the merger is subject to income tax, the accumulated tax losses of the disappearing company cannot be utilized by the post-merger company. If a merger qualifies for tax-free treatment, the accumulated tax losses of the disappearing company can be carried over to the post-merger company with certain limitations.	Under the normal tax treatment, where the merger is subject to income tax, the accumulated tax losses of the disappearing company cannot be utilized by the post-merger company. If a merger qualifies for tax-free treatment, the accumulated tax losses of the disappearing company can be carried over to the post-merger company with certain limitations.	Yes, however, losses remain with selling entity for the remainder of the loss carry forward term and cannot be carried over to the buyer entity.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes.	Yes, but the purchasing entity does not acquire any of the losses of the selling entity.

HONG KONG		Merger	Asset Sale
1.1	Local integration method.	Court-free amalgamation available for merging sister companies or parent/subsidiary companies. Court-sanctioned scheme of arrangement available for more complex amalgamations, though this is rarely used in practice.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Tax losses brought forward from the amalgamating company can only be set off against the profits of the amalgamated company derived from the same trade or business succeeded from the amalgamating company (same trade test).	Tax losses are specific to a company and cannot be transferred to other group companies.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Tax losses brought forward in the amalgamated company can be set off against profits derived from the trade or business succeeded from the amalgamating company if: ▪ the amalgamated company has adequate financial resources (excluding intra-group loans) to purchase the trade or business of the amalgamating company other than through amalgamation (financial resources test) ▪ the amalgamated company was carrying on a trade or business until the amalgamation (trade continuation test) ▪ such losses were incurred after the amalgamating company and the amalgamated company had become wholly owned subsidiaries of the same group (post-entry test) If the conditions are not all met, the tax losses can only be used to set off against the profits derived by the amalgamated company from its own trade or business.	Tax losses are specific to a company and cannot be transferred to other group companies.

INDONESIA		Merger (1)	Merger (2)	Asset Sale
1.1	Local integration method.	Merger — market value.	Merger — book value.	Asset sale.
1.2	Can merger/ asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	The tax regulations stipulate only that the transfer of tax losses in a book value merger is prohibited; the regulations are silent on the transfer of tax losses in a market value merger. In the latter situation, it is more likely than not that the loss carry forward can be transferred to the surviving entity.	No.	Yes, however, losses remain in the selling company until dissolution.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	No.	Yes, however, the surviving entity must be the entity that has no or lower fiscal and commercial losses carried forward.	Yes.

JAPAN		Merger	Asset Sale
1.1	Local integration method.	Merger by absorption.	Asset sale (non-tax qualified corporate split achieves the same result).
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes. Disappearing and surviving companies must undertake a "tax qualified" merger and must either (a) have been under common control for five years or more, or (b) satisfy certain "deemed joint venture tests," which include a "business similarity test" and "management continuity test," or a "business similarity test," "similarity of scale test" and "continuity of business scale test."	No.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, however, certain conditions should be met. The same conditions must be met as described above.	Yes, in general (if a surviving company is not a recently purchased dormant company).

MALAYSIA		Merger	Asset Sale
1.1	Local integration method.	No merger procedure is available in Malaysia. Court-sanctioned amalgamation rarely used.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	N/A.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	N/A.	Yes, however, the accumulated tax losses of the selling entity remain with the seller until dissolution.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	N/A.	Yes, the accumulated tax losses of the buyer entity survive the asset sale. However, the buyer cannot utilize any of the accumulated tax losses of the seller.

PHILIPPINES		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	Generally, no. An asset sale is effective on the date of completion of the asset transfer.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Generally, no. However, the transfer of NOLs will be allowed if the shareholders of the disappearing company gain control of at least 75% in nominal value of the outstanding issued shares of the surviving company.	Yes. Losses incurred in trade or business which are actually sustained during the taxable year (and not compensated for by insurance or other forms of indemnity), including a carryover of NOLs of a business for the three consecutive taxable years immediately following the year of such loss, may be allowed for carryover. However, a net loss incurred in a taxable year during which the taxpayer was exempt from income tax (eg, for the duration of the income tax holiday incentive) shall not be allowed for carryover. In addition, carryover of losses will only be allowed if there has been no substantial change in the ownership of the business, ie, (i) not less than 75% in nominal value of the outstanding issued shares, or (ii) not less than 75% of the paid-up capital of the corporation, is held by or on behalf of the same persons.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes.

SINGAPORE		Merger	Asset Sale
1.1	Local integration method.	Amalgamation.	Asset sale.
1.2	Can merger/ asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, subject to certain conditions being met. This includes (but is not limited to): (i) the business continuity test — the surviving company must continue to carry on the same trade or business on the date of amalgamation as that of the disappearing company from which the unabsorbed tax losses were transferred; and (ii) the shareholding test — the company's shareholders on the last day of the year the loss was incurred, or the donation was made, must have been substantially the same as the company's shareholders on the first day of the year of assessment in which such loss, or donation, would otherwise be deductible. For capital allowances, the shareholding test will be met if the company's shareholders on the last day of the year in which the allowances arose (ie, the last day of the year of assessment) were substantially the same as the company's shareholders on the first day of the year of assessment in which such allowances would otherwise be available. In the event that the shareholding test is not satisfied, the amalgamated company may apply for a waiver of the shareholding test.	No, the accumulated tax losses of the selling entity cannot be transferred to the buyer entity. A seller may transfer its current year's unabsorbed tax losses, capital allowances and donations to another Singapore company within the same group under a group relief scheme, subject to certain conditions being met.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, subject to the shareholding test being met. In addition, for unabsorbed capital allowances, the business continuity test will need to be met and for unabsorbed donations, the five-year carry forward limitation will apply. In the event that the shareholding test is not satisfied, the surviving company may apply for a waiver of the shareholding test.	Yes, subject to the shareholding test being met. In addition, for unabsorbed capital allowances, the business continuity test will need to be met and for unabsorbed donations, the five-year carry forward limitation will apply. In the event that the shareholding test is not satisfied, the buyer entity may apply for a waiver of the shareholding test.

TAIWAN		Merger	Asset Sale
1.1	Local integration method.	Merger.	Statutory acquisition of assets under the Enterprises Merger and Acquisition Law.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes. In proportion to the shareholding ratio the disappearing company's shareholders hold in the surviving company, the net operating losses of the disappearing company that occurred within the preceding five years may be credited against the yearly net income of the surviving company.	No.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes. In proportion to the shareholding ratio the surviving company's shareholders hold in the surviving company, the net operating losses of the surviving company that occurred within the preceding five years may be credited against the yearly net income of the surviving company.	Yes.

THAILAND		Merger	Asset Sale
1.1	Local integration method.	Amalgamation, where two or more companies are amalgamated to create a new company.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No. Accumulated tax losses of the amalgamating companies cannot be transferred to the newly created company.	No. Accumulated tax losses of the selling entity cannot be transferred to the buyer entity.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	N/A. There is no surviving company in the amalgamation. This means that tax losses of amalgamated companies will be surrendered.	Yes.

VIETNAM		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes. Tax losses of the disappearing company survive the merger but as a general rule, tax losses can be carried forward for five consecutive years after the year in which the loss is incurred.	If the selling entity has accumulated tax losses upon the asset sale, such tax losses cannot be transferred to the buyer entity.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes. Tax losses of the surviving company survive the merger but as a general rule, tax loss can be carried forward for five consecutive years after the year in which the loss is incurred.	The buyer entity can carry forward its accumulated tax losses continuously for five years from the year when the loss is incurred.

3 Europe, Middle East and Africa

AUSTRIA		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	Yes, from nine months before the date the merger is legally effective.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, provided the merger is effected at book value and the loss making asset is attributable to the business transferred and is still in existence at the effective date of the merger. A change in the business may lead to the forfeiture of the losses.	Yes, however, they remain with the selling entity until dissolution.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, provided the loss making asset is still in existence at the effective date of the merger. A change in the business may lead to the forfeiture of the losses.	Yes. However a change in the business before or after the acquisition may lead to the forfeiture of the losses.

AZERBAIJAN		Merger	Asset Sale
1.1	Local integration method — merger or asset sale	Merger where two or more companies merge without creating a new entity.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No.	No.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes.

BELGIUM		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset transfer.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	From a tax and accounting perspective, the merger may be retrospectively effective to a date up to seven months prior to the merger, however, this date cannot extend beyond the end of the previous fiscal year of the merging companies.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, on a pro rata basis (based on tax net asset value).	Yes, the tax losses of the selling entity are not affected by the transfer of the business.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, on a pro rata basis (based on tax net asset value).	Yes, the tax losses of the buyer entity are not affected by the transfer of the business.

CZECH REPUBLIC		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	Yes, up to 12 months from the date of filing the application for the merger at the Commercial Register.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, subject to certain conditions the tax losses may only be utilized within the period of five years following the year when the tax loss is incurred.	Yes, however, losses remain in selling entity until dissolution and may be utilized within the period of five years following the year when the tax loss is incurred.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, provided it meets certain conditions including continuity of business.	Yes, provided it meets certain conditions including continuity of business.

EGYPT		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale/asset sale qualifying as a “transfer as a going concern.”
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	Yes, to the beginning of the surviving company’s fiscal year (this may be the date of the company’s formation if a new company was formed).	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No.	Yes, until the selling entity is dissolved.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes.

FRANCE		Merger	Asset Sale
1.1	Local integration method.	Merger (merger between stock companies/limited liability companies or dissolution without liquidation).	Asset sale (transfer of a going concern).
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	Mergers can be retrospective for accounting and tax purposes. Dissolutions without liquidation may only be retrospective for tax purposes. The retrospective effect is limited in time (the limit depends on the closing and opening financial year dates of the parties, the retrospective date chosen and other facts).	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Losses can survive subject to a ruling from the competent tax authorities and the fulfillment of a number of conditions such as maintaining the activity (of the absorbed entity) which generated the losses for at least three years.	Losses remain in selling entity until dissolution and can be offset against capital gain deriving from the transfer of assets (subject to certain offset limitations). In the case of a partial transfer of business only, and if this transfer leads to a significant change of activity at the seller, the remaining losses would be forfeited.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, as long as the surviving entity does not significantly change its activity as a result of the merger.	Yes, as long as the buyer entity does not significantly change its activity as a result of the transaction.

GERMANY		Merger	Asset Sale
1.1	Local integration method — merger or asset sale	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	Yes, to the date of the merger closing accounts, but only for the purposes of income tax, corporate income tax and trade tax (ie, not for VAT, wage tax, social security).	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No.	Yes, losses remain with selling entity until dissolution, unless change in financial control cancels losses earlier.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, unless merger results in change of financial control, for example, through issuance of new shares. Under certain circumstances, losses of the surviving company may not be used to offset profits generated by the disappearing company within the retrospective period.	Yes, unless the business sale is followed by change of financial control.

HUNGARY		Merger	Asset Sale
1.1	Local integration method.	Merger (amalgamation).	Asset sale (sale of a business unit).
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, provided that (i) an existing direct or indirect majority shareholder or its related party will have a majority ownership in the surviving company and (ii) the surviving company continues at least one of the disappearing company's business activities and earns revenue from it for two subsequent and consecutive fiscal years.	Yes, losses remain with selling entity until its dissolution or the expiration of the losses, whichever is earlier.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes.

ITALY		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale (sale of business unit).
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	Yes, provided that the effective date does not precede the closing date of the last fiscal year of any of the companies participating in the merger or, if more recent, the closing date of the last fiscal year of the surviving company.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, to the extent that they do not exceed the adjusted net equity of the disappearing company and to the extent that certain economic vitality conditions are met. (Similar restrictions apply to the excess of net interest expenses and notional interest deduction carried forward.) In the event that the tax effects of the merger are retroactive, the above restrictions apply also to the tax attributes accrued from the beginning of the year up to the moment the merger is executed.	Yes, however, tax losses remain with selling entity until dissolution.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, to the extent that they do not exceed the adjusted net equity of the surviving company and to the extent that certain vitality conditions are met. (Similar restrictions apply to the excess of net interest expenses and notional interest deduction carried forward.) In the event that the tax effects of the merger are backdated, the above restrictions apply also to the tax attributes accrued from the beginning of the year up to the moment the merger is executed.	Yes.

KAZAKHSTAN		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, the accumulated tax losses should be assumed by the surviving company as the full legal successor of the disappearing company.	No.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes, generally, accumulated tax losses of the surviving company would not be affected by the sale.

LUXEMBOURG		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	From an accounting perspective, the merger may be retrospectively effective but not before the opening date of the current financial year of the surviving company. From a tax perspective, the merger cannot be retrospectively effective.	Yes.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No.	Yes, however, losses remain with selling entity until dissolution (and then disappear).
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes.

MOROCCO		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale ("sale of going concern" (*cession de fond de commerce*) or asset contribution (*apport partiel d'actif*)).
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	Yes; however, the effective date must be set between the fiscal year start date of the disappearing company and the fiscal year end date of the surviving company.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No.	Losses remain in selling entity until dissolution and can be offset against capital gain deriving from the transfer of assets (subject to certain offset limitations).
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes.

NETHERLANDS		Merger	Asset Sale
1.1	Local integration method.	Legal merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	Yes, merger can be retrospectively effective as of the beginning of the financial year, provided certain conditions are satisfied.	In principle, no. However, if an entire business or an independent business unit is transferred in return for shares in the buyer's share capital, the transfer can be retrospectively effective as of the beginning of the financial year, provided certain conditions are satisfied.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No, unless a request is filed with the tax authorities requesting application of the legal merger facility (rollover of book value of disappearing entity's assets, deferral of taxation of capital gains). The ruling will stipulate that pre-merger losses of the disappearing entity can only be compensated with the post-merger profits attributable to the business of the disappearing company.	No, however, assuming that an entire business or an independent business unit is transferred in return for shares in the buyer's share capital, a request could be filed with the tax authorities requesting application of the company merger facility (rollover of book value of seller's assets, deferral of taxation of capital gains). The ruling will stipulate that the seller's losses from before the business transfer can only be compensated with the profits made after the business transfer that are attributable to the business of the seller.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, subject to approval of the tax authorities, tax losses will remain with the surviving company but may only be set off against future profits attributable to the business of the surviving company.	Yes, only if the asset sale takes the form of a transfer of an entire business or an independent business unit in return for shares in the buyer's share capital and subject to approval of the tax authorities, tax losses will remain with the buyer but may only be set off against future profits attributable to the business of the buyer.

POLAND		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	Generally, no. However, in certain cases, a merger can be retrospective for tax purposes to the beginning of the current fiscal year, provided that certain accounting conditions are satisfied.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No, the tax losses of the disappearing company are forfeited.	Yes, however, losses remain with selling entity until dissolution.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, the losses of the surviving company remain available.	Yes.

QATAR		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No. Tax losses stay with the company that generated them. Therefore, the losses of a disappearing company will not survive the merger.	Yes, however, losses remain with selling entity until dissolution.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes. The losses of the surviving company should survive the merger.	Yes. The losses generated by the buyer prior to the transaction stay with the buyer.

RUSSIA		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale (which can be structured as a sale of separate assets or as a sale of an enterprise).
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, such accumulated tax losses should be assumed by the surviving company as the full legal successor of the disappearing company.	No.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes, generally, accumulated tax losses of the buyer entity would not be affected by a sale of an enterprise.

SAUDI ARABIA		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	Not from a tax perspective. From an accounting perspective, a merger may qualify as a pooling of interests, which would require the presentation of financial statements as though the enterprise had been combined as of the beginning of the accounting period.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No.	No.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, from a tax perspective, the accumulated tax losses of the surviving company would be allowed to be carried forward for set off against the future profits of the combined company subject to certain conditions, provided that the surviving company has not changed its ownership or control by 50% or more.	Yes, from a tax perspective, the accumulated tax losses of the surviving company would be allowed to be carried forward for set off against the future profits of the combined company subject to certain conditions, provided that the surviving company has not changed its ownership or control by 50% or more.

SOUTH AFRICA		Merger	Asset Sale
1.1	Local integration method.	Merger (since May 2011 under the South African Companies Act). Due to some remaining uncertainty on the practical implementation of some of the statutory merger provisions and potentially cumbersome procedural requirements vis-à-vis creditors and undesired tax consequences, this integration method is currently very rarely used in practice.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	No.	Yes, the accumulated losses will remain with the selling entity until it is liquidated/ deregistered.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes.

SPAIN		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	Yes, compulsory retrospective effect from an accounting perspective to the later of: (i) the date on which the merged companies became members of the same group; and (ii) the first day of the fiscal year in which the merger takes place.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, subject to limitations and conditions designed to avoid the possibility of using accumulated tax losses more than once.	Yes, however, losses remain with selling entity until dissolution.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes.

SWEDEN		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	Yes. For tax purposes, a merger may be retrospective up to the beginning of the last book year of the assumed company to the end of the surviving company's book year. This cannot exceed 18 months.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, subject to certain limitations and conditions.	Yes, however, losses remain with selling entity until dissolution.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, subject to certain limitations and conditions.	Yes.

SWITZERLAND		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	Yes, retroactive effect for up to six months is possible.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, unless merger is wholly or mainly motivated for tax reasons (ie, to access tax losses of transferring company: generally the merging companies must have been active prior to the merger and operations should continue in the surviving entity).	No.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes, unless merger is wholly or mainly motivated for tax reasons (ie, to access tax losses of transferring company: generally the merging companies must have been active prior to the merger and operations should continue in the surviving entity).	Yes.

TURKEY		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	Yes, provided certain conditions are met, the surviving company may deduct the losses from the last five years of the disappearing company.	Yes. The selling entity's losses can be used to shelter any gain derived from the asset sale.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes.

UNITED KINGDOM		Merger	Asset Sale
1.1	Local integration method.	No merger procedure available in the UK. Court-sanctioned scheme of arrangement or reconstruction rarely used.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	N/A.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	N/A.	Subject to certain conditions being met, where a company ceases to carry on its trade and another company begins to carry on this trade, the trading losses that have accrued pre-1 April 2017 should be available to set against profits from the same trade going forward. It will be possible to use losses accruing from 1 April 2017 (including trading and non-trading losses) on a transfer to set against the profits of the buyer entity, subject to certain restrictions (eg, on a change of ownership, among others). Capital losses cannot be transferred, however, subject to certain restrictions, the selling entity and buyer entity may elect to allocate a gain arising on the transferred capital assets to the selling entity such that it can offset the gain against its carried forward capital losses.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	N/A.	Yes, subject to conditions.

UKRAINE		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	No.	No.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	According to the current position of the tax authorities, accumulated tax losses of the disappearing company are not transferred to the surviving company in the course of the merger.	Yes, until the dissolution of such company. Separately, if the selling entity sells its assets, any capital gains received as a result of such sale may generally be offset against its accumulated tax losses.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	Yes.	Yes.

UNITED ARAB EMIRATES		Merger	Asset Sale
1.1	Local integration method.	Merger.	Asset sale.
1.2	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	N/A as described below.	N/A as described below.
1.3	Do accumulated tax losses of disappearing company survive the merger/asset sale?	N/A as the United Arab Emirates currently has no federal tax laws. Tax legislation does exist in individual Emirates, however, most are never applied in practice. To date, only oil, gas and petrochemical companies and branch offices of foreign banks are required to pay taxes. Where a company is subject to tax, the utilized losses of the disappearing company cannot be carried forward.	N/A as the United Arab Emirates currently has no federal tax laws. Tax legislation does exist in individual Emirates, however, most are never applied in practice. To date, only oil, gas and petrochemical companies and branch offices of foreign banks are required to pay taxes. Where a company is subject to tax, the utilized losses of the disappearing company cannot be carried forward.
1.4	Do accumulated tax losses of surviving company survive the merger/asset sale?	N/A as described above. However, if the surviving company is subject to tax, its losses can be carried forward.	N/A as described above. However, if the surviving company is subject to tax, its losses can be carried forward.

Section 6
Employment

The careful management of personnel issues is a key element of the integration of a newly acquired business. The legal and operational changes arising from a post-acquisition integration may cause uncertainty and unrest for some staff. This includes existing staff as well as staff of the newly acquired business). Employees can be resistant to change, and navigating integration matters in a clear and effective way is both vital to mitigating legal risks and crucial to the operational success of the integration.

There are many legal considerations which should influence, and be incorporated into, the human resources section of the integration plan, both in respect of what can realistically be achieved from a hiring perspective and contingencies in the event that integration plans are met with resistance from staff or their representative bodies. This is particularly true of many countries outside of the United States. Some desired changes may be legally impossible, create unacceptable risks, or may only be possible with employee consultation or consent. Others may be difficult to achieve without careful preparation, and a deep understanding of the industrial relations climate in the relevant jurisdiction.

In addition to the legal issues outlined below, operational matters need to be addressed, such as: How can key individuals be retained in the relevant jurisdictions? And how can the different cultures of the acquiring entity and the acquired entity be integrated so as to achieve stability and maintain good morale? Planning for such issues will often have a direct impact on the success of the post-acquisition integration.

Common post-acquisition measures taken by an acquiring company include merging two or more businesses following an acquisition, downsizing and/or restructuring its workforce and/or harmonizing the terms and conditions of its new and existing staff. Below are some of the key considerations which should be taken into account when considering such measures in the European Union, the Americas or Asia Pacific.

1 The European Union

As at the date of publication, the European Union has 28 Member States. Following a referendum held on 23 June 2016, the United Kingdom voted to withdraw from the European Union (colloquially known as “Brexit”) and the UK government has, with effect from 29 March 2017, invoked the formal procedure for withdrawal from the EU. This, within the treaty terms, puts the UK on a course to leave the EU by March 2019. Prime Minister Theresa May has promised to incorporate existing EU laws into UK domestic law, however much could change during the formal withdrawal negotiations.

Other European non-EU countries (for example, Switzerland and Norway) generally follow a similar approach on the following employment topics.

1.1 Post-Acquisition Mergers/Asset Transfers

Following an acquisition, the purchaser will often wish to integrate, in each local jurisdiction, the new subsidiaries into its existing subsidiaries, or all its subsidiaries into a new company. As noted in Section 2 and Section 5, this can be achieved by way of an asset transfer or, in some jurisdictions, a statutory merger procedure. Any such merger or transfer within the European Union will often trigger the "Acquired Rights Directive" ("ARD") (or, strictly, the implementing legislation passed by the relevant EU Member State pursuant to the ARD). Whether or not the ARD applies to a particular consolidation will depend upon the structure of the proposed business transfer and the applicable detailed rules, which can differ between EU Member States. Where it applies, the ARD will have significant implications for the acquiring company.

1.1.1 Automatic Transfer of Employees

If the ARD applies, all of the employees assigned, immediately before the transfer, to the business (or part of business) being transferred will automatically transfer by operation of law to the transferee entity. Where parts of subsidiaries are being transferred, care needs to be taken to identify the employees falling within scope to transfer, and to ensure that they transfer to the correct entities. Difficulties can occur with employees who have responsibilities in relation to more than one business and they should be looked at carefully. In most jurisdictions, the ARD applies only to employees (however, what constitutes an "employee" is defined by each EU Member State and can vary considerably). However, generally atypical workers such as direct contractors and agency staff will fall outside the ambit of the ARD and so businesses will need to consider separately how their transfer will be achieved.

1.1.2 Transfer of Terms, Conditions and Liabilities

Employees transferring automatically pursuant to the ARD transfer on their existing terms and conditions. All rights and liabilities in respect of their employment also transfer, as do any existing collective agreements. The ARD places strict limitations on the ability to vary terms and conditions to the employees' detriment following the transfer and, although the extent of the restrictions varies between jurisdictions, these create obstacles to harmonizing terms and conditions. If changes to terms and conditions are crucial, advice should be taken prior to the acquisition and integration to establish the feasibility of making the changes, whether any consultation will be required to effect such change, the timing for implementation and the extent of any residual risk. If the harmonization has the effect of improving terms and conditions overall, it may be that from a practical point of view it can be implemented without provoking objections from employees, notwithstanding the strict letter of the law.

In other circumstances it may be preferable to delay the merger (potentially by a number of years) and make the relevant changes while the companies are separate legal entities. Particular problems can arise in respect of certain employee benefits which are difficult or impossible to replicate following the transfer, for example, stock options, collective agreements (where the different subsidiaries recognize different unions) and restrictive covenants (which may lose their meaning, or provide inadequate protection, following the transfer).

Most rights under occupational pension schemes do not transfer automatically under the ARD. However, some pension rights do transfer, for example in relation to early retirement benefits. This will depend on the terms of the scheme. Country-specific advice should be obtained to address specific pension issues.

1.1.3 Consultation Obligations

Before an ARD transfer takes place, both the transferor and the transferee are required to inform, and under the laws of some countries consult with, representatives of any of their employees who will be "affected" by the business transfer. This requirement should be built into the planning process and will have a timing impact. Jurisdictions differ as to how long before the transfer the information and consultation process should take place, but if consultation is required, it must be long enough for genuine consultation to occur before the transfer is effected. The appropriate employee representative body will normally be the recognized union(s) or existing works council(s), if there are any. Otherwise, a body may need to be established, generally through a statutory prescribed election procedure, adding further time to the process. If the group has an established European Works Council, there may be a separate requirement to consult with that body. This will depend on the terms of the relevant agreement and the number of countries impacted. In some jurisdictions, a failure to consult can render the transfer void or give rise to a criminal offense, while in others the sanctions are limited to financial penalties and/or compensation for the employees concerned.

1.1.4 Protection Against Dismissal

Employees who are transferred pursuant to the ARD are in a protected category. They cannot be dismissed (either before or after the transfer) solely because the business has been transferred unless the dismissal is for an "economic, technical or organizational" reason which entails a change in the workforce. The way that expression has been interpreted by courts in different EU Member States varies to some degree, and the relevant local restrictions must be considered before commencing a dismissal process before or after a local integration.

1.2 Downsizing

If, following the acquisition of the new business, the acquiring company plans to downsize the workforce in the newly acquired business, for example, by closing down a plant, four key employment law issues need to be considered:

- the legal justification for the dismissals
- the consultation and other procedural requirements (both collective and individual)
- the selection criteria for redundancy which can and should be used
- termination payments

In addition, if the redundancies occur before or after a business transfer which triggers the ARD (as explained above), additional consideration must be given to the dismissal protection provisions of the local ARD legislation (see further at paragraph 1.1.4) which can increase the risk profile considerably.

1.2.1 Legal Justification

In some countries, a high standard of justification is required in order to carry out dismissals. In others, employers have considerable discretion. Country-specific advice should be sought.

1.2.2 Consultation and Other Procedural Requirements

As a result of the EU Collective Redundancies Directive, each of the EU Member States has enacted legislation which requires an employer to consult with employee representatives prior to effecting a collective redundancy. As the time periods for the consultation procedures can significantly delay local post-acquisition integrations, it is very important that the scope of any potential downsizing is identified when the key objectives of the integration are considered at the start of the planning process. The extent of the employee representatives' powers to delay the process varies from country to country.

The requirements are triggered when the number of contemplated redundancies exceeds a specified threshold over a specified period of time. The threshold differs between jurisdictions, but can be triggered in some jurisdictions when the number of contemplated redundancies is as low as two employees over a period of 30 days.

The matters to be covered in the consultation process will include: the possibility of avoiding collective redundancies or reducing the number of workers affected; and ways of mitigating the consequences, for example, by recourse to accompanying social measures aimed at helping to redeploy or to re-train workers made redundant.

The consultation must begin in good time prior to the redundancies taking effect. Certain jurisdictions lay down specific timeframes, which can be three months or more depending on the numbers of impacted employees. In some countries, this may require negotiation of a social plan. The rules in the specific jurisdiction should be checked. In addition, the employer has an obligation to provide certain information to the employee representatives, such as the numbers and categories of workers involved and the proposed selection criteria. The employer must also notify "the competent public authority."

Generally, the appropriate body to consult with (as with consultation in relation to ARD business transfers described above) will be the recognized union(s) or the existing works council(s), if there are any in respect of the affected employees. Otherwise, arrangements may need to be made to elect a representative body. If it is anticipated that collective consultation will be required in relation to both an ARD transfer and a collective redundancy. Representatives can be elected with a remit to cover both processes in order to avoid duplicative election processes.

In some jurisdictions, a failure to consult can render the redundancies void; in others the sanctions are limited to financial penalties and/or compensation for the employees.

As well as collective consultation requirements, the majority of EU Member States impose additional procedural requirements on employers making redundancies, even where a single redundancy is being effected. Rules differ significantly and should be taken into account for the relevant jurisdictions. There may also be company-specific contractual requirements (in terms of process and/or severance pay entitlements in the event of redundancy) which the acquiring company inherits from the transferring company.

1.2.3 Selection Criteria

Many EU Member States have rules about what type of selection criteria an employer may reasonably apply when selecting candidates for redundancy. Some jurisdictions, such as the United Kingdom, give considerable scope to the employer, others are very formulaic and will strictly apply, for example, a "last in, first out" rule. A number of jurisdictions require employers to take social factors into account, such as whether the employee is the sole earner and whether he/she has children or other dependents, or protect certain categories of employees from dismissal, for example, works council members.

1.2.4 Severance Payments

Most EU Member States require employers to make severance payments to employees who are dismissed by reason of redundancy. The formulae for calculating the level of payments vary significantly. In addition, most employees will have the right to a minimum period of notice of termination of their employment, either under their employment contracts or under local legislation. Again, there may also

be company-specific contractual severance pay entitlements which the acquiring company inherits from the transferring company.

1.3 Harmonization of Terms and Conditions

Following an acquisition, an employer will often wish to harmonize the terms and conditions of its new employees with those of its existing employees, for commercial and efficiency reasons and to integrate the new employees into the established working culture of the acquiring organization. However, employees in EU Member States are afforded significant protection of their contractual rights which limits the extent to which any employer can impose variations to their terms and conditions in connection with a business transfer which triggers the ARD (as explained in paragraph 1.1). Generally, the consent of the employees will be needed to achieve the variation. Otherwise, the employees will frequently have the right to claim breach of contract and/or constructive dismissal/discharge (and enforce the local employment protection legislation against the employer). Strategies for the implementation of such changes should be developed by the employer in the context of the local legislation. Again, forward planning is a crucial part of the process, as such strategies can sometimes involve effecting theoretical collective redundancies (which will trigger the collective consultation requirements described above) and/or giving the employees such notice of the variations as they would be entitled to if their employment was being terminated.

In jurisdictions where the employer has recognized a union or works council, harmonization may require consultation, or even agreement, with the relevant employee representatives, which can result in protracted negotiations.

The employees' protection is even greater when the harmonization takes place in connection with a business transfer which triggers the ARD (as explained in paragraph 1.1). In some jurisdictions, their terms and conditions simply cannot be changed for the worse, even if the employees give their consent, if the change is related to the business transfer (which it often will be in the context of harmonization). Even if consent is, ostensibly, obtained, some jurisdictions such as the UK allow employees to challenge the variation and insist that more favorable terms that applied immediately before the transfer continue to apply. In other jurisdictions there is a specified period of protection which needs to expire before changes are made. Again, appropriate strategies need to be developed in the context of the relevant local legislation. It may sometimes be advisable for the acquiring company not to merge the relevant businesses, but to retain the entities purchased, thereby preventing the complications which arise from the ARD.

1.4 Restructuring/Relocating the Workforce

Restructuring the workforce can involve any or all of the measures described in the preceding paragraphs.

The restructuring of the functions within a business will often be treated as resulting in redundancies under the legislation of EU Member States. While overall, the number of employees required by an employer may remain the same, or even increase, the fact that the specific job for which an employee was engaged is eliminated will be sufficient to constitute a redundancy. The employer would, therefore, need to follow the appropriate redundancy procedures for the relevant jurisdiction (both individual and collective procedures where necessary).

Similarly, relocations can constitute redundancies in EU Member States where the relocation is out of the immediate area of the existing location of employment, triggering the obligations described in paragraph 1.2. Even where an employer seemingly has a contractual right to relocate, local legislation may place limits on the exercise of that right, to the extent that certain relocations may need consultation or even consent. Again, in jurisdictions where there are recognized unions or established works councils, an employer will often need to consult or agree proposed relocations with the union/works council.

1.5 Data Protection and Privacy

Proper consideration of data protection and privacy issues is becoming an increasingly important aspect of post-acquisition integration, where the processes, policy and approach to data privacy adopted by the newly acquired business may differ considerably from that of the employer.

Works councils, trade unions and other employee representative bodies take the protection of employee data very seriously. Providing comfort that adequate steps have been taken to safeguard employee data privacy can be an important part of a consultation process. This is particularly true of many countries in mainland Europe.

The EU General Data Protection Regulation ("GDPR") comes into force on 25 May 2018. It imposes a higher standard of data protection compliance on organizations and is accompanied with potential fines reaching up to 4% of worldwide turnover in the event of breach.

Employees in EU Member States are afforded protections in respect of their personal data, with limitations on the processing of such data without employee consent. In the integration process, the acquiring entity is likely to be the recipient of a large amount of employee data falling within the scope of data protection rules. Early regard should be had to the types of data held, the reasons for processing such data, and the territories to which personal data is (or will be) transferred.

A key deliverable under the GDPR is a data inventory demonstrating the flow of personal data. This involves keeping a detailed record of what personal data is held about which people (employees, contractors, etc.), who the data is shared with, where it is accessed around the world and which third parties support the processing of data. Following an acquisition, the employer's data map will need to be updated

to take into account the new personal data it will acquire. This will involve input from various constituencies of the employer and the newly acquired business, including IT, procurement, marketing and human resources.

Under the GDPR, a fundamental requirement is transparency. This means that the employer will have to update its data processing notice as it is likely some of the data processing activity may have changed following an acquisition. This notice explains to employees what personal data is being processed, why and how it is being processed, who is doing the data processing, who the data protection contact is, and what the employees'/workers' rights are in relation to their data.

Another key consideration is whether employee data will be transferred outside the European Economic Area ("EEA") in consequence of the integration. This point should be considered where anyone outside the EEA (for example, in the US) is able to access the employee data. There are several ways to comply, but the simplest method is to enter into agreements based on the European approved "model clauses." In some countries the transfer of personal data may require works council approval (or consultation at a minimum). Organizations will also have to ensure that contracts with third-party service providers who handle employee data contain appropriate data protection provisions.

2 The Americas

United States

In the United States, employment is governed by contract and federal, state and local laws. These laws, along with any contractual obligations (for example, employment contracts/offer letters, severance plans, policies, practices or programs, change in control agreements, etc.) will govern any post-acquisition restructuring, downsizing, and/or harmonization of the terms and conditions of employment for existing employees.

The majority of employees in the United States are employed "at will" and, consequently, changes to the identity of their legal employer (in the case of a post-acquisition merger) can normally be achieved easily through a termination and rehire of those employees. Generally, employers can also unilaterally change non-unionized employees' terms and conditions of employment for the purposes of harmonization or otherwise.

Downsizing may also be relatively straightforward, although there are a number of steps employers may need to take to ensure any layoffs are lawfully implemented depending on the number of employees involved, and whether any employees impacted by the layoffs are in a protected category (for example, by reason of their age, gender, race, religion, sexual orientation (in certain states) or the business is

unionized, which all need to be considered). However, some of the key issues which should be considered in each case are described in the following paragraphs.

2.1 Transfer of Employees to Surviving Entity

In the United States, employees transfer automatically in a merger, unless the merger results in a change of the employer for the impacted employees (as for example, in the case of a forward merger).

If the merger results in a change to the employer, then whether employment transfers automatically depends on the application of successor-in-interest rules under applicable state law.

In an asset sale, employees "transfer" through a termination and rehire (which requires a payout of the employee's final wages and any accrued entitlements by the seller, and rehire by the buyer on new terms and conditions of employment).

2.2 Notice and Consultation

Given that the majority of employees in the United States are employed "at will," there are generally no statutorily required notice and consultation obligations in connection with a change in their legal employer, harmonization of terms and conditions of employment, and/or downsizing (or otherwise). The exceptions being if WARN (see paragraph 2.3.1) is triggered or if contractually required (for example, collective bargaining agreement for union employees, etc.).

With respect to unionized businesses, the union must be notified at the time of signing, or in any event when the transaction is made public. Collective agreements should also be reviewed for any applicable notification or consultation requirements. Negotiation over the transaction is generally not required unless specified in the collective bargaining agreement. Effects bargaining would be required to the extent the transaction adversely impacts any covered employees. However, to the extent the buyer assumes the existing collective bargaining agreement, there would likely be no effects bargaining required.

2.3 Downsizing and Restructuring

As noted above, in the United States, because employment is presumed to be "at will" the termination process generally does not require notice, consultation or severance payments, unless WARN is triggered or if contractually required (for example, collective bargaining agreement for union employees, severance plans, policies, programs or practices, change in control agreements, and the like). In addition, the employer should ensure that it uses valid and objective selection criteria in making termination decisions in order to avoid potential discrimination or other claims.

2.3.1 WARN and Other Notice Requirements

The federal Worker Adjustment and Retraining Notification Act ("WARN") requires employers to provide advance notice if they employ 100 or more people and intend to dismiss at least 50 employees (or one-third of its US workforce if greater), which may include employees working overseas. Federal WARN does not generally apply upon the sale of a business provided there is no break in service. Some states also have similar laws, but the thresholds are often lower and there may not be the same exceptions as under federal WARN.

Besides applying to downsizing situations, WARN can apply in other restructuring scenarios. For example, if the relevant thresholds are met, a reduction in individual employees' work hours of more than 50% during each month of any six-month period can fall within its scope.

There are other notification requirements which may arise under state or federal law in the event of dismissal, such as the obligation to notify employees of their rights to obtain unemployment insurance benefits or to purchase health insurance under Consolidated Omnibus Budget Reconciliation Act of 1985.

2.3.2 Contractual Rights

Although the majority of employees in the United States are employed "at will," some employees will have certain contractual rights. Those contractual rights need to be considered in the context of the proposed integration process. Some employees (particularly officers) will have contracts of employment which give them the right to a specified period of notice and/or a severance payment in the event of a termination, including "transfer" occurring through a termination and rehire. The contract may also contain a change of control clause requiring payments to be made in the event of an acquisition or restructuring.

If the employer has a collective bargaining agreement with any trade union relating to the affected employees, the collective agreement is likely to have an impact on any proposed restructuring. Collective agreements may also include provisions governing redundancy selection criteria, notice and severance. In addition, if its workforce is unionized, the employer should ensure that its actions are consistent with the National Labor Relations Act.

2.4 Harmonization of Terms and Conditions

Since employees in the United States are generally employed "at will," employers may impose new terms and conditions on employees, provided that they do not do so in violation of any applicable federal, state, or local laws (for example, governing discrimination or harassment, wages or working hours, collective bargaining agreements and the like).

2.5 Data Protection and Privacy

Although the US does not have a comprehensive federal data privacy law, companies in the US are subject to various data privacy requirements at the federal and/or state level. Some privacy laws focus on particular industries, such as healthcare, financial services and telecommunications, while other privacy laws focus on particular activities, such as consumer reporting and background checks. These could cover employee data in somewhat unexpected ways (for instance, where employees are also consumers of financial products or participate in health plans offered by the employer). US laws also focus on particular data types, such as Social Security numbers, bank account numbers, credit card numbers and health information. In addition, a growing number of states have enacted laws requiring entities that possess certain categories of information, which could include employee information, to implement various data security measures and comply with various obligations in the event of a data breach. Employers should also ensure that they have considered circumstances where it may be necessary to define and negate any expectation of employee privacy, and that they have done so through policy.

Unlike the EU, there is no specific prohibition on the transfer of employee personal data, although certain types of data transfers may require employee notice and/or consent. In addition, contractual protections for data transfers are recommended, as these could provide for a commercially negotiated level of indemnification in respect of damages arising out of data breach or loss. This could be a useful tool in the right circumstances, given that class action enforcement is more common in the US than elsewhere. Moreover, companies that are certified under the US/EU Privacy Shield Framework must adhere to the relevant guidelines for transfer under that scheme (with respect to data originating in the EU) or risk direct enforcement, including financial penalties, by the Federal Trade Commission or the Department of Transportation, as applicable.

Finally, an increasing number of US states have enacted laws requiring entities that possess certain categories of information, which could include employee information, to implement various data security measures and comply with various obligations in the event of a data breach.

Canada

In Canada, employers are either provincially or federally regulated, depending on the nature of their business. The majority of employees are employed by provincially regulated employers. Federal employers comprise employers in defined industries such as telecommunications, nuclear energy, shipping, banking and other industries considered to be of national interest. There are three sources of law applicable to provincial or federal employers: statutory (each jurisdiction has its own employment statutes), common law (except in the province of Quebec which is based on a Civil Code), and employment contracts. This legal framework will govern any post-

acquisition integration actions undertaken by the acquiring company. Below is a discussion of the main issues which should be considered in the context of such integrations in Canada, but the specific rules may differ depending on individual circumstances.

2.6 Transfer of Employees to Surviving Entity

As in the US, Canadian law (other than in Quebec) does not provide for the automatic transfer of employees upon the transfer of the assets of a business. The transfer of employees would need to be achieved by way of a termination by the existing employing entity coupled with a simultaneous hiring by the surviving entity. Unlike in the US, however, all employees have the right to notice of termination and the employer must give the appropriate notice or make a payment in lieu of notice if the employee does not agree to the transfer. Where the employee does accept the transfer, provincial laws generally provide that continuity of employment applies in relation to certain statutory rights, such as vacation entitlement, maternity leave and severance pay. In contrast, Quebec does provide for the automatic transfer of employees where there is a transfer of a distinct business or enterprise.

The situation is different in respect of unionized businesses, where in all provinces an existing collective agreement will be binding on the acquiring company following the transfer of all or part of a business. The union will also retain its bargaining rights and the acquiring company cannot vary the terms of employment without the union's consent.

2.7 Notice and Consultation

There is no statutory obligation to notify or consult with employees or their unions about the transfer of a business. However, the relevant employment contracts and collective agreements should be checked for contractual requirements.

2.8 Downsizing and Restructuring

As stated above, employees in Canada have the right to receive notice of termination where their employment is terminated. In addition, employees are entitled to notice of termination where a significant change is made to the terms and conditions of their employment and such change amounts to a constructive dismissal. In either case, the employee is obligated to mitigate his or her damages flowing from the dismissal.

Specific requirements for statutory notice may apply where 50 employees are dismissed within a short timeframe, commonly referred to as a mass termination. The applicable employment or labor standards statute should be reviewed to determine if the mass termination provisions apply. In Ontario, for example, statutory notice requirements are 8 weeks for 50 to 199 employees, 12 weeks for

200 to 499 employees, and 16 weeks for 500 or more employees. In addition, the statutory notice period for a mass termination in Ontario cannot begin until the Ministry of Labour receives a disclosure statement outlining, among other things, the economic factors responsible for the pending terminations; any alternatives to termination implemented or discussed with employees or their agent; and any proposed adjustment measures to aid the affected employees.

Collective agreements should also be reviewed for any applicable consultation requirements.

As in the US, the employer should use valid and objective selection criteria in making termination and rehiring decisions. Failing to do so can expose the employer to discrimination claims based on the prohibited grounds in applicable human rights legislation. If, for example, the employer intentionally excludes all employees on maternity leave from the group of employees to be rehired, this action can be the subject of a claim of improper discrimination on the basis of sex and family status.

2.9 Harmonization of Terms and Conditions

Since employees in Canada are not employed "at will," employers are unable to impose new terms and conditions on employees without risking a claim by employees that they have been constructively dismissed (creating liability for notice of termination or payment in lieu as described above). Strategies for the implementation of any changes to the terms and conditions of employment of affected employees should therefore be developed well in advance of such changes being made and appropriate risk assessments should also be conducted.

2.10 Data Protection and Privacy

The Personal Information Protection and Electronic Documents Act ("PIPEDA") generally governs the collection, use, and disclosure of personal information by private sector organizations in all Canadian provinces except for Alberta, British Columbia and Quebec (since these provinces have enacted private sector privacy legislation that has been deemed substantially similar to PIPEDA).

Personal information is generally defined under PIPEDA as all personally identifiable information about an identifiable individual. Personal information generally does not include the name, title or business address or telephone number of an employee of an organization. Note also that employment is a matter of provincial jurisdiction under Canada's Constitution and for this reason provincially regulated employers are not subject to PIPEDA with respect to information about their own employees.

As a result of recent amendments to PIPEDA, organizations are now expressly permitted to use and disclose individuals' personal information without their knowledge or consent where the personal information is necessary to determine whether to proceed with or complete a business transaction, and certain measures

are taken to protect the information. If the transaction is not completed, all personal information must be returned or destroyed by the recipient. If the transaction is completed, the recipient may continue to use the personal information as long as certain security measures are taken, the personal information is necessary for carrying on the activity that was the object of the transaction, and the individuals are notified of the completion of the transaction and the disclosure of their personal information within a reasonable amount of time afterwards. This exception to the general consent requirement does not apply where the purpose of the transaction is to buy, sell, or lease personal information.

In addition to the statutory protections for personal information, common law recognizes a right to personal privacy, more specifically enforced as a "tort of intrusion upon seclusion." In a recent decision, the Ontario Court of Appeal held that the following elements are required to establish a successful claim:

- the conduct must be intentional or reckless
- there must be an "invasion" without lawful jurisdiction of a person's private affairs or concerns
- a reasonable person would consider the event as highly offensive causing anguish, humiliation or distress

The Court thereby confirmed the status of an intentional breach of privacy as an actionable claim that may lead to a damage award, in addition to any other damages, if substantiated by the evidence presented. Organizations should therefore carefully monitor and address the protection of employee privacy in any collection, use or distribution of personal information by the organization in the course of post-acquisition integration actions.

Latin America

2.11 Transfer of Employees to Surviving Entity

In most Latin American jurisdictions, employees transfer automatically in a merger. This is the case, for instance, in Argentina, Brazil, Chile, Colombia and Venezuela (though in Venezuela the employees have the right to object to the transfer if they consider it harmful to their interests). Typically, employees receive a merger notification letter or employer substitution notice to confirm their transfer to the surviving entity. Notices in some cases must also be given to several other persons or entities (for example, the competent Labor Office, the Social Security Administration, etc.). In Mexico, the transfer of employees will depend on the specifics of the merger.

In an asset sale, how employees transfer depends on the jurisdiction where the employee is located. Generally speaking, in most Latin American jurisdictions, in an asset sale, employees transfer either through employer substitution or (where

permissible) termination and rehire. In Mexico, for instance, the employer can transfer employees through employer substitution (which would require terms and conditions of employment to remain unchanged) or through termination and rehire (which would require a payout of any employee rights in connection with the termination, but would permit engagement on new terms and conditions of employment). Similar rules apply in Brazil, where employees can be transferred in an asset deal if the assets sold encompass a business. All terms and conditions of employment must be maintained. Benefits can change but the economic value must be maintained. In Chile, the employees will transfer automatically without the consent of the employees, the labor authority, the union or any other institution.

In Argentina, employees can transfer in an asset sale only with employee consent. No consent is required for the transfer of employees in a share sale, but harmonization of salaries and other compensation is required. This cannot be achieved by terminating employees and rehiring them the next day, as this may be viewed as a fraudulent maneuver. The employer must therefore either increase levels of salaries/compensation or dismiss the employees and hire unrelated new employees. In either case, there is no need for consultation with unions and/or works councils, and no need to serve prior notice on employees to be transferred.

2.12 Notice and Consultation

In most Latin American jurisdictions, corporate restructuring does not trigger any statutory notice or consultation obligations (unless the restructuring involves downsizing or reducing existing benefits or conditions, or employees are transferred, in which case certain notice and/or consultation requirements apply). That said, in various Latin American jurisdictions, while there is generally no concept of works councils like in the EU, employers are often subject to industry-wide or regional labor unions, and the post-acquisition integration may trigger notification or consultation obligations with the unions. For instance, in Brazil, all employees are represented by a labor union, and applicable collective agreements should be reviewed for any obligations triggered in this regard. By way of example, labor union fees have to be paid to the appropriate labor union, and various benefits are set out in collective agreements. Thus, it is important to confirm the applicable collective agreements and their impact on the post-acquisition integration.

2.13 Downsizing and Restructuring

Like in the EU, any downsizing in connection with a post-acquisition integration needs to address the following three key employment law issues:

- consultation and other procedural requirements, restrictions and prohibitions
- selection criteria
- termination payments

As to consultation procedures and procedural requirements, applicable collective bargaining agreements should be reviewed for any union consultation requirements. Also, in some jurisdictions, termination agreements or releases need to be signed off before the labor authorities or unions (for example, in Argentina, Brazil or Mexico). In certain countries, collective or mass dismissals are prohibited or may be stopped by the labor authorities (for example, in Venezuela), and thus amicable negotiations with the unions or employees may be necessary to implement the personnel reduction exercise. In addition, certain employees are protected against dismissal, in which case amicable negotiations for the employees to voluntarily resign from employment may also be required. In Chile, this protection extends to pregnant women, certain union officials, and employees on sick leave.

In the Latin American jurisdictions, mandatory selection criteria are less widespread than in the EU jurisdictions, and instead, any objective criteria can be used. That said, various Latin American jurisdictions protect certain types of employees from termination. For instance, in Colombia, there are termination protections related to union membership, collective dismissal, disability, illness and maternity. In Brazil, pregnant women, union representatives, employees on sick leave, etc. all enjoy job stability. In Argentina, pregnant women or mothers, as well as recently married employees, among others, may be entitled to special severance indemnities. As indicated above, in these cases amicable exit negotiations are recommended.

As to termination payments, in most Latin American jurisdictions, terminations due to redundancy are treated as "without cause" terminations, often triggering generous notice and severance requirements. For instance, Mexican employees terminated due to redundancy are entitled to: (i) three months' salary; (ii) 20 days' salary per year of service; and (iii) a seniority premium of 12 days' salary (capped at twice the minimum wage) per year of service. Brazilian employees terminated without cause are entitled to 50% of the funds in their severance fund account (the "FGTS"), plus a supplemental FGTS payment, among other entitlements. In Chile, terminations due to a company's restructuring or downsizing are treated as dismissals by reason of "company needs." In these cases, the employer must make a statutory severance payment (broadly, one month per year of service capped at 12 months' pay or CLF 90 (approximately USD 5,000)) and either provide the employee with 30 days' notice of termination or make a payment in lieu of notice.

Finally, if a company does not anticipate making employees redundant, but instead wants to otherwise restructure its workforce (for example, through a change in reporting structures or relocations), it must carefully analyze whether such proposed restructuring measures constitute changes to terms and conditions of employment that may not be permissible, or can be deemed as tantamount to a redundancy, thus triggering the related redundancy obligations.

2.14 Harmonization of Terms and Conditions

Harmonization of terms and conditions of employment can be a challenging topic in many of the Latin American jurisdictions, due to two conflicting concepts: (i) the requirement to transfer employees on the same terms and conditions of employment, at least if employees transfer automatically or through employer substitution in connection with a merger or in an asset sale; and (ii) the equal pay principle, requiring equal pay for work of equal value.

As to the former, in many Latin American jurisdictions, terms and conditions of employment cannot be changed to the detriment of the employee, even if the employee's consent is obtained. This is the case, for instance, in Argentina, Brazil and, in some circumstances, Mexico. In Chile, any change to the contract can be made with the written consent of the employee. Sometimes it may be possible to circumvent this requirement by transferring employees through termination and rehire (on new terms), or by paying out partial severance (for example, in exchange for a salary reduction). In Colombia, parties to the employment contract are free to agree different terms of compensation provided that legal minimums are respected.

As to the latter, many Latin American jurisdictions have equal pay for work of equal value requirements. What this can mean in connection with a post-acquisition integration is that, if one group of employees has beneficial terms (since detrimental changes cannot be made to employees' terms and conditions), all employees have to be provided with the better terms. The simple fact that some employees may have been acquired through a transaction typically does not constitute sufficient grounds for unequal pay. In Colombia, the employer will have to amend employment contracts by mutual consent and structure payments to raise some benefits and lower others in order to comply with the principle of equal pay for work of equal value.

However, there may be exceptions to the above principles, and a case-by-case review of these issues is, as in all the aspects referred to, advisable. For example, in Venezuela, labor court rulings have allowed certain changes of existing conditions to the detriment of the employee (provided applicable minimum mandatory benefits and standards are met) if the changes are justified on the grounds of a force majeure or a supervening event such as a merger.

Any benefits harmonization in Latin American jurisdictions must be carefully planned and implemented, and strategies need to be developed to mitigate risk, all to be analyzed and determined on a case-by-case basis.

2.15 Data Protection and Privacy

In general terms, data privacy in Latin American countries is generally protected by the Constitution and the laws of each relevant country. Each country has its own particularities, for example: (i) some countries have regulatory agencies dealing

directly with data protection/privacy, while others do not; and (ii) some jurisdictions have more protective or developed legislation than others.

As a general matter, employee data privacy issues must be reviewed and adequately addressed when considering post-acquisition integration issues in Latin America. Furthermore and subject to the specific characteristics of each country, access to and use of personal information generally requires prior authorization of the owner of such information.

3 Asia Pacific

3.1 Transfer of Employees to Surviving Entity

In Asia Pacific, the ability and process to transfer employees will depend on the jurisdiction of the employer. As a general rule, and unlike many countries in Europe, there is no concept of "automatic transfer" of employment in Asia Pacific. This is the case even when the old and new employers are within the same group, or when the employees are transferred as part of a larger transaction, such as the sale of a particular business unit. There are limited exceptions to this, including under Singapore law, but the exceptions will not apply in every case.

Unless one of the limited circumstances of automatic transfer applies, an employer may not force an employee to change employers without consent. Accordingly, transfer of employment in Asia Pacific is achieved through a termination and rehire process.

In some jurisdictions, such as Australia and Hong Kong, employers can avoid making certain termination payments to transferring employees if the terms of employment offered by the new owner meet a specified standard.

However, as there are strict restrictions on termination in some jurisdictions (such as Japan and Indonesia), many employers adopt a "resign and rehire" approach. This avoids having to justify the dismissals or risking later disputes.

3.2 Notice and Consultation

It is possible to terminate a transferring employee's employment by giving notice (or making payment in lieu) in almost every jurisdiction in Asia, save for the Philippines (where payment in lieu of notice is not allowed) and Indonesia (where there are strict procedures that preclude termination by notice or payment in lieu in most cases). In other jurisdictions, such as China and Japan, termination by notice is permissible but is subject to general requirements that the dismissal be justifiable in accordance with the relevant laws and procedures.

In jurisdictions where termination with notice is allowed, the minimum statutory notice period can vary from one day to eight weeks. In some jurisdictions, such as Malaysia and Singapore, the legislation applies only to specified categories of staff, and the rights of senior employees are governed by the relevant contract of employment.

Consultation requirements differ between the jurisdictions. Countries such as Australia, China, Indonesia, Taiwan and Vietnam have local regulations regarding consultation, whereas countries such as Hong Kong, Malaysia and Singapore do not. Notwithstanding local legislative requirements, as employee consent is required for the termination/rehire process, best practice dictates that employees should be consulted in relation to the transaction/transfer.

In some countries, unions and/or employee representatives must be notified or consulted prior to termination/transfer.

The level of unionization varies across Asia. Unions are much stronger in Indonesia than they are in Hong Kong and Singapore, for example. In all countries, if there is any collective bargaining agreement in place and that agreement requires union consultation before termination, the requirement will be upheld. In Australia, common-rule industrial instruments (Awards) also stipulate consultation requirements for employers and employees who fall within coverage.

3.3 Downsizing and Restructuring

The rights of employees who are laid off or made redundant vary significantly across Asia. Given the disparity in legal systems and employee rights among Asia Pacific jurisdictions, reducing one's workforce can be a significant task that should not be approached lightly. Unlike the US (where the termination process is straightforward and employment "at will" allows employers to downsize without incurring significant costs), labor laws and market practice in many Asian countries require employers to make significant payments and/or comply with strict procedural requirements when carrying out terminations.

In countries such as Japan, layoffs can be extremely problematic and employers may be required to prove "just cause" for the termination or make large payouts. In China, downsizing must meet statutory requirements to be justifiable. Restructuring in other countries such as Hong Kong and Singapore is relatively straightforward by comparison.

In a retrenchment/redundancy situation, the laws in most Asia Pacific countries specify a minimum notice of termination that must be provided to the employee (or payment in lieu if permissible). In Indonesia, issuing a termination notice can be regarded as an unlawful act, rendering the termination invalid.

Separate to the notice payment, redundant employees in countries such as Australia, China, Hong Kong, Indonesia, Philippines, Taiwan, Thailand and Vietnam are also entitled to receive a statutory redundancy payment, typically based on the employee's length of service.

Employers in many countries prefer to adopt the "voluntary redundancy" approach, meaning the employer solicits resignations from employees. This method of downsizing is particularly recommended in those jurisdictions where it is otherwise very difficult to terminate employees, including China, Indonesia and Japan, or where termination procedures are particularly cumbersome. Employers who are conducting a multi-jurisdictional exercise may therefore wish to adopt this approach throughout the region, though care should be taken to ensure the method of soliciting the resignations does not, in itself, lead to further liabilities.

3.4 Harmonization of Terms and Conditions

The new owner may wish to rationalize the terms and conditions of the "old" and the "new" employees as soon as possible.

While in Australia a new employer may become bound by an automatically transferring collective bargaining agreement, in most Asian countries there is no legislation which protects employees' terms and conditions automatically (as in the EU).

Harmonization of employees' terms post-transfer will require a variation of the employment contract for the employees affected and, hence, each employee's consent. If an employee does not consent and the employer implements a salary cut (for example), the affected employees could claim damages for breach of contract. They will, as a minimum, be entitled to the difference between their old salary and the new. In some jurisdictions, such as Australia, Hong Kong and Singapore, affected employees could claim that they have been constructively dismissed as a consequence of a unilateral variation of their employment terms.

3.5 Data Protection and Privacy

There is no single regime which the countries of the Asia Pacific region are required to implement. Each jurisdiction has developed its own set of data protection laws and practices, the composition and strength of which vary significantly. This variation exists despite the development in 2005 of the APEC Privacy Framework, which has not been adopted by all APEC member countries.

Organizations doing business in the region must carefully consider, on a case by case basis, the data protection obligations to which they will be subject. The following is therefore not intended to be a comprehensive overview but seeks instead to briefly demonstrate the diverse approaches taken by countries across the region.

South Korea's privacy laws are similar in structure to those of the European Union

and are arguably the most stringent in Asia Pacific. Apart from a small number of limited exemptions, personal information can only be collected and processed with the prior consent of the relevant individual. Additional consents are required from the data subject where personal information is disclosed to a third party as part of a business transfer. Data subjects also have extensive rights under South Korean law, including the right to require that a processor stop further processing of the subject's personal information.

In Australia, a business seeking to disclose personal information as part of an asset sale must ensure that the disclosure relates to the reason the information was collected and is within the reasonable expectations of the individuals concerned, or that the business has the prior consent of the relevant individuals for their information to be disclosed as part of a business sale. These requirements need not be met if the business transfer results in the personal information being kept within the business (for example through a share sale). In New Zealand, a vendor is permitted to disclose personal customer information for due diligence purposes and to the eventual purchaser when the business is being sold as a going concern.

Japan prohibits the transfer of personal data to a third party without the data subject's prior consent. However, where the information is disclosed to a surviving or newly established company following a merger or sale of a business, the surviving or newly established company receiving personal data is not considered a "third party." In Hong Kong, data cannot be transferred to third parties (including affiliates) for the purpose of a business transfer unless the data subject was informed on or before the date of collection that his or her personal data may be transferred for such purpose and of the classes of persons to whom the data may be transferred. Singaporean law requires that an entity obtain an individual's deemed or express consent to transfer information to third parties (including affiliates).

Other countries in the region have less regulated privacy practices. The Philippines, for example, permits the transfer of personal information without restriction (including to overseas recipients), however, the personal information controller remains responsible for information that may have been transferred to a third party for processing, whether domestically or internationally. There is no general statutory law governing data protection and privacy in countries such as Thailand and Vietnam (although such laws are under consideration as at the date of this publication). In these jurisdictions, the requirements for a business seeking to disclose personal information as part of a business transfer may be determined by industry-specific laws, to the extent that such laws regulate the processing of personal information.

The same is generally true in respect of transactions occurring in the People's Republic of China, which is yet to implement a comprehensive data protection law. However, industry-specific regulations are increasing, and presently cover sectors such as telecommunications, banking, insurance, real estate brokerage, post and courier, and health.

Summary of Employment Issues

This summary is based on the following assumptions:

1. Each company is a 100% subsidiary of the same parent company or each other (subject to any mandatory minority interests).
2. The surviving company of the integration will be one of the original operating companies, not a newly incorporated company (save where indicated otherwise below).

Alternative methods are available in many jurisdictions and situation specific circumstances may exist. This summary should not be relied on instead of obtaining specific legal advice.

1 Americas

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Argentina	Merger.	Yes, if assets and employees transfer simultaneously, otherwise employee consent must be obtained.	No, but written notification is advisable.
	Asset sale.	Yes, if assets and employees transfer simultaneously, otherwise employee consent must be obtained.	No, but written notification is advisable.
Brazil	Merger.	Yes.	No.
	Asset sale.	No, however a transfer on the same terms and conditions is possible where the assets sold constitute a business unit or division of the selling entity.	No.
Canada	Amalgamation.	Yes, employees transfer automatically on the same terms and conditions.	Only if required under agreement with labor unions.
	Asset sale.	No, Canada is an offer/ acceptance jurisdiction. In a non-arm's length transaction, the transferee may wish to make an offer to some or all of the employees of the transferor. They may choose to do this on substantially the same terms and conditions, which would reduce the liability of the transferor; however, they are not obliged to do so. Please note that the Province of Quebec is an exception to this general rule as employment automatically transfers in that jurisdiction.	Only if required under agreements with labor unions.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Chile	Merger.	Yes.	No, but written notification is advisable.
	Asset sale.	Yes (with certain exceptions).	No, but written notification is advisable.
Colombia	Merger.	Yes.	No. Only if required under agreements with labor unions.
	Asset sale.	Yes.	No. Only if required under agreements with labor unions.
Mexico	Merger, where two or more companies merge without creating a new company.	Yes, if employees are transferred by way of employer substitution. The surviving company (substitute employer) must honor all labor conditions and benefits for the employer substitution to be valid. Failure by the surviving company to honor existing working conditions may give grounds for the employees to bring an action against the employer (in relation to honoring working conditions and/or the making of a severance payment). If the above mentioned requirement is not met (nor the requirement to transfer assets from the substituted employer to the substitute employer), it is advisable to transfer employees through termination and rehire. This requires employee consent.	No, if employees are transferred through an employer substitution as a consequence of the merger. Yes, if employees are transferred through termination and rehire.
	Asset sale.	No. The parties must expressly agree on the mechanics for the transfer of employees (eg, employer substitution or termination and rehire).	Yes, consultation is required if employees will be terminated and then rehired by the buyer entity. No consultation is required if the employees are transferred through employer substitution.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Peru	Merger.	Yes, transfer of employees is automatically triggered. A letter to the employees regarding the employer substitution is required.	Not applicable.
	Asset sale.	No, transfer is not automatically triggered. Obtaining employee consent to the transfer is required. As employee consent is required, it is advisable to transfer employees on the same terms and conditions. The transfer of employees can be achieved by: (i) termination and rehire; or (ii) entering into a tripartite agreement.	Not applicable.
United States	Merger.	Yes, unless the merger results in a change of employer for the affected employees. If the merger results in a change to the employer such as in a forward merger, then whether employment transfers automatically depends on the application of the successor-in-interest rules under applicable state law.	Generally no. Only if required under agreements with labor unions or if the transaction adversely impacts covered employees.
	Asset sale.	No.	Generally no. Only if required under agreements with labor unions or if the transaction adversely impacts covered employees.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Venezuela	Merger.	Yes.	No, unless the collective bargaining agreement expressly provides otherwise.
	Asset sale.	Yes.	No, unless the collective bargaining agreement expressly provides otherwise.

2 Asia Pacific Region

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Australia	Merger.	No merger procedure is available in Australia. Court-sanctioned scheme of arrangement rarely used.	
	Asset sale.	No. Employment is terminated and new offers must be made by the purchaser (usually on the same terms and conditions).	Prior consultation may be required due to the effect of unfair dismissal laws or due to the terms of any awards or orders of industrial tribunals, registered agreements, company policies or contracts of employment. The requirement for prior consultation is not necessarily dependent on whether unions are active in the workplace.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
China	Merger by absorption and merger by setting up a new company.	Yes.	Yes, the current employer(s) must seek the opinions of the union and the employees regarding the merger and should listen to any comments provided, though need not adhere to or follow such comments. In practice, this requirement is not strictly enforced.
	Asset sale.	No.	Yes, the selling entity must seek the opinions of the union and its employees, and although the seller should listen to any comments provided, it does not need to adhere to or follow such comments. In practice, this requirement is not strictly enforced.
Hong Kong	Merger.	Debatable due to lack of reported cases on the issue. Considering the lack of any reported case on this issue, it may be prudent to obtain each employee's consent by way of a transfer letter.	Workers' representatives/ councils do not exist in Hong Kong and there are no statutory requirements to have prior consultation.
	Asset sale.	No. Existing employment contracts must be terminated and new contracts should be entered into with the buyer.	Workers' representatives/ councils do not exist in Hong Kong and there are no statutory requirements to have prior consultation.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Indonesia	Merger.	Yes, but employees of the disappearing entity have the right to refuse to transfer to the surviving entity and to demand to be terminated in accordance with the statutory procedure.	By law, employees must be notified in writing and are entitled to demand that they be terminated and receive certain statutory benefits (which can be substantial). Where consultation is provided for under a recognized collective bargaining agreement, the employer is legally obliged to comply. In the absence of such a provision, and in the interests of maintaining good industrial relations, employers should nonetheless take steps to seek the views of the trade union.
	Asset sale.	No. Employees must either: (i) resign from the seller employer and be re-engaged by the buyer with accrued entitlements; (ii) be terminated by the seller employer, and thereafter be re-employed by the buyer; or (iii) agree to transfer with accrued entitlements based on a tripartite agreement.	Individuals' consents are required for a "transfer." Where consultation is provided for under a recognized collective bargaining agreement, the employer is legally obliged to comply. In the absence of such provision, and in the interests of maintaining good industrial relations, employers should nonetheless take steps to seek the views of the trade union.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Japan	Merger by absorption.	Yes.	No. However, if the buyer wants to change the employees' working conditions to their detriment upon integration, such a change must be reasonable unless each of the employees consents to it. In practice, sufficient prior communication should be made with the employees in this regard.
	Asset sale.	No. The employees must either: (i) consent to transfer of employment agreement; or (ii) resign from the seller employer and be rehired by the buyer.	No, but individual consent is required for transfer by consent or resignation and rehire.
Malaysia	Merger.	No merger procedure is available in Malaysia. Amalgamation under scheme of arrangement rarely used.	N/A.
	Asset sale.	No. Employees must either resign or have their employment terminated by the seller employer, and thereafter be re-employed by the buyer. However, statutory benefits will apply to Malaysian Employment Act employees (ie, lower paid employees).	Where there is provision under a recognized collective bargaining agreement regarding prior consultation, the employer is legally obliged to comply. In the absence of such a provision, employers should nonetheless take steps to seek the views of the trade union in the interests of maintaining good industrial relations.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Philippines	Merger.	Yes.	No prior consultation required, unless the employer has agreed to do so under a collective bargaining agreement or another contract.
	Asset sale.	No. Buyer entity must: (i) assume existing employment contracts or offer new contracts of employment after selling entity terminates employees and pays severance pay; and (ii) obtain individual consent.	No prior consultation required, unless the employer has agreed to do so under a collective bargaining agreement or another contract.
Singapore	Amalgamation.	Yes.	Yes, where employees are covered under the Employment Act (ie, those not employed in managerial or executive positions), the transferor must notify the affected employees and (if relevant) the trade union(s). In respect of employees not covered under the Employment Act, no prior consultation regarding the transfer is required (unless provided otherwise in a trade union agreement or similar document). However, it may be prudent to notify employees (and trade unions, if applicable) within a reasonable period of time prior to the effective date of the amalgamation.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
	Asset sale.	Yes, where covered by the Employment Act (ie, those not employed in managerial or executive positions). Otherwise, terms will not transfer automatically and employment must be terminated and the employee re-employed.	Yes, where employees are covered under the Employment Act (ie, those not employed in managerial or executive positions). In respect of employees not covered under the Employment Act, no prior consultation regarding the transfer is required (unless provided otherwise in a trade union agreement or similar document). However, it may be prudent to notify employees (and trade unions, if applicable) within a reasonable period of time prior to the effective date of the amalgamation.
Taiwan	Merger.	No. Employment can be terminated. Employees who transfer will retain their seniority and will have pension rights. Any employees accepting a transfer are not entitled to severance. Employees are deemed to accept the transfer if they do not respond within 10 days of notification.	Notification only.
	Statutory acquisition of assets under the Enterprises Merger and Acquisition Law.	No. Employment can be terminated. Employees who transfer will retain their seniority and will have pension rights. Any employees accepting a transfer are not entitled to severance. Employees are deemed to accept the transfer if they do not respond within 10 days of notification.	Notification only.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
	Asset sale that does not meet the criteria of the above statutory acquisition of assets.	No. Employment is terminated and new offers must be made by the purchaser.	No prior consultation is required, unless the employer has agreed to do so under a collective bargaining agreement or another contract. However, if the asset sale will lead to the termination of employment of a number of employees and this number exceeds the threshold stated in the Mass Redundancy Law, negotiation meetings with worker representatives or unions will be required.
Thailand	Amalgamation where two or more companies are amalgamated to create a new company.	Yes. However, if the employee specifically refuses to be transferred, then no transfer will occur.	No, unless such requirement is specified within agreements with them (eg, a collective bargaining agreement with a labor union has this consultation requirement).
	Asset sale.	No. The employee's consent is legally required. The transfer is generally effected by having all three parties (ie, the selling entity, the buyer entity and each of the employees) execute an employment transfer agreement. The employee's length of service must continue. The transferee can offer different employment terms and conditions as long as the employees accept and agree to the transfer.	No, unless such requirement is specified within agreements with them (eg, a collective bargaining agreement with a labor union has this consultation requirement). However, in practice, to facilitate obtaining the employees' consents, it is suggested that the seller and the buyer should meet with the employees in advance to explain the situation, address any concern the employees may have and encourage them to consent to the employment transfer.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Vietnam	Merger (either by absorption or by consolidation).	Yes. Employees can refuse to transfer and can terminate their employment contract. Redundancy is possible subject to statutory job loss allowance and authority notification requirements.	No, but consultation is required if there is to be any redundancy.
	Asset sale.	No. Employment is terminated and new offers must be made by the buyer entity. If the employees refuse to transfer or disagree with the terms and conditions offered by the buyer entity, they can be made redundant by the seller in accordance with the law.	No, but consultation is required if there is to be any redundancy. Specifically, if the employer makes the employees redundant, it must consult with the corporate trade union; if there is no union, then it must consult with the upper immediate-level trade union (usually the district-level trade union) to formulate a labor usage plan. The plan must specify the number of employees to be retained, re-trained, retired and terminated, as well as financial resources for the plan. Nevertheless, if the employees are represented by a corporate union, it is recommended that the employer consult that union on a voluntary basis and secure its support to facilitate the transfer.

3 Europe, Middle East and Africa

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Austria	Merger.	Yes.	Yes. Prior notification of the works council and, upon request, consultation is required. Approval is not required.
	Asset sale.	Yes.	Yes. Prior notification of the works council and, upon request, consultation is required. Approval is not required.
Azerbaijan	Merger.	No. Existing employment agreements are terminated and new employment agreements are concluded with the surviving entity. This process requires the consent of the employees.	Generally, yes.
	Asset sale.	No (as above).	Generally, yes.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Belgium	Merger.	Yes, a merger would in principle qualify as a transfer of an undertaking.	Yes, the works council or, in the absence of this, the Trade Union Delegation, or in the absence of this, the Committee for Prevention and Protection at the Work Place must be informed and consulted before the transfer decision is definitively taken (ie, before filing the merger proposal with the clerk's office of the commercial court). Consultations should be conducted effectively and in good faith, but the council/ delegation/committee cannot veto the transfer. In undertakings where neither a works council, a Trade Union Delegation nor a Committee for Prevention and Protection at the Work Place has been established, the relevant transferring employees must be informed in advance by the transferor about the transfer date, the reasons of the transfer, the legal, economic and social consequences, and any envisaged employment related measures.
	Asset sale.	Yes, to the extent that the asset transfer qualifies as a transfer of an undertaking. In order to qualify as a transfer of an undertaking or division of an undertaking, the "economic" entity must retain its identity. This implies that sufficient components are transferred to be able to continue to function as a division of a business undertaking after the transfer.	Yes, the works council or, in the absence of this, the Trade Union Delegation, or in the absence of this, the Committee for Prevention and Protection at the Work Place must be informed and consulted before the transfer decision is definitively taken. Consultations should be conducted effectively and in good faith, but the council/ delegation/committee cannot veto the transfer.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
			In undertakings where neither a works council, a Trade Union Delegation nor a Committee for Prevention and Protection at the Work Place has been established, the relevant transferring employees must be informed in advance by the transferor about the transfer date, the reasons of the transfer, the legal, economic and social consequences, and any envisaged employment related measures.
Czech Republic	Merger.	Yes.	Yes. Consultation is required with the employee representatives (trade union or works council) or directly affected employees (in the event that there are no employee representatives). However, the employee representatives/employees cannot veto the transfer.
	Asset sale.	Yes, as long as the transfer meets the test for a labor law legal succession as defined by the Labor Code.	Yes (as above).
Egypt	Merger.	Yes.	No, but prior written notification is advisable.
	Asset sale/asset sale qualifying as transfer of a going concern.	No.	No, but prior written notification is advisable.
France	Simplified merger between stock companies or limited liability companies.	Yes.	Yes. Prior notification of and consultation with any works council is required. Prior consultation of the Health and Safety Committee (CHSCT) may also be required if the project has a significant impact on employees' health and safety or working conditions.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
	Asset sale qualifying as "transfer of a going concern."	Yes.	Yes (as above). If there is a partial sale of a business (ie, when the buyer only takes over part of the activity and the employees but not the entire workforce of a specific company), prior authorization of the local labor inspector is also required for the transfer of "protected" employees (such as works council members).
Germany	Merger (*Verschmelzung*).	Yes.	No. Prior notification of the employees is required but consultation is not necessary. The works councils need to receive a (draft) merger agreement one month in advance of execution of the shareholders' resolutions approving the merger agreement.
	Asset sale.	Yes.	No. Prior notification of both employees and works councils is required, but no consultation is required.
Hungary	Merger (amalgamation).	Yes.	Prior notification is required. The opinion of the works council (if any operates at the company) must be sought, but it is not binding. If there is a trade union, then it must be informed about the employer's decision to proceed with the merger. The trade union may initiate consultation upon receipt of that information, in which case the employer must consult with the trade union, but is not required to reach an agreement with it.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
	Asset sale.	Yes (where the transfer is a labor law legal succession as defined by the Labor Code).	Prior notification is required. The opinion of the works council (if any operates at the company) must be sought, but it is not binding. If there is a trade union, then it must be informed about the employer's the decision to proceed with the sale. The trade union may initiate consultation upon receipt of that information, in which case the employer must consult with the trade union, but is not required to reach an agreement with it. If there is no union or council/representative, the employees must be consulted.
Italy	Merger.	Yes.	If the merging company has more than 15 employees, all the companies participating in the merger must send a joint notice of their intention to merge to their respective works councils, as well as to the unions that concluded the collective agreements applied by the employers affected by the transfer (even in the event that there are no works councils). The notice must be sent at least 25 days before any binding agreement (ie, the merger deed) is signed. Within seven days following receipt of the notice, the unions may request to enter into a consultation procedure but they cannot veto the transaction once the relevant waiting period has elapsed.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
	Asset sale (sale of business unit).	Yes.	If the selling entity has more than 15 employees (regardless of the number of employees that are being transferred), the seller and the buyer must notify their intention to carry out the sale of the line of business to their respective works councils, as well as to the unions that concluded the collective agreements applied by the employers affected by the transfer (even if there are no works councils). The notice must be sent at least 25 days before the execution of the business transfer agreement, or in any event prior to the signature of any binding document relating to the proposed business transfer.
Kazakhstan	Merger.	Yes. An employee may refuse to continue employment and, if so, their employment agreement would need to be terminated.	No, except where such requirement is specifically provided for in the collective agreement.
	Asset sale.	No. Employee consent is required. If desired, the acquiring entity has the right not to employ the selling entity's employees.	No, unless: (i) specifically provided for in a collective bargaining agreement; or (ii) the transaction also involves a collective redundancy.
Luxembourg	Merger.	Yes.	Consultation will be required if there are changes foreseen to employment. If there are no workers' representatives/ councils, written information should be given to the employees.
	Asset sale qualified as a "transfer of a business" (*transfert d'entreprise*).	Yes.	Yes. If there are no workers' representatives/councils, written information should be given to the employees involved.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Morocco	Merger.	Yes.	Yes. Prior notification and consultation is recommended.
	Asset sale ("sale of going concern" (*cession de fond de commerce*) or asset contribution (*apport partiel d'actif*)).		Yes. Prior notification and consultation is recommended.
Netherlands	Legal merger.	Yes.	Yes, except in certain circumstances (for example, in the event of a simplified merger without any operational changes occurring).
	Asset sale.	Yes.	Yes, except in certain circumstances.
Poland	Merger.	Yes. However, an employee may terminate his/her employment agreement on seven days' notice within two months from the date of merger.	Yes. Prior notification and consultation is required. If there are no trade unions or works councils, the existing and new employer must notify employees in writing within a statutory time limit.
	Asset sale.	Yes, provided it is a transfer of a business as a going concern. However, an employee may terminate his/ her employment agreement on seven days' notice within two months from the date of transfer.	Yes (as above).
Qatar	Merger.	Yes, unless the merger results in a change of employer for the affected employees.	There are currently no labor unions in Qatar.
	Asset sale.	No.	There are currently no labor unions in Qatar.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Russia	Merger.	Yes, unless an employee refuses to continue employment by operation of the merger, all employment rights and obligations are transferred from the current employer to the surviving company. However, employees should be notified of the merger to enable them to refuse to continue work because of the merger (this right is provided by the Russian Labor Code). If an employee refuses to continue employment, their employment must be terminated under specific statutory grounds without any severance compensation.	No, unless such a requirement is specifically provided for in the collective bargaining agreement. If the merger entails staff redundancy, two months' written notice must be given to each employee being made redundant, as well as to the primary trade union (if any) and the local state employment authorities (in case of mass dismissal, the primary trade union and employment authorities must be notified three months in advance).
	Asset sale (sale of separate assets or sale of an enterprise).	No. An asset sale does not entail automatic transfer of employees by operation of law. Transfer of employees may be formalized only by termination and rehire and, therefore, requires the employees' consent. If an employee objects and gives no consent to the transfer to the acquiring company, he/she remains employed by the selling entity and may be further terminated in compliance with Russian labor legislation. If desired, the acquiring entity has the right not to employ the selling entity's employees.	No, unless such a requirement is specifically provided for in the collective bargaining agreement.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Saudi Arabia	Merger.	Yes.	No.
	Asset sale.	No. Consent is needed. If desired, the acquiring entity has the right not to employ the selling entity's employees.	No.
South Africa	Merger (very rarely used in practice).	Yes.	No general consultation requirements under employment law. May be required in terms of company policy, collective agreement, employment agreement, etc. However, consultation will be required if the parties wish to agree to vary the automatic consequences under employment legislation. There are prior notification obligations under competition laws if the transaction constitutes an intermediate or large merger.
	Asset sale.	Yes, if the asset sale constitutes a transfer of a business as a going concern. If not, transfer can occur by mutual agreement between seller, buyer and employees.	No general consultation requirements under employment law. May be required in terms of company policy, collective agreement, employment agreement, etc. However, consultation will necessarily be required if the parties wish to agree to vary the automatic consequences under employment legislation. There are prior notification obligations under competition law if the transaction constitutes an intermediate or large merger.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Spain	Merger.	Yes.	Prior notification is required at the time the general meeting approving the merger is called. If this meeting is not called, notification is required 15 days before the approval of the merger. If labor measures are going to be implemented (eg, collective dismissals or substantial modification of the employment conditions), the company needs to negotiate with the employees' representatives at least 30 days before the effective date of the merger.
	Asset sale.	Yes, provided that a "standalone unit" is transferred to the buyer.	Prior notification is required at least 15 days before the effective date of the transfer. If labor measures are going to be implemented, the company needs to negotiate with the employees' representatives at least 30 days before the effective date of the asset sale.
Sweden	Merger.	Yes. However, employees in the absorbed entity may decline to transfer. If so, the employee will remain with the original employer but may be exposed to a redundancy scenario.	Yes, for both entities.
	Asset sale.	Yes. However, employees may decline to transfer. If so, the employee will remain with the original employer but may be exposed to a redundancy scenario.	Yes, for both entities.

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
Switzerland	Merger.	Yes, employment will transfer on the same terms and conditions, but the employees have (in theory) the possibility to refuse the transfer. They should therefore be informed of the merger.	Prior notification of the representatives/works council of the entities is required. If no representative or works council exists, prior notification of employees must take place.
	Asset sale.	Yes, employment will transfer on the same terms and conditions.	Yes, prior notification of the representatives/works council of the entities is required. If no representative or works council exists and measures affecting employees are contemplated then notification of employees is required.
Turkey	Merger.	Yes, provided the transferring employees do not object to the transfer of their employment to the transferee employer. An objecting employee's employment will terminate at the end of his/her notice period. Such objection, however, does not stop the merger process.	In principle, no. If, however, the employer of the transferring employees is party to a collective bargaining agreement, such agreement must be reviewed for any special regulations it might include. In any case, it is best practice to inform the relevant union before the merger.
	Asset sale.	Yes. If the asset transfer amounts to transfer of an undertaking or a part thereof, then the employees working in the transferred undertaking or its relevant part will transfer automatically to the transferee employer on the same terms and conditions of employment. Employees as well as the transferor and the transferee employers do not have the right to object to the transfer of employment.	In principle, no (as above).

Country	Local integration method — merger or asset sale.	Does employment transfer automatically on the same terms and conditions?	If workers representatives/ councils exist, is prior consultation regarding the transfer required?
United Kingdom	Merger.	No merger procedure is available in the UK. Court-sanctioned scheme of arrangement or reconstruction is rarely used.	N/A.
	Asset sale.	Yes.	Yes. Prior notification is required and if labor measures are going to be implemented, consultation is required.
Ukraine	Merger.	Yes, the employment agreement will continue (it will not be deemed "a transfer" in the sense of the Ukrainian labor laws), unless there is a staff reduction.	Prior consultation is required if there will be a reduction in staff as a result of the merger.
	Asset sale.	No, unless the transfer is a "transfer of integral property complex" and the asset sale qualifies as a change of the owner of the enterprise.	No.
United Arab Emirates	Merger.	Yes, the employees of the surviving company automatically transfer on the same terms and conditions (in fact they simply continue to be employed). The employees of the disappearing company do not automatically transfer, they must be transferred by way of a tripartite agreement between the old employer, the new employer and the employee.	No.
	Asset sale.	No. Consent and new employment contracts would be required to be entered into with employees. These contracts may stipulate that seniority shall be maintained — although there is no legal requirement to recognize previous service.	No.

Section 7
Employee Benefits/Equity Awards

The term "employee benefits" covers a wide range of benefits which may be provided to employees, such as retirement benefits, cash bonuses, car entitlements, equity awards, beneficial loans and healthcare. In certain countries, particularly the United States, retirement benefits and other so-called welfare plans (for example, medical, dental, disability insurance, life insurance, etc.) are generally provided by the employer rather than the State. In jurisdictions where the employer has the primary responsibility for providing employee benefits, due diligence and financial analysis are essential to determine the impact of the transaction on liabilities, costs and cash flow as well as the effect on employee morale. This section focuses on those benefits that are most directly affected by an acquisition and subsequent integration, ie, retirement and welfare benefits and equity awards (for example, employee stock options). A detailed analysis of the employee benefits and employee equity award issues to be considered in the planning and due diligence stages of the acquisition is outside the scope of this Handbook.

1 Employee Equity Awards

Equity awards held by employees are usually over shares in the parent company, and so will be directly affected by an acquisition of that company. To the extent that awards will remain outstanding after the acquisition, these rights may need to be altered in some way to reflect the resulting change in ownership. Awards that could be affected include employee stock options, restricted shares, restricted stock units and any other share-based awards (even if ultimately settled in cash).

The impact of the acquisition on equity awards should be considered in the structuring and planning leading up to the acquisition, as briefly commented on below. Following the acquisition, further work to ensure compliance with all applicable laws and, to the extent deemed necessary, to integrate these awards with the acquiring group's equity plans and benefit plans is required.

1.1 Planning and Due Diligence

Although equity awards should be one of the aspects considered in the structuring of an acquisition, such awards are rarely a central focus, even though they can have a significant impact on the transaction if they are widely held by employees of the target group.

As part of the pre-acquisition due diligence process, the terms on which the awards were granted and the rules of the equity plan should be considered as these may

contain provisions dealing with a change of control of the company over whose shares the awards were granted. For example, many US equity plans provide for the assumption/conversion of awards on a change in control into awards over shares of the acquiring company without employee consent. However, in the UK, a typical plan may provide for the exercise of vested options or vesting of shares prior to the acquisition being completed, with any awards that remain outstanding then lapsing following completion. A UK tax-favored or a French tax-qualified plan may permit the exchange of equity awards on a tax-neutral basis, provided certain requirements and processes are complied with. The exchange of Belgian tax qualified or Israeli trustee awards, on the other hand, may result in a loss of tax-favored treatment unless an advance ruling is sought from the tax authorities.

It should be considered whether the equity awards form part of the employee's employment terms, rather than an exceptional benefit offered by a third-party parent company. If they are an employment term, the employee may be entitled to continue to enjoy certain equity award benefits following the acquisition and the acquiring company will need to ensure that such benefits are provided.

If any awards converted to rights over the acquiring company's shares will remain outstanding following the acquisition, the acquiring company will need to have a process in place for administering these awards, especially if the terms of the awards are different from the acquiring company's existing equity awards. In addition, the company will need to ensure that any necessary tax and/or compliance filings or governmental approvals are completed for the awards in all relevant jurisdictions, given that any assumed/converted awards will be considered as "new" awards in many countries. This can be an issue especially if awards are held by employees residing in countries that are new to the acquiring company.

Depending on the structure of the transaction, the acquiring company may assume the equity plans of the target and rely on the share reserve in the assumed equity plan to make new grants to target employees. The assumed plan will likely require registration and potentially shareholder approval by its new sponsor, and the acquiring company will need to ensure that any necessary tax and/or compliance filings or governmental approvals are completed before offering equity awards under the assumed plan.

1.2 Post-Acquisition Steps

As discussed above, consideration should have been given to the treatment of equity awards prior to the acquisition taking place and various actions should already have been taken, such as the making of any necessary regulatory filings, and possibly the obtaining of consents. Depending on the jurisdictions involved in the transaction, data protection rules may prevent the acquiring company from obtaining detailed information concerning the target's outstanding equity awards until after the close of the transactions. The post-acquisition steps outlined below are mostly aimed at

supporting the pre-acquisition work which may already have been completed in affected jurisdictions, but such work may be delayed until post-close due to privacy or other considerations.

This list of post-acquisition steps is a general guide to the main issues which may need to be considered, and the focus and relevance in any particular integration depends on whether and the extent to which these issues were considered prior to completion of the acquisition.

- If existing awards were converted on completion into awards over the acquiring company's shares, the company will need to communicate this with the employees (to the extent this has not already been done) and information regarding the details of the converted awards (for example, new exercise price, number of shares subject to the award) will need to be provided to the new employees.
- If the awards are not converted, there may be a general employment obligation on the employer to provide benefits of similar value. This would involve considering whether the plans already operated by the acquiring company are sufficient for this purpose, and possibly setting up new plans for this purpose.
- A thorough review (to the extent not already done) should be undertaken of all equity-based plans operated by the new group, including local variations and standalone plans. It will be necessary to ascertain whether the documentation being used is sufficiently comprehensive to comply with the requirements of the various jurisdictions in which the plans operate (by reference to securities, tax, employment, exchange control and data protection laws) and amend where appropriate. In addition, the number of shares authorized under each equity plan should be re-evaluated in light of increased employee numbers.
- An understanding of how the acquired company structured its equity awards to accommodate local laws will be important. If the structuring differs from the acquiring company, two different procedures for complying with local rules may be necessary.
- In addition to regulatory filings and governmental approvals which may have been needed before the acquisition, further filings and approvals may be needed following completion. The availability of local exemptions should also be reviewed as the change in corporate structure and size of the local entities may impact this. For share plans operated in China, a new exchange control registration for any equity awards is necessary if a target's employees are employed by a separate subsidiary, but this may take time as it first requires a "de-registration" of the subsidiary from an existing approval structure. Employees should be informed of any filings or approvals that may delay their ability to benefit from equity awards following the close.

- The actions required for compliance with legal requirements worldwide, such as securities laws, data protection, taxation, exchange control and employment laws, should be ascertained. This should include a summary of any available exemptions or "safe harbor" provisions under securities laws, and the conditions which need to be satisfied in order to qualify for them, the various filing and reporting requirements which are needed on an ongoing basis and the entity responsible for each. The company should ensure that sufficient procedures are in place to monitor and maintain compliance and undertake necessary reporting and filings on a timely basis.
- If the awards were structured to be tax beneficial, consider whether anything can be done at this stage to retain the necessary approvals, etc. It should also be considered whether the time, costs and effort involved in maintaining such approvals is worthwhile, and whether this is consistent with how the company decides to structure its equity plans going forward. If the tax-favored treatment was lost upon the close of the acquisition, then employees should be informed so they can act prior to the completion of the transaction.
- The extent to which the equity awards are administered globally or locally should be determined. The company may also wish to consider whether the extent and complexities of the equity plans mean that the administration may need to be outsourced to a third-party provider, or whether additional people should be given this responsibility internally.
- Sufficient communication procedures need to be established between the various entities and functions, such as the stock plan administrators, human resources and payroll, to ensure that, the appropriate people are aware of the equity plans and activity within them. For example, to ensure that on an option exercise, the appropriate taxes are withheld within the appropriate timeframes, where necessary.

The discussion above focuses on equity awards such as employee stock options or restricted stock units; a similar review must be conducted for employee stock purchase plans. For example, US companies offering a global employee stock purchase plan will need to consider how to integrate employees of the acquired group into the employee stock purchase plan, including, if necessary, completing corporate formalities to bring new subsidiaries into the plan. If target employees will transfer employment from one company group to another as part of the post-acquisition integration process, that transfer will need to be considered for the purposes of employee stock purchase plan participation as it may mean employees are not eligible to continue to participate in the plan.

In addition, a change in the structure of the group may be an opportune time to reconsider the nature of equity awards offered by the company, subject to any restraints which may be imposed by employment laws.

The company may wish to have a "global" equity plan which is integrated across the group worldwide or it may prefer that awards are structured at a more regional level, according to what is appropriate for that section of employees. The extent to which regional variations are to be permitted or indeed encouraged should be considered. This may depend, for example, on whether the company wishes to amend plans to obtain tax relief or to avoid unnecessary regulatory filings. In the UK, France and Israel, share plans can be amended by way of a sub-plan so that equity awards can be granted in a tax beneficial manner.

Further, changes in tax or accounting rules might lead to the nature of the awards being provided as remuneration being reconsidered. Generally, companies seek to incentivize or reward staff by a combination of cash (by way of bonuses) and share-based plans. Share-based plans are much more common in the case of companies whose shares are listed on a stock exchange, due to the lack of marketability of shares in private companies. Nonetheless, many private companies have established equity plans and often permit senior managers to acquire shares directly.

Finally, it should be noted that restricted shares have tax disadvantages in some countries, as employees may be taxed when they first receive the shares and may be unable to claim the tax back if they forfeit the shares before they vest. As a result, some companies grant restricted stock units or "RSUs." RSUs involve a promise to transfer shares to the employee in the future if the employee remains employed during the vesting period of the award and generally do not carry voting or dividend rights. RSUs are usually only taxed if and when the shares are issued at vesting.

2 Retirement Benefits

Retirement benefits for employees may be provided by the State, the employer or the individual. Employer-provided retirement benefits are usually voluntary arrangements and are generally structured as defined contribution or defined benefit plans. In most countries, tax relief is granted to retirement arrangements that meet the specified requirements of the governing tax authorities.

Under defined contribution plans, the final benefit at retirement is not known. These plans may be funded by contributions made by the employer, by the employees or both the employer and the employees. The annual contribution may either be discretionary or a fixed predictable amount which is then allocated to the accounts of the participating employees. The ultimate retirement benefit depends on both the rate of contribution and the investment experience of the amounts contributed (in other words, the employee bears the risk of loss and enjoys the gain on investments). In contrast, defined benefit plans provide a guaranteed benefit at retirement determined by a formula that typically takes into account a specific percentage of an employee's compensation or a flat dollar amount multiplied by his/her years of service with the employer. These plans are typically non-contributory (ie, the employees do not contribute because the employer is the sole source of the

retirement fund), as in the US, but are contributory in the UK and it is the employer that bears the risk of investment loss. Hybrid arrangements are also available. Hybrid arrangements combine the account structure of a defined contribution plan with the guaranteed benefit of a defined benefit plan. Retirement plans may be unfunded or pre-funded. In the US, for example, tax-advantaged plans are required to be funded through a trust or insurance and the funding levels are a key aspect of the pre-acquisition due diligence.

In order to have a smooth post-acquisition integration, it is essential to identify the type of retirement benefit plans that will be assumed and terminated in each jurisdiction. Once the review is complete, the financial, tax, securities, legal and labor implications of maintaining, modifying or terminating the plans must be considered. For example, the company should identify which of the retirement programs are tax-advantaged. For a company whose shares are traded on a US exchange or subject to the reporting requirements of the US Securities and Exchange Commission, it is essential to determine whether the retirement plans hold company stock. The company should also assess whether it will assume funding obligations under each plan, and whether funding or other liabilities will arise if the retirement plans are modified or terminated. This is a particular issue in the UK where the pensions regulator has punitive powers to ensure that defined benefit plans are properly funded and employers cannot walk away from their liabilities. Specific legal advice should be sought where there is a defined benefit plan in the UK. Further, the company should apply its benefits philosophy when evaluating the future of the acquired plans. For example, will the company strive to impose a standardized global benefits package or do local considerations (such as being competitive in the local market) factor into the renewal process?

2.1 Post-Acquisition Steps

Following the acquisition, it is important to understand what retirement benefits apply to the acquired employees and what obligations the employer has with respect to maintaining these benefits. The specific legislative, tax, securities, labor and plan requirements will vary from jurisdiction to jurisdiction. Additionally, if the retirement plan is funded by a trust, in many countries the plan administrator will have fiduciary obligations to consider the best interests of the plan participants when making investment choices and administrative decisions. Further, in efforts to provide a streamlined process for communicating retirement benefits, electronic distribution of materials is becoming quite common. However, the use of electronic communication and enrolment must be assessed under the data privacy and electronic commerce requirements of each country to avoid an inadvertent violation.

Therefore, as part of the post-acquisition integration planning and implementation process, the acquiring company should:

- attain a proper understanding of the existing retirement arrangements
- evaluate any potential restrictions on terminating existing retirement arrangements (for example, negative tax implications, negotiated benefits, early termination penalties)
- identify the service providers for the retirement programs and decide whether to retain or replace the current vendors
- review each retirement benefit arrangement to determine whether changes need to be made and whether such changes would be permitted under local law (for example, there may be vested rights, tax qualification or labor law issues)
- assess and account for any employer funding obligations under the retirement plans
- communicate any changes sensitively and clearly with affected employees and any employee representative bodies, and consult on such changes if required under local law
- consider translation into the local language if it is mandatory or recommended to ensure employees comprehend any changes
- analyze the requirements of local data privacy laws and electronic delivery laws and institute compliance procedures
- establish a calendar of required compliance, reporting and notice obligations for each jurisdiction
- review any funding issues for retirement plans and consider whether there is a need to educate fiduciaries, develop an investment policy, and develop a list of preferred providers to provide economies of scale

3 Welfare Benefits

In many jurisdictions, welfare benefits (for example, health, disability, life insurance, etc.) are provided wholly or partially by the State (typically through social insurance contributions) and these State-provided benefits can be supplemented by the employer. In these jurisdictions, the acquiring company should assess any withholding and funding obligations with respect to such benefits. In other jurisdictions, such as the United States, an employee typically receives his or her health, life, and disability and severance benefits from the employer pursuant to an insurance contract between the employer and the benefits provider that may be subject to constraint with regard to changes. Where collective bargaining units and

works councils are involved, changes may need to be negotiated with or accepted by the employee representatives.

An acquiring company sometimes continues participation in the target group's welfare plans for a transitional period after the acquisition has closed. Such an arrangement is often put in place to allow time to review and, if necessary, establish new welfare arrangements in foreign jurisdictions. Any transitional services arrangements should be reviewed to ensure such an arrangement is permissible in all jurisdictions. For example, in some countries, while any party may provide supplemental benefits, only the employer may provide "mandatory benefits." Additionally, entering into such transitional services arrangements for welfare benefits may subject an acquiring company to increased liability with regard to its pre-existing employees. For example, in jurisdictions with equal pay legislation, the original employees may have a discrimination claim if better benefits are provided to the new employees during the transitional period.

Section 8
Compliance and Risk Management

1 Introduction

In recent years, there has been an explosion in the number and importance of "compliance areas" that senior management and legal and compliance departments within companies must take into account. The level of enforcement and penalties for non-compliance has significantly increased across areas such as antitrust/competition law, trade sanctions and anti-bribery and corruption. Non-compliance also often leads to broader and more damaging practical consequences, such as costly and time-consuming investigations, harm to relationships with regulators and third parties, limitations on business activities, and reputational damage. Risk management and compliance are therefore firmly on the radar of companies and their boards.

In practice, many violations (and subsequent fines) arise due to the acquisition of a non-compliant target. Violations of law may not always be flushed out in the due diligence process, and they may continue post-completion if the relevant conduct is not identified and corrected. Relevant warranties may not necessarily be included in the purchase agreement and, even if they are included, may not be effective and are usually limited in duration. For example, a purchaser of assets, as well as shares, of a target involved in anti-competitive conduct or trade violations can, in certain circumstances, be liable for the infringement in some jurisdictions, even if the purchaser was not itself involved.

In this section, we set out recommended steps for tackling compliance risks in a post-acquisition context, referring briefly to some of the key risk management issues in the areas of antitrust/competition, export control and trade sanctions, customs and anti-bribery and corruption laws.

2 Approach to Addressing Compliance Risks

Regulatory guidance on compliance best practice can be boiled down to five key principles:

- **Leadership** — ie, top-down commitment to compliance from all levels of management.
- **Risk assessment** — ie, a risk-based approach to identify priorities and areas of focus.
- **Standards and controls** — ie, rules and protocols to control behavior.

- **Training and communication** — ie, conveying adequate and practical guidance.
- **Monitoring, auditing and response** — ie, ongoing monitoring of the effectiveness of compliance measures themselves, coupled with adequate response mechanisms.

In applying these compliance best practice principles in a post-integration context, the following key steps should be taken as soon as possible after closing:

- **Risk assessment:** There is an increasing realization by businesses that regulatory risks can be avoided, or at least minimized, by taking proactive steps to detect key risk areas and infringements upfront (rather than developing a reactive approach to compliance issues). Without proper risk assessment, valuable resources can also be wasted in addressing areas where the exposure is of lesser magnitude or time critical. It is vital to take steps in order to assess the target's approach to compliance generally, identify key compliance risks, and flush out any infringements. The scope of such a risk assessment will typically depend on the size of the company, where it operates (on a global or local basis), and practical realities such as available time and budget. Key considerations will include the extent of the target's business in high-risk locations and sectors, the types of transactions it conducts, and the counterparties with which it engages.
- **Integration of compliance regime:** In order to put the merged entity in the best position to manage compliance risks going forward, it is important to ensure that the target is covered by an appropriate compliance program. In most cases, this is best ensured by integrating the target into the merged company's compliance regime. This may include applying the acquiring group's existing policies and procedures to the target, running training across key risk areas, implementing the acquiring group's monitoring, audit and response mechanisms, and ensuring a top-down commitment to compliance. The extent of integration required will, of course, depend on what compliance regime the target already has in place, and how closely connected the activities of the target and the risks it faces are with those of the acquiring group. Any compliance measures should be appropriately tailored to the risks faced by the target.
- **Remediation:** The risk assessment may flush out evidence of infringements or at least areas deserving of a more in-depth, targeted audit. Any audits or investigations should be conducted under legal professional privilege. If any historic or ongoing infringements are discovered as part of a risk assessment or audit, immediate steps should be taken to end the relevant conduct. The merged entity should also consider potential remedial steps, such as disclosure to the relevant authority/authorities or applying for leniency in the case of a cartel.

3 Competition/Antitrust Compliance

3.1 Introduction

In all acquisitions serious consideration should be given to the potential application of competition law, given that in many jurisdictions competition law breaches by an acquired target will be attributable to the acquirer even if at the time of the infringement the entity was not under the acquirer's ownership or control. Breaches of competition law in many jurisdictions can lead to sizeable fines, individual criminal liability, and reputational damage. Follow-on civil damages claims are extremely commonplace in some jurisdictions (eg, the US) and increasingly common in others, notably in Europe.

Potential competition law breaches on the part of a target could include the following:

- evidence of anti-competitive agreements or practices with competitors, for example, price-fixing (cartels), market sharing, bid-rigging or the exchange of competitively sensitive information
- evidence of anti-competitive restrictions placed on companies in the target's supply/distribution chain, for example (in some countries), resale price maintenance where a distributor's freedom to determine its resale prices is restricted
- abuse of a dominant position (if the target occupies a powerful position on any market), for example, "predatory" low pricing (designed to eliminate a competitor from the market); however, it is not a violation of competition law for a company to merely occupy a dominant position on a market without carrying out abusive conduct

Legal advice should also be sought if at any point in the future the merged entity is at risk of abusing a dominant position on a market.

The importance of complying with competition law has been underlined in recent years by the increasingly aggressive and wide-ranging enforcement approaches of many regulators, which are imposing rising fines and improving their detection of infringements.

Ideally, detailed competition due diligence will be conducted at the pre-acquisition stage. Particularly where this is not the case — and even where such due diligence has been carried out — as soon as possible after closing the acquirer should conduct a risk assessment of the newly acquired business and its competition compliance procedures, in order to pick up any issues that were potentially not identified at the pre-acquisition due diligence stage and with a view to understanding the existing compliance culture, identifying key risks and flushing out infringements. The target should then be integrated into the acquirer's existing competition policies,

procedures and training. Furthermore, any uncovered violations should be swiftly investigated, and consideration should be given at an early stage as to whether voluntary disclosures to the authorities are appropriate.

3.2 Risk Assessment

The first stage of a risk assessment should be to identify all areas in which there may be exposure to competition law infringements. The following factors in particular will be worth flagging as potentially exposing an acquirer to liability for infringements:

- the target employees lacking awareness and knowledge about competition law compliance
- target employees having a lot of contact with competitors, either at industry events or more generally
- target employees possessing information about competitors' prices or business plans
- overlap between customers/suppliers of the target and its competitors
- the existence of a joint venture, collaboration or other partnership agreements between the target and its competitors
- the existence of contracts with onerous terms imposed on suppliers/ distributors, for example (in some countries), resale restrictions on distributors
- agreements containing joint selling or purchasing provisions with competitors
- agreements containing requirements to share commercially sensitive confidential information with competitors
- the post-transaction entity enjoying a large share of any of the markets in which it operates (broadly speaking, an entity with a market share of less than 25% is unlikely to be at risk of breaching competition law, whereas an entity with a share of more than 40% is likely to be at far greater risk)

Once all the potential competition law risks have been identified, the next stage should be to classify and assess the seriousness of the risks. Classification may be expressed in monetary terms (quantitative) or as "high/medium/low" (qualitative). Consideration should be given to which target employees are in high risk areas, for example, those who are likely to have contact with competitors (conversely, employees in less exposed areas, such as back office functions, can likely be classified as low risk).

3.3 Integration of Compliance Regime

Following any risk assessment, it is essential that the target is integrated into the acquirer's competition law policies and procedures. In addition to tailored training, standards and monitoring, a visible management commitment to competition compliance is important in instilling a competition compliant culture.

Although any post-acquisition integration must inevitably be tailored according to the precise circumstances of the target and transaction, the following implementation steps may be useful:

- training employees in competition law (desktop training for low risk employees and more regular face-to-face training for higher risk or more exposed employees)
- integrating the target into the acquirer's existing employee code of conduct and ethics policy
- integrating the target into the acquirer's whistleblowing policy
- ensuring that target employees log all competitor contacts/notify the company if they are joining a trade association or attending events where they may have contact with competitors

Once the target has been integrated into the acquirer's existing policies and procedures, the target's compliance should be monitored on a periodic basis to ensure that standards are maintained and to minimize the ongoing risk of infringements. The frequency of such monitoring will depend to a large extent on the company's exposure to competition law risks. Some businesses review their compliance procedures and efforts on an annual basis, while others review more or less frequently than this.

3.4 Remediation

The risk assessment may uncover areas that are deserving of a more targeted, in-depth audit. In the event that a risk assessment or audit reveals any potential infringements of competition law, the acquirer should take immediate action to cease the infringing conduct (if the conduct is ongoing) and consider remedial steps. A comprehensive internal investigation should be carried out to determine the cause of the infringement and assess the acquirer's exposure. Serious consideration should be given to whether to instruct external lawyers to oversee the investigation and prepare relevant materials. This should particularly be the case where the business of the acquirer or target has an EU dimension (even where the business has EU sales but no physical EU presence) as communications between a company and its in-house lawyers are not privileged under EU competition law.

Consideration should also be given as to whether any disclosures of the activities are

required by competition regulators, or whether there would be any merit in making a voluntary disclosure in order to mitigate the risk of criminal or regulatory liability. For example, many regulators (including those in the US, EU and the UK) have leniency programs under which businesses can come forward to report their own involvement in a cartel. Such disclosure may result in the eventual financial penalty being reduced or avoided entirely, depending on the extent of the disclosure and the amount of information on the infringements already known to the authorities. However, in such cases, substantial fine reductions are only available to the cartel member that first discloses to the authorities. Therefore, any disclosure should be made as swiftly as possible to minimize the risk of a competitor being "first in." Furthermore, swift disclosure and full cooperation may also lead to fine-reductions in non-cartel infringement cases.

Appropriate disciplinary measures against employees of the business found to have been involved in the conduct should also be considered. However, if disclosures are contemplated, it is strongly recommended to discuss potential disciplinary measures with the relevant authorities beforehand, to minimize the risks of tipping off individuals to the existence of the investigation. Regulators are typically extremely sensitive about maintaining the integrity of their investigations.

4 Bribery Compliance

4.1 Introduction

When making an acquisition, it is important to ensure that the businesses or companies being acquired comply with bribery and corruption laws and that any bribery or corruption issues identified in the due diligence process are fully addressed. Under the bribery laws of some jurisdictions, where a subsidiary of a parent company engages in corrupt conduct, criminal liability may result not only for the subsidiary company but also for the parent company. Some jurisdictions such as the United States also impose "successor liability" on acquirers of businesses that have engaged in corrupt conduct in the past, even in the case of asset acquisitions. Ensuring that the companies or businesses acquired are being managed in accordance with ethical laws should be a key priority in the post-acquisition integration phase.

An acquirer should carry out a risk assessment of the newly acquired businesses from a bribery perspective and, ideally, as part of the acquisition due diligence process the target's compliance procedures should be examined. Failing this, the review should happen as soon as possible after closing. If necessary, group-wide codes of ethics or codes of conduct should be extended to cover the newly acquired business. Where corruption is uncovered, this should be fully investigated and consideration should be given as to whether any protective disclosures to enforcement authorities are required.

4.2 Risk Assessment

An important initial step to be taken following the acquisition is to carry out a risk assessment of the bribery risks faced by the companies or businesses acquired and integrate such assessment into the assessment of risks across the business of the enlarged group. Many organizations choose to devise risk matrices by grading their business lines, counterparties, business partners and joint ventures, as well as third parties or intermediaries that they use, into "low," "medium" or "high" risk. Relevant risk factors in relation to a newly acquired business would include:

- **Country risk** — the level of corruption in the country in which the newly acquired business is located, or in countries in which the newly acquired business has operations or uses intermediaries.
- **Transaction risk** — the level of risk posed by particular transactions in which the newly acquired business or company is involved in, for example, transactions which are of particularly high value, transactions linked to a public authority or transactions involving the use of intermediaries or political contributions.
- **Partnership risk** — risks posed by distributors, agents, joint ventures or other third parties with whom the newly acquired company does business but has limited control.

4.3 Integration of Compliance Regime

It will be important to ensure that anti-bribery compliance measures are applied appropriately to all companies or businesses that have joined the corporate group, as well as to other parties who act on behalf of any such companies or businesses. A parent company may ultimately be held accountable for the actions of subsidiary companies as well as agents, distributors, suppliers and other third parties that act on their behalf. When considering the scope of the compliance program required, it is important to consider which bribery laws may be applicable to the acquired business or the enlarged group as a whole as a result of the acquisition. It is important to bear in mind that laws in some jurisdictions prohibit bribery in a commercial or private sector context, as well as bribery of public officials.

4.3.1 Appointment of Senior Management Responsible for Compliance

The purchaser will need to ensure that there is senior management commitment within the newly acquired business to the group's compliance program, and that this commitment is communicated both internally and externally through a public statement of commitment. A senior manager or sub-committee of the board of a newly acquired company should be appointed with overall responsibility for implementation of the group's compliance program within the new business and reporting on the program to the board.

4.3.2 Policies and Procedures

The enlarged group should ensure that the newly acquired business has clear anti-bribery policies and procedures in place, including:

- Code of Ethics/Code of Conduct setting out prohibitions on bribery and other types of unlawful or unethical conduct.
- Compliance Manual providing information on the legal requirements imposed by the group's anti-bribery procedures and any applicable anti-corruption laws, in particular the US Foreign Corrupt Practices Act and the UK Bribery Act. Given the scope of the manual, this would provide more detailed guidance for employees than the Code of Ethics, in particular, for example, in relation to gifts and hospitality, facilitation payments, and interacting with government officials and third parties. The manual should also address political and charitable donations, in the event that any group company will make such donations.
- Escalation processes — for employees to report suspicions either to management or to confidential "whistleblowing" services (prior to implementing whistleblowing procedures, legal advice should be obtained in all relevant jurisdictions).
- Operational procedures — financial and auditing controls to prevent access to company accounts by unauthorized personnel, for example, and to detect unusual payments.
- Disciplinary procedures — breach of relevant codes of conduct should be a serious disciplinary matter.
- Training — procedures should be put in place to train relevant employees and third parties (this training should be tailored to the recipient's role).

It may be appropriate to extend group policies to cover newly acquired businesses. In other cases, it may be appropriate to retain or enhance existing procedures that already apply to the acquired business. Whether the latter approach is appropriate may depend, for example, on the nature of the business undertaken by the newly acquired company and its connection with the existing business of the acquirer's group.

4.3.3 Due Diligence and Third-Party Issues

If the newly acquired company or business uses intermediaries or other third parties, it is important to ensure that proper due diligence is carried out on those third parties in order to identify the risks associated with such relationships. It may also be appropriate to carry out due diligence on counterparties such as suppliers or customers. While counterparties who do not act on an organization's behalf will not pose such a high bribery risk as, for example, agents, involvement with

counterparties who you know or suspect engage in corrupt or other unlawful activities may give rise to money laundering as well as bribery issues. It is therefore advisable to carry out due diligence on such persons, both prior to entering into relationships with them and on an ongoing basis throughout a relationship (as circumstances may change over time). As part of that due diligence, the nature of third parties' bribery compliance measures should be examined.

For third parties who act on behalf of a newly acquired company, due diligence should be more stringent and can be tailored further in accordance with the risk categorization assigned to that third party. Third parties who act on the company's behalf should be required contractually to abide by anti-bribery laws. For higher risk third parties, you should consider including monitoring and audit rights in relation to those third parties' books and records. Breach of anti-bribery laws by the third party should give rise to a right to terminate the contract with the third party. If a third party has less stringent procedures than those required under applicable laws, you should consider requiring the third party to comply with aspects of your policies and procedures when they act on your behalf (for example, in relation to interaction with government officials, agents, or with regard to gifts and hospitality). Contractual provisions with such third parties should require the third party to undertake to comply with your policies when acting on your behalf.

4.3.4 Effective Implementation and Training

The compliance program will be effective only if it is properly implemented, with responsibility for key functions assigned to competent individuals (for example, internal audit), and if employees and other parties are properly trained and made aware of their responsibilities. Ideally, suitable management personnel at different levels of the organization should be charged with acting as compliance "champions" to assist with any cultural change towards compliance.

Training will be an important part of ensuring effective implementation. The nature of the new business's existing training programs, if any, should be evaluated.
The acquirer may then take the approach of providing high-level training for all employees (for example, through an online training tool), and providing enhanced training to senior management and higher risk third parties/intermediaries (such as those operating in higher risk jurisdictions). Records should be kept of training that is carried out (online training tools should be able to record the date on which an employee completed training and whether the employee passed any relevant tests set as part of the training). For senior managers, a member of the legal department or external adviser could record the fact that the training took place and, for high risk agents, it would be advisable to take minutes of the training session. The challenge with training is to avoid a "tick the box" approach, hence the importance of education and implementation through, for example, the use of "champions" within the organization.

4.3.5 Monitoring and Review

Existing internal controls relating, for example, to financial monitoring and auditing should be of a nature and robustness that can effectively identify irregular payments or potential weaknesses in internal controls from an anti-bribery perspective. Mechanisms should be in place for the reporting of irregularities to the board, audit committee or equivalent body.

Anti-bribery procedures should be subject to ongoing review and, where failures or difficulties are identified, these should be reported to the person with overall responsibility for the program, and up to the audit committee, board or equivalent body if appropriate. Reports on the effectiveness of policies and procedures should, in our view, be prepared at least annually (for example, as part of the internal audit).

4.4 Remediation

Where historic corrupt conduct is uncovered, the acquirer should take steps to address the misconduct. This should involve investigating the matters fully (in a way which ensures that legal privilege is protected, by ensuring that investigation reports, for example, are prepared by internal or external lawyers). Consideration should be given as to whether any disclosures of the activities are required by law enforcement or government bodies, or whether there would be any merit in making a voluntary disclosure of the historic misconduct in order to mitigate the risk of criminal or regulatory liability. Appropriate disciplinary measures against employees of the business found to have been involved in the conduct should also be considered.

5 Export Controls and Trade Sanctions

5.1 Introduction

It is important to consider, as part of a post-acquisition integration, the application of export controls and trade sanctions, in particular with a view to minimizing risk related to past or continued breaches. Violations of export control and trade sanctions legislation can attract significant criminal and civil penalties in a broad range of jurisdictions worldwide, and can cause damaging practical consequences, such as harm to relationships with banks and other key counterparties, inability to obtain export or sanctions licenses, and even the threat of the company itself being blacklisted under sanctions rules. In a share purchase, liability for past violations of export controls and trade sanctions will typically transfer with the target. Moreover, in certain jurisdictions, liabilities for past violations can also transfer with the acquisition of assets (this is the case under US law).

Broadly speaking, export controls relate to the “what” and the “what for,” ie, controls on the export of specified items (for example, military or dual-use (meaning

items which can be used in military and civilian applications) goods, software or technology), and on the export of any items that may be put to a specified sensitive end-use (for example, a military or weapon of mass destruction end-use). An export may be either a tangible or intangible transfer of such a controlled item from one jurisdiction to another. However, in certain circumstances, export control legislation can also apply to transfers within a country, for example, under US export control legislation, a deemed export may occur if a transfer is made within a country to a person of a certain nationality.

Sanctions generally relate to the "where" and the "who," ie, dealings with certain sanctioned countries (for example, an embargo on trading military or other specified items with a certain country) or dealings with certain persons (for example, a prohibition on financial or other dealings with certain designated or "blacklisted" parties). Sanctions commonly reflect international and/or national security concerns, and are typically strictly enforced by the authorities.

5.2 Risk Assessment

Pre-acquisition due diligence may not uncover all breaches of export controls and trade sanctions. Thus, upon acquisition, a thorough risk assessment is recommended, including:

- A review of the target's product portfolio, the licenses it holds, the sectors in which it operates, the countries and parties with which it does business, and any past instances of non-compliance, in order to determine risk areas from both an export controls and trade sanctions perspective.
- A comprehensive audit of the target's compliance processes and procedures in this area.

5.2.1 Export Controls

It is recommended that a risk assessment cover the following:

- A review of the target's product portfolio and screening against relevant international and national lists of controlled items. Particular caution should be exercised when dealing with military goods. Where there is doubt, clarification of whether an item is controlled may be sought from some national authorities.
- A review of the export control licenses held by the target, to determine whether appropriate licenses are held. Any licenses required should be identified and obtained as swiftly as possible, with the exports of controlled items blocked until the necessary licenses are obtained. In many jurisdictions, licenses may not transfer automatically as part of an asset deal, or licenses may contain change of control provisions triggered by a share sale.

- Consideration of the extra-territorial application of certain export control legislation; most notably, US export controls can have broad extra-territorial application, for example, US export controls can apply to US persons outside the US, and to re-exports of items of US origin and foreign origin items with more than de minimis US control (ie, exports from and to countries outside of the US).
- Consideration of the target's involvement in brokering transfers of controlled items between third countries, as a company's involvement may be subject to brokering controls.

5.2.2 Sanctions

It is recommended that a risk assessment cover the following:

- A review of countries to/from which the target transfers items, both directly and indirectly, to determine whether any sanctions restrictions may be applicable. Consideration of the extent of US nexus to the target is also important, given the breadth and aggressive enforcement of US sanctions (for example, US incorporated entities, US citizens or permanent resident alien staff, use of US origin or content items and US banks/dollars).
- A thorough screening of the target's business partners as against all relevant national and international lists of designated persons is essential, including the screening of related parties such as directors.
- Consideration of the extra-territorial application of trade restrictions, in particular US sanctions, such as US restrictions on dealings with Cuba currently apply extra-territorially to entities owned or controlled by US persons.

5.3 Integration of Compliance Regime

A thorough review of the target's compliance processes and procedures should be conducted, in order to bring these in line with those of the existing business and to ensure compliance with the relevant legislation going forward. Among other things, the following key elements to a business's compliance processes and procedures should be considered:

- Culture of compliance, with commitment from top level management down: this commitment should be impressed upon employees of the target business being acquired.
- Clear allocation of responsibility within the business for compliance with export controls and trade sanctions: the appointment of an officer responsible for compliance within the target business might be considered here.
- Clear compliance policies and procedures: these may need to be tailored to apply to the target business and the export controls and sanctions risks it faces.

- Training and raising the awareness of issues: staff transferred with the target should be appropriately trained and given clear information on existing compliance processes and procedures.
- Regular internal audits: the target business should be added to the internal audit cycle.

5.4 Remediation

In addition to conducting audits or investigations into specific risk areas or transactions under cover of legal privilege, and immediately halting any non-compliant conduct, consideration should also be given as to whether to disclose any infringements to relevant export controls or sanctions regulators. This step can have clear benefits, but must be considered carefully on a case by case basis. Swift and comprehensive disclosure may have the effect of mitigating any potential penalties for which the acquirer is liable for, and demonstrate a strong culture of compliance to the authorities. Indeed, disclosure is an increasing expectation of certain authorities. Such a course of action may also enable the acquirer to retain greater control over the process. However, any disclosure should be full and frank, with companies avoiding rushing in with incomplete or inaccurate information. Disclosure will also not be appropriate in all circumstances and to all regulators.

6 Customs Issues

6.1 Introduction

The acquisition of any business, or assets from a business, which moves products across international borders will require some consideration of the import implications of the transaction. For example, acquiring a business which imports goods into the European Union (either for direct sale to a third party or to another company within the same group) will require the purchaser to assess:

- the previous customs compliance of that business pre-acquisition
- customs treatment going forward, both from a pure compliance perspective and also from a revenue stream viewpoint

Many, although not all, of the issues discussed below relate primarily to the share acquisition of a business. Acquisition of assets by a purchaser tends to cause fewer concerns from an import perspective, simply because assets themselves do not tend to have outstanding customs liabilities or risk compliance issues going forward. However, there are other considerations which should be taken into account from an import perspective on an asset integration.

Most importantly, if the purchaser wishes to move the acquired assets across borders, this will give rise to customs implications. Movement of high-value assets may expose the purchaser to significant duty costs (as well as other expenses such as transport costs). The purchaser may therefore wish to consider the need to move the assets, or impose conditions upon the seller regarding the liabilities which arise from the asset movement.

6.2 Risk Assessment

A share acquisition of a business will broadly entail the purchaser assuming the liabilities of that business. This includes any issues arising from poor customs compliance pre-acquisition. Following the acquisition of a business which imports goods, best practice would therefore be to conduct a thorough risk assessment of the acquired business's customs records and relationships with external stakeholders (such as customs authorities, freight forwarders and customs brokers) in order to pick up issues not identified during the pre-acquisition due diligence process.

If the business has made errors in its customs declarations (for example, by incorrectly classifying goods when they are imported), this may lead to duty consequences for the business which are likely to be assumed by the purchaser on acquisition. Customs authorities can, in general, go back a number of years to reclaim unpaid duty (in the EU, Member State authorities can recover duties and penalties over a three year period), which can lead to very significant liabilities.

There are numerous advantages to performing a customs risk assessment on acquisition:

- The purchaser remains in control of the process and can ascertain liabilities, if they exist, independently of the customs authorities.
- In most jurisdictions, if duty has been overpaid, the importer will be able to claim this back from the customs authorities. As such, a customs audit not only gives peace of mind but may also lead to significant windfalls for the acquiring company.
- In many jurisdictions, an importing business which discovers errors can make voluntary disclosures to the customs authorities (see below). Again, this has a number of advantages as the importer retains some control over the process, develops a reputation as a compliant company and (perhaps most importantly) may avoid or reduce any penalties which customs authorities can impose for such violations.

6.3 Integration of Compliance Regime

Following the acquisition of a business which imports goods, and following any risk assessment, there are a number of actions which the purchaser may wish to take to ensure that the acquired business is properly integrated from a customs perspective:

- It is imperative that the newly acquired business, if it imports products which are similar to those of the purchaser, applies customs procedures in a consistent manner with the rest of the purchaser's business. As an example, if the purchaser imports bolts and the acquired business imports bolts, but the businesses classify their bolts under different headings with different tariff duty rates, customs authorities will naturally want to ensure that this different treatment is justified. If the products are very similar, this will act as a red flag to the authorities.
- The newly acquired business may have import licenses or permits which have behavioral conditions attached, and which will need to be respected by the purchaser going forward. For example, the EU's Authorised Economic Operator (AEO) program and the US's Customs-Trade Partnership Against Terrorism (C-TPAT) program, which both allow an importer to take advantage of certain import incentives as a result of the supply chain security demonstrated by the business, require the importer to maintain certain levels of security and can be lost if these levels are not respected post-acquisition. The target may also have rulings (such as binding tariff information rulings for particular products) which may remain binding post-acquisition and which will need to be complied with.
- The purchaser may wish to standardize the acquired business by incorporating it into its own customs arrangements. A particular focus, and an area in which the purchaser may be able to significantly cut costs, is the relationship between the acquired business and its agents. Putting in place arrangements with freight forwarders, customs brokers and other agents on a company-wide basis, as opposed to ad hoc arrangements as and when imports arise, allows the business to negotiate from a far stronger position, as well as defining the terms of the relationship up front. Purchasers will also want to look at issues such as the origin and valuation of particular products to assess whether there are any standard procedures which could result in a reduction of duty liabilities.

6.4 Remediation

As with risk assessments in the other compliance areas discussed earlier in this section, a customs risk assessment may flush out areas deserving of a more in-depth, targeted audit (for example errors in customs declarations). In the event that a customs risk assessment or audit uncovers any historic or ongoing examples of non-compliance, the violation should be immediately remedied to ensure compliance in future. In addition, serious consideration should be given as to whether to

voluntarily disclose the violation to the authorities. As noted above, such a course of conduct has a number of potential advantages in that the importer can retain a greater degree of control over the process, develop a reputation as a compliant company and possibly avoid or reduce any penalties for which it would otherwise be liable.

Section 9
Cross-Border Mergers in the EU

1 Corporate Aspects of Cross-Border Mergers

1.1 Background and Benefits

The cross-border merger procedure is an increasingly popular tool for transferring businesses between Member States of the European Economic Area ("EEA"), ie (as at publication), the 28 countries of the EU plus Iceland, Liechtenstein and Norway. It offers a simplified approach to cross-border integrations and, by enabling the transfer of a business on a true merger basis, is particularly effective in the area of corporate reorganizations.

The legal framework for cross-border mergers is set out in the Cross-Border Mergers Directive (2005/56/EC) (the "Directive"). It is important to bear in mind that although the Directive provides a framework within which cross-border mergers are implemented, the process for effecting a cross-border merger is not identical in each EEA country, as each country has its own regulations setting out the procedure for merging companies incorporated in that jurisdiction. This means in practice that there are local differences in process, for example, in relation to time periods for filing documents and the length of time it will take to implement the merger.

The key effect of a cross-border merger is that all assets and liabilities of a transferor (or "disappearing") company (including employees) are transferred automatically to the transferee (or "surviving") company. This automatic transfer means that counterparty consent to the movement of contracts to the transferee is not required (unless a particular contract stipulates otherwise). This may be a particularly helpful benefit where the business involves a large number of counterparties or a particularly high volume of contracts. Transferors should bear in mind, however, that it is not possible to choose which assets and liabilities are to transfer. Accordingly, any items not intended to be held by the transferee will need to be transferred elsewhere in advance of the cross-border merger.

A further effect of a cross-border merger is that any transferor companies will cease to exist without needing to be put into liquidation. Consequently, there will be no need to appoint a liquidator, or to take any other steps that would normally be required in relation to the dissolution of a company. This aspect of the process may offer the merging companies certain time and cost savings when compared to a "traditional" integration. When considering a cross-border merger to implement a dissolution, however, consideration should be given to whether a simplified dissolution procedure exists in the jurisdiction concerned. In many cases,

this procedure will be simpler and less expensive to implement than a cross-border merger, and can offer all of the same benefits. However, where the transferor company has business operations in its country of domicile prior to the merger, it is likely that steps will need to be taken to ensure that the business and all of its assets are registered and operated as a branch of the surviving company upon the effective date of the merger, and so these steps should also be considered as part of the planning process.

1.2 Types of Cross-Border Merger

Three types of merger are permitted under the Directive:

- **Merger by absorption:** one or more transferor companies, upon being dissolved without going into liquidation, transfer all their assets and liabilities to an existing transferee company in another EEA Member State in exchange for the issue to the members of the transferor company of shares or other securities representing the capital of the transferor company and, if applicable, a cash payment.
- **Merger by absorption of a wholly owned subsidiary:** a wholly owned subsidiary, on being dissolved without going into liquidation, transfers all of its assets and liabilities to its parent company in a different EEA Member State. This tends to be the simplest and most common approach as no consideration is required. In some jurisdictions, it is possible to use this simplified merger approach to implement a downstream (or "reverse" merger of a parent into its subsidiary) as well as an upstream merger (of subsidiary into parent, as described).
- **Merger by formation of a new company:** two or more transferor companies (at least two of which must be governed by the law of different EEA Member States), on being dissolved without going into liquidation, transfer all of their assets and liabilities to a newly formed special purpose company, in exchange for the issue to their members of shares or other securities representing the capital of the new company and, if applicable, a cash payment.

1.3 Application of Cross-Border Merger: Branch Structures

One of the most obvious, and perhaps most useful, applications of the cross-border merger is to transform a parent/foreign subsidiary company structure into a branch structure where a company has a business presence in a foreign jurisdiction without having a subsidiary company. Prior to the introduction of the cross-border merger by way of the Directive, the main way to achieve this structure was through implementing a series of asset transfers followed by liquidations. Unsurprisingly, given the expense and the involvement of creditors in local liquidation processes, having to effect multiple liquidations did not tend to be popular and the

introduction of the cross-border merger regime therefore provided an attractive alternative.

While asset transfers can generally be implemented more quickly than cross-border mergers, these have a number of disadvantages, including the need to potentially seek the consent to the transfer of contracts from the contract counterparties in addition to notifying them of the change via merger. This can be a time-consuming process and can also bring with it an element of risk, as counterparties may take the opportunity to object to the transfer or to try to renegotiate the terms of the relationship. The cross-border merger removes this additional step, as contractual relationships generally transfer by operation of law, so do not need to be addressed on an individual basis. The cross-border merger may also have material tax advantages over an asset transfer.

A branch structure has a number of key advantages over a parent/subsidiary structure, which fall into four main categories: operating efficiencies, management structure, tax/accounting and regulation.

- Operating efficiencies: a branch structure enables certain functions to be centralized in shared service centers or centers of excellence. Rather than having, for example, local human resources teams in each jurisdiction, a central human resources team with responsibility for the region can be created. This leads not only to cost savings, but also to a more effective business function, in that the increased transparency that this model brings promotes a more cross-border approach and wider strategy. In a similar vein, having more centralized back-office functions means that efforts (and costs) are not duplicated in each jurisdiction. Centralized functions should further mean that decisions can be made more quickly as this should cut down the need to obtain input from a disparate group of people across various different countries. Improved cash flow is another obvious advantage to a branch structure as cash can be repatriated to the head office easily, effectively and tax free.
- Management structure: a reduction in the number of legal entities means a corresponding reduction in the number of boards of directors and, in some cases, of local managers. From a compliance/governance perspective, this can significantly increase efficiency and will promote “regional thinking” and faster decision making from a management perspective. The streamlined management structure also promotes external, ie, customer, focus. In parent/subsidiary structures, local management is often focused on the results of its own legal entity, sometimes to the detriment of the regional business as a whole. This can be exacerbated where such management’s reward package is based on the performance of the local entity. By contrast, a branch structure promotes a more customer-facing, regional view, and can focus local management’s mind on regional revenue generation and profitability, rather than solely on local profitability.

- **Tax and accounting:** for groups that have significant intra-group service flows, the adoption of a branch structure can, at a stroke, eliminate a large amount of VAT compliance. From an accounting perspective, centralized accounting means that management has "real time" access to financial information for the region and is not reliant on the efficiency of local reporting flows. Where the head office entity is in a jurisdiction with an exemption for branch profits, the main tax disadvantage to a branch structure, ie, "top-up tax" in the head office jurisdiction, is eliminated.
- **Regulation:** for groups in regulated industries, the branch structure provides additional advantages. One of these is that the group has to maintain only one single pool of capital that can be accessed across the region. Another advantage is that the group can "passport" into the branch jurisdictions, thus maintaining a single regulatory relationship and aligning itself with a single set of regulatory rules, rather than having to comply with different rules in each subsidiary's jurisdiction.

1.4 Other Applications of Cross-Border Mergers

A cross-border merger can be an efficient way to effect a migration of a company from one EEA jurisdiction to another, in some cases simply to move the hub of the European operations to a more operationally relevant or commercially favorable jurisdiction or, in others, to facilitate onward migration to a non-EEA jurisdiction. This can be particularly desirable where the companies involved own subsidiaries in jurisdictions that impose gains taxation on an indirect transfer of shares (for example India). In such cases, effecting the indirect transfer by way of merger often opens up an exemption that is not available on an intra-group sale. It seems likely that the use of the cross-border merger to effect migration will further attract increasing levels of attention in the context of the UK's departure from the European Union/EEA. While at the time of writing the full legal details of the exit are unknown, groups of companies with significant UK operations may well be evaluating whether it would be beneficial to migrate away from (or into, depending on the context) a UK holding company structure and the cross-border merger mechanism could be the most efficient way to achieve the new target structure.

In addition to using the cross-border merger to move companies between countries to achieve longer term business objectives, the cross-border merger can also be an efficient tool, as compared to liquidators, in the context of legal entity rationalization projects where it is necessary to decrease the number of companies within a group, enabling multiple EEA entities to be merged and dissolved at once without going into liquidation. A cost-benefit analysis should be undertaken to determine the best method of integration which takes into consideration alternative methods of integration, such as the simplified dissolution procedure.

1.5 Procedure for Cross-Border Merger

Although the detailed requirements for cross-border mergers vary by jurisdiction, certain key steps that must be followed are set out in the Directive.

In order to obtain the necessary pre-merger certificate from the competent authority within the relevant jurisdiction, the Directive stipulates that each of the merging companies must produce common draft terms of cross-border merger including prescribed details, such as the form, name and registered office of the merging companies, and the applicable share exchange ratio. The management of each merging company must also draw up a report intended for the members of the company to cover the implications of the cross-border merger for members, creditors and employees. A report from an independent expert may also need to be commissioned to determine the appropriate share exchange ratio to be set in consideration for the merger. Once the required pre-merger documents have been prepared, a general meeting of each of the merging companies will usually need to be convened to approve the cross-border merger, after which application can be made for the pre-merger certificate.

Following the issuance of the pre-merger certificate, each merging company must, within six months, submit this certificate along with the approved common draft terms of cross-border merger to the competent authority in its jurisdiction, to enable the authority to scrutinize the legality of the cross-border merger, determine that arrangements for employee participation have been put in place, and approve completion of the merger. As part of the approval process, a date will be set upon which the cross-border merger will become effective. Upon the merger becoming effective, the commercial registry of the merged company must notify the commercial registries in each other relevant jurisdiction of the merger so that the companies that have ceased to exist can be removed from the local registers.

1.6 Timetable for Cross-Border Merger

The estimated timetable for implementing a cross-border merger is four to six months. It may be possible to implement a cross-border merger more quickly than this, for example, in Denmark or in the Netherlands (provided there are no employee participation complications) it may be possible to complete the process in two to three months. However, for overall planning purposes it is recommended to allow six to eight months. Where employee participation rights exist, it is possible that negotiations may extend the time required to around 12 months (or more).

2 Employment Aspects of Cross-Border Mergers

A particular requirement of the Directive is that any "employee participation" rights that exist prior to the cross-border merger must be protected in the merged entity, even where the merged entity is located in a jurisdiction that does not offer such rights (for example, the UK). The Directive imposes a "highest common denominator" approach, meaning that the surviving company will have to introduce participation rights which are at least as favorable as currently apply to employees (unless otherwise agreed with the employee representatives). This requirement places an additional burden on employers, over and above the need to comply with any information and consultation procedures set down in the ARD and local implementing legislation in relation to a change in employer.

As gaining approval for the merger will be conditional on settling any employee participation arrangements, and the process of negotiating and determining the details of these can be a contentious and time-consuming process, it is crucial to consider the implications of these provisions at an early stage when considering the viability of and planning a cross-border merger.

"Employee participation" is widely defined under the Directive to ensure that it captures the different forms of participation throughout the EEA. Generally, this concept could be defined as "a system which gives employees a statutory or contractual right to play a role in the management of a company." This could consist of employees having representation on the board or on a "supervisory" board of a company, allowing employees to observe board meetings and request information, but not to make decisions in respect of the company. Statutory employee participation rights exist in a number of EU Member States, including Germany, Austria, Denmark, the Netherlands and Spain, and employers and employees can also create arrangements voluntarily.

Where employee participation rights exist, the merging companies have two options: either to agree to be subject to standard rules on employee participation, setting out the minimum requirements for participation rights, without prior negotiation with the employee representatives; or to set up a Special Negotiation Body with a view to agreeing arrangements with employees. If no agreement is reached by the end of a six-month negotiating window (which can be extended to 12 months), different jurisdictions provide for different solutions to resolving this issue.

3 Tax Issues on Implementing a Cross-Border Merger

3.1 Introduction

The tax issues relevant to cross-border mergers are very similar to the issues that need to be considered in any post-acquisition integration. In particular, the three main questions to address in planning a cross-border merger are:

- can the merger be implemented without triggering taxes in the jurisdiction of both the merging and the surviving entity?
- will existing tax assets of the merging and surviving entity survive the merger?
- how can the merger implementation best be prepared for from a tax and accounting perspective?

The answers to these questions tend to depend, to a significant extent, on the nature of the entities being merged and the post-merger business structure. Cross-border mergers of holding companies, for example, tend to create different tax issues to mergers of operating companies.

In addition to the above considerations, the cross-border element of the merger often gives rise to tax issues that would not arise on a purely domestic merger. For example, the issue of merger retroactivity from a tax and accounting perspective, usually a very easy determination to make in a purely domestic context, involves a number of additional considerations in the cross-border context.

Finally, where cross-border mergers are being used as a tool to transform a parent subsidiary structure into a head office/branch structure, VAT and transfer pricing considerations will come into play, and will need to be considered at an early stage of the process.

3.2 Cross-Border Mergers: Tax Treatment of the Merger

In the absence of any relief or exemption, a cross-border merger will generally be viewed for tax purposes as a disposal of assets by the merging entity and as a disposal of shares in the merging entity by the surviving entity, often for deemed market value consideration. The effect of this is that the merger can trigger tax liabilities in both jurisdictions on any latent gains in the business assets of the merging entity or the shares in the merging entity.

Where the cross-border merger is used to create a head office/branch structure, relief from tax will usually be available in both jurisdictions. However, the availability of relief is often subject to conditions designed to ensure that the merger technique cannot be used for tax avoidance purposes and does not reduce the domestic tax base in the merging company's jurisdiction. The specific conditions vary from country to country, but generally tend to include one or more of the following requirements:

- A fairly universal requirement is that all of the assets transferred pursuant to the merger remain allocated to the branch of the surviving company in the jurisdiction of the merging company that results from the elimination of its corporate identity. As all European jurisdictions exercise taxing rights over businesses carried on by non-resident companies through a local permanent establishment, this ensures that the merged assets remain in the local tax "net" of the merging company's jurisdiction. This requirement can give rise to issues where the legal entity reorganization coincides with a supply chain restructuring where functions and/or risks are being moved between companies in the wider group.
- Some jurisdictions (for example, the UK) do not give tax relief where the merger does not have a "business purpose" or where the merger is being implemented for tax avoidance purposes.
- Some jurisdictions (for example, France) require a pre-merger ruling to be obtained from the local tax authorities for tax relief to apply. Other jurisdictions (for example, Germany) require a simple application for the carried asset values of the merged entity to be continued by the branch.

The requirement for the ongoing allocation of assets of the merging entity to the continuing branch also raises problems for assets such as IP, since these are normally allocated to the head office. To the extent that the effect of the merger is that IP assets leave the domestic tax net, a tax realization event can arise that may not benefit from an exemption regime.

Where the cross-border merger involves holding companies, the relief described above will generally be unavailable, for the simple reason that, following the merger, shares in subsidiaries formerly held by the merging company may no longer be within the merging jurisdiction's tax "net." In this scenario, however, as many European jurisdictions now have participation exemption regimes that apply to share disposals, these transactions will often be exempt from tax in practice. Care should be taken, though, to ensure that the conditions for the participation exemption apply (for example, required holding periods).

3.3 Transfer of Tax Attributes Pursuant to a Cross-Border Merger

Where the merging and/or surviving entity in a cross-border merger has tax assets in the form of carried forward losses, the impact of the merger on those tax assets should be considered early in the planning stage.

In many jurisdictions, tax losses in the surviving entity are unaffected by the merger. Issues can arise where the effect of the merger is that significant changes are made to the nature or scale of the business carried on by the surviving entity. In the UK, for example, if the merger resulted in changes to the business of the surviving entity that were significant enough to be regarded as a different "trade" to that carried

on prior to the merger, NOLs incurred prior to the merger may be restricted or even extinguished.

Where the cross-border merger results in a head office/branch structure, NOLs in the merging entity will often survive the merger and can be utilized in the future to shelter taxable profits attributable to the branch, although this is not always the case (NOLs do not survive a merger in Germany, but they do in Austria). In some jurisdictions (for example, France), it is necessary to obtain a tax ruling prior to the merger confirming this treatment. Moreover, many jurisdictions place similar restrictions on the use of NOLs to those described above in the context of the surviving company, for example, where the effect of the merger is that significant changes to the business will take place. Where the merger does not involve companies under direct common control, or the merger pre-positioning steps involve the transfer of shares in one or both of the companies involved in the merger, this can also have implications for the survival of NOLs. In Germany, a direct or indirect change of shareholding of 25% or more can result in restrictions on NOL carry forward, with full NOL cancellation possible in the case of a change of control (ie, 50% or more).

Where losses will not survive a merger (because, for example, an anti-avoidance rule applies or the losses are in a merging holding company), opportunities for cross-border loss relief claims should always be considered. Recent European case law has had the effect that a number of European jurisdictions now allow domestic companies to utilize NOLs incurred by overseas subsidiaries in certain limited circumstances. A common requirement of these rules is that the NOLs are "terminal" (ie, cannot be carried forward and utilized in the jurisdiction of residence of the company that incurred the NOLs). Where the loss-making company is disappearing in a cross-border merger, this may result in NOLs becoming "terminal," thus opening up the possibility of a cross-border claim.

In those countries where the legal validity of a merger depends on its recording in a register, its timing may be difficult to control. For this reason, the merger terms can include wording which would arrange for assets and liabilities of the merging company to be held for the account of the surviving company as from a specific date (following the date of the merger terms) chosen by the parties for financial accounting purposes. As from this date, the assets and liabilities could be shown in the books of the surviving company even if the merger was not yet legally effective, but giving parties control over when the merger takes practical effect, including when the IT systems are combined.

3.4 Retroactive Effect of Cross-Border Mergers

Retroactivity is a normal feature of domestic merger laws in most European jurisdictions. These allow mergers to be treated as having effect, for (income) tax and accounting purposes, at some earlier date (normally the beginning of the fiscal year of the merging entities) than the date on which the merger becomes legally effective. The principal benefit of this is compliance-related: only one set of financial statements needs to be prepared and one tax return filed for the year in which the merger takes place. Current filings, such as VAT and wage tax and social security withholding filings, have to be continued by the merged company until the legal effective date of the merger. The same applies to financial accounting obligations.

As most jurisdictions that have domestic merger laws have based their cross-border merger legislation on those laws, their legislation often makes provision for cross-border mergers to be retroactive for tax and/or accounting purposes. In the cross-border context, however, retroactivity can give rise to issues that do not arise in a purely domestic merger, and the decision as to whether to make a cross-border merger retroactive is often not as straightforward as the same decision in the domestic context. In a domestic merger, for example, merging the accounting results of the merging and surviving entities is relatively straightforward. This may be less easy in a cross-border merger, however, because of differences in local generally accepted accounting practice in the two jurisdictions involved. In addition, some jurisdictions (for example, the UK) do not have domestic merger statutes and so do not have established domestic practice in relation to merger retroactivity that can easily be applied in the cross-border context. Although these issues can often be overcome, consideration should be given to the cost/benefit analysis of opting for retroactivity.

3.5 Transfer Pricing Issues

Where cross-border mergers are being implemented to change a parent/subsidiary structure into a head office/branch structure, the reorganization will represent a complete change in the transfer pricing landscape for the group. Instead of ensuring that intercompany transactions are priced on an arm's length basis, the key issue following the reorganization will be to ensure that the correct amount of profit is allocated to each branch for local tax purposes. Making sure that management and finance functions fully understand the detailed implications of this change is an important and sometimes challenging part of the integration process. Transfer pricing analysis should be started early — as is generally the case with transfer pricing issues, contemporaneous documentation and support represents the most effective (and frequently legally required) means of defending the transfer pricing model going forward.

3.6 VAT Issues

The primary objective from an indirect tax perspective is to identify the VAT consequences of the merger in each jurisdiction and then to seek to mitigate or reduce any absolute, cash flow or administrative costs for the merging entity, the surviving entity and for third-party trading partners.

From a practical perspective, the key areas of focus are the following:

- A local transfer mechanism should be designed enabling VAT on the reorganization to be mitigated and, if not possible, to identify the conditions that must be met in order for the surviving entity to fully recover any VAT charged. The underlying principle is that the merged company will continue to be accountable for VAT through the legal effective date of the merger and the surviving company thereafter.
- In order to cause minimum disruption to trading, the surviving entity will need to register for VAT in all EU Member States where it will operate after the legal effective date of the merger with sufficient lead time for the business to adapt its internal accounting systems (which in turn needs to be properly prepared through prior harmonization of the respective chart of accounts), timely notify third parties of changes to the supply chain and ensure that any local applications or filing requirements for specialized VAT accounting arrangements are approved.
- In order to create minimum disruption for third parties, consider approaching the local tax authorities to investigate the possibility (where legally permissible) of transferring the merging entity's VAT registration number to the surviving entity. If accepted, this means that internal systems/documentation do not need to be amended and third-party customers/suppliers do not need to amend their systems. Attention should also be paid to inventory of the merged company where this is maintained in third countries
- If separate VAT registration is required, identify which jurisdictions allow the surviving entity to register for VAT in advance of the reorganization and those where registration is not possible until the surviving entity is "active" from a trading perspective. Where early registration is possible, although advantageous from a VAT perspective, it should be considered whether this may create a requirement to report transactions from a direct tax perspective (which would not necessarily be advantageous).
- Many jurisdictions do not permit a company to hold a local VAT number (enabling it to trade) once it has merged or ceased to operate. As a result, it is important to ensure that the merging entity recovers any input VAT it is entitled to claim in the final VAT return submitted for the pre-merger period. Although, in principle, the effect of the merger should be that the surviving

company "inherits" the VAT position of the merged entity, in practice many VAT authorities will not permit the surviving entity to recover VAT invoiced to the merging entity prior to the merger, or allow the merging entity to submit a VAT refund claim post-merger to recover this VAT. If accounts payable are not properly managed, this can result in an actual cost to the group.

- Following the merger, the surviving entity may operate, for VAT purposes, in new jurisdictions. Care should be taken to ensure that third-party costs are invoiced to the correct "establishment" for VAT purposes going forward (where they may simply have been invoiced to the head office pre-merger).

Section 10
Summary of Local Integration Methods

When one multinational company acquires another company and its international subsidiaries, a key aspect of the integration of the two multinational groups is to consolidate duplicate operating companies so that there is only one operating company in each country. The following summary of integration methods describes the simplest, most appropriate methods based on the following assumptions:

1. Each company is a 100% subsidiary of the same parent company or the other operating company (subject to any mandatory minority shareholding interests).
2. The surviving company of the integration will be one of the original operating companies, not a newly incorporated company.
3. Each company is profitable at the time of the integration.
4. The timetable for the integration relates to the period after due diligence has been completed and financial statements prepared.
5. Asset sale refers to all of the business of the dissolving company.

Alternative methods are available in many jurisdictions and this summary should not be relied on instead of obtaining specific legal advice.

Summary of Local Integration Methods

1 Americas

ARGENTINA		Merger	Asset Sale
1.1	Local integration method	Merger in accordance with Law No. 19,550 as amended.	Asset sale in accordance with Bulk Transfer Law No. 11,867 (or without following this procedure, which is not mandatory).
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Audited special merger and consolidated financial statements are required for each company. All statements must be drawn up to the same date, which must not be earlier than three months from the date of execution of the preliminary merger agreement.	None, however the business should be transferred for fair market value.
1.5	Legal Effective Date of Integration?	Date of registration with the Public Registry of Commerce.	Date of execution (unless the agreement provides otherwise).
1.6	Can merger/asset sale be retrospectively effective from <u>tax and accounting</u> perspectives? If yes, what is deadline for filing merger application?	Yes, but only from the date on which the surviving company took over and commenced the activities previously conducted by the disappearing company (the “Merger Date”) and only if the merger is fully compliant with the requirements applicable to tax-free reorganization. The deadline for filing notification of the tax-free reorganization with the Tax Authority is 180 days from the Merger Date.	Yes, but only from the date on which the buyer entity took over and commenced the activities previously conducted by the selling entity (the “Merger Date”) and only if the asset sale is fully compliant with the requirements applicable to a tax-free reorganization. The deadline for filing notification of the tax-free reorganization with the Tax Authority is 180 days from the Merger Date.

ARGENTINA		Merger	Asset Sale
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes. There are mandatory waiting periods of 15 days (which can be extended to 20 days if there is creditor opposition).	Yes, there are mandatory waiting periods if the transfer of assets is performed in accordance with Bulk Transfer Law No. 11,867.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	This varies on a case-by-case basis.	This varies on a case-by-case basis.

BRAZIL		Merger	Asset Sale
1.1	Local integration method	Merger.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Unaudited balance sheet of the merged company drawn up to a date no more than 30 days before the date of the merger. An appraisal report of the net worth of the merged company is also required.	None.
1.5	Legal Effective Date of Integration?	Date of execution.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	No. However any creditor prejudiced by the merger may request annulment of the merger in court within 60 days if the disappearing company is a corporation, or 90 days if the disappearing company is a limited liability company.	No. However any creditor prejudiced by the sale may request its annulment, if the seller is insolvent or has became insolvent as a result of the sale.

BRAZIL		Merger	Asset Sale
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	One to two months.	One to two months.

CANADA		Merger	Asset Sale
1.1	Local integration method	Amalgamation (the companies amalgamating must be in the same jurisdiction).	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	None are required; however, note that the amalgamating entities will need to meet a solvency test that is set out by the relevant corporate statute.	None, business should be transferred for fair market value.
1.5	Legal Effective Date of Integration?	Date specified on certificate of amalgamation; may not be retroactive but may be specified in advance.	Normally date of completion of asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No retrospective effect.	May have retrospective financial effect, but tax implications should be considered
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	None, however in most Canadian jurisdictions, the amalgamation requires an affirmative statement by a director or officer of the amalgamating corporations confirming solvency and that no creditors will be prejudiced as a result of the amalgamation.	None.

CANADA		Merger	Asset Sale
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Three weeks. If one company needs to be transferred and continued into the jurisdiction of the other amalgamating entity, prior to amalgamation, this could add up to four weeks to the timetable (or more if Ontario tax filings not current).	Three weeks, subject to the time it takes to assemble the information regarding the assets and liabilities to be transferred.

CHILE		Merger (1)	Non-Statutory Merger	Asset Sale
1.1	Local integration method	Merger (1): a new entity is created, both entities are dissolved. Merger (2): one of the entities is absorbed and the other survives.	Non-statutory merger: a stock corporation is dissolved when all of its shares are fully owned by a single entity for at least 10 consecutive days.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	Depends on the circumstances.	Depends on the circumstances.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Both companies must prepare an audited balance sheet.	No legal requirement for independent valuation of the assets.	None, however the business should be transferred for fair market value.
1.5	Legal Effective Date of Integration	Date of execution.	Date of execution.	Normally date of completion of the asset transfer.

CHILE		Merger (1)	Non-Statutory Merger	Asset Sale
1.6	Can merger/ asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Yes, from an accounting/financial perspective but not from a tax perspective.	No, the board of directors or the manager of the disappearing company must submit a declaration of dissolution within 30 days.	Yes, with limited effects depending on the circumstances (eg, this may only be within the same fiscal year).
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	No notice or waiting periods.	No notice or waiting periods.	No notice or waiting periods.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Three weeks.	Three weeks.	Three weeks.

COLOMBIA		Merger	Asset Sale	Bulk Asset Sale
1.1	Local integration method	Merger.	Asset sale of separate assets.	Bulk assets sale (not requiring details of individual elements making up commercial establishment).
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	No preference.	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	As a general rule, yes. However, real estate and goods subject to public registration require separate formalization and registration to be effective against third parties.	No, however, if a transfer of assets occurs and the labor contracts of employees related with the business being transferred are not terminated prior to the closing of the transaction, then an employer substitution will take place by operation of law.	The buyer entity and selling entity are jointly and severally liable for all obligations existing at time of bulk sale for a period of two months from registration of bulk sale. After this time, the seller is released from responsibility.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Audited financial statements required for both companies. Also required: ▪ projection of consolidated financial statements once merger completed ▪ description of valuation of assets and liabilities of the companies ▪ explanation of the share exchange method	The price of the assets to be transferred cannot be below 75% of fair market value. In the case of shares the price should not be below 115% of the intrinsic value. If the transfer is between related parties located abroad, the transfer should be carried out on an arm's length basis.	The selling entity must provide a certified balance sheet with a description of the transferring liabilities.

COLOMBIA		Merger	Asset Sale	Bulk Asset Sale
1.5	Legal Effective Date of Integration	Date of registration in Mercantile Registry/ formalization of all documents required by Colombian law in a public deed (or private document if the absorbing entity is a simplified share company (SAS) and there is no transfer of real estate property).	Date of execution.	Date of registration in Mercantile Registry.
1.6	Can merger/ asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes. Within a 30-business-day period, the company's creditors will be entitled to demand sufficient and satisfactory guarantees for the payment of their credits.	None. In the case of a simplified corporation, if the assets to be transferred represent 50% or more of the equity of the company on the date of the transfer, the transfer qualifies as a global disposal of assets, which requires the authorization of the shareholders' assembly and registration at the Chamber of Commerce. A registration tax of 0.7% over the value of the assets must be paid to the Chamber of Commerce.	No, but two-month period from date of registration of bulk transfer for creditor oppositions and release of selling entity's liability.

COLOMBIA		Merger	Asset Sale	Bulk Asset Sale
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Where the companies fall within certain circumstances (for example, they have pension liabilities or financial difficulties), the merger must be approved by the Companies Superintendence and will take approximately six months. Otherwise approximately three months.	Can be immediate.	Two to three months.

MEXICO		Merger	Asset Sale
1.1	Local integration method	Merger, where two or more companies merge without creating a new entity.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes, however, when real estate is transferred through a merger, the transfer must be formalized in a separate public instrument and registered with the Public Registry of Property.	No.

MEXICO		Merger	Asset Sale
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	All companies participating in a merger are required to publish a balance sheet one month prior to the merger. Also required: ▪ an obligations payment program must be disclosed by the disappearing company ▪ a Tax Audit Report for the disappearing company (for the year of the merger) and the surviving company (for the year of the merger and one year following) A valuation is also recommended.	None, although an independent valuation is advisable.
1.5	Legal Effective Date of Integration	Either: (i) following a three-month waiting period (traditional merger) from the registration date; or (ii) on the date of registration of the merger agreement at the Public Registry of Commerce if creditors have granted their consent or their credit has been guaranteed (fast-track merger). For tax purposes, the merger will be effective on the date set out in the merger resolutions.	Normally date of completion of the asset transfer as set out in the transfer agreement.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.

MEXICO		Merger	Asset Sale
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Waiting period of three months during which creditors of the merging companies can oppose the merger unless: ▪ payment of all creditors is agreed with creditors ▪ an amount is deposited in escrow for the benefit of creditors ▪ the creditors expressly consent to the merger, in which case there is no waiting period.	No.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Four to six months.	One month (or immediately if no real estate is to be transferred).

PERU		Merger	Asset Sale
1.1	Local integration method	Two types of merger: (i) two or more companies merge to form a new company and they cease to exist; or (ii) one company absorbs one or more other companies, which cease to exist.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	Parent/subsidiary (assuming the parent is the survivor).	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes, from the effective date. With respect to rights that are registered in public records (registered real estate or vehicles), the transfer will be automatically registered when the merger is filed to the public records for registration. Registrations, licenses, permits and authorizations are also automatically transferred either to the absorbing company or the new company as a result of the merger.	As a general rule, rights and obligations are not transferred by operation of law. Exceptionally, as soon as the regulation of a very recent legislative decree is approved, the municipal license for the operation of administrative offices, industrial plant and similar will be automatically transferred if the asset sale involves the transfer of an ongoing business and there is no variation regarding the line of business and the authorized use of the premises.

PERU		Merger	Asset Sale
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	The companies participating in a merger need to approve the following balance sheets within 30 days after the effective date: (i) in the case of the merged companies, a balance sheet dated the day before the effective date; and (ii) in the case of the surviving company, an opening balance sheet dated the day after the effective date. Neither independent valuations nor external auditing are mandatory.	None.
1.5	Legal Effective Date of Integration	Date agreed by the parties in the merger agreements (which can be immediate if desired by the parties).	In the case of real estate, the transfer of property occurs as soon as the respective contract is signed. In the case of movables, the transfer of property requires the physical transfer of the respective goods to the new owner. Registration in the public registry, when applicable, is also required but only for transparency.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No. The companies participating in the merger need to notify the tax authority about the Legal Effective Date of Integration within 10 days after the same occurred for such date to be acknowledged for tax purposes.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes. Creditors may oppose the merger within 30 calendar days following the completion of three publications (with five days interval between each) of the merger in the official gazette.	Not required.

PERU		Merger	Asset Sale
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Two to three months to complete the process, including the creditor's opposition period and registration in the Public Registry.	Depends on complexity of the sale (registration period for the transfer of real estate, the transfer of licenses and other conditions).

UNITED STATES (DELAWARE)		Merger	Asset Sale
1.1	Local integration method	Merger.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	Parent/subsidiary.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	None.	None.
1.5	Legal Effective Date of Integration	Date of filing with secretary of state unless a later date is specified in agreement and plan of merger.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	No.	No. However, creditors' consent may be required to transfer obligations.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	May be effected immediately.	May be effected immediately.

VENEZUELA		Merger	Asset Sale
1.1	Local integration method	Merger.	Bulk asset sale under Articles 151 and 152 of the Venezuelan Code of Commerce ("Code").
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	For tax reasons, a brother/sister merger is preferable as this does not trigger income tax liability. A parent subsidiary may be treated as a liquidation for tax purposes and trigger income tax liability for the surviving entity.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	Generally, no. However, if the selling entity and buyer entity do not comply with the requirement prescribed by the Code to publish three notices in national newspapers at 10-day intervals, the buyer will be jointly and severally liable with the seller for the seller's obligations. Under the Venezuelan Organic Tax Code, the buyer is also jointly liable for the seller's tax obligations for a period of one year from the date of the notice to the tax authorities regarding the sale.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	No external audited financial statements are required. However, balance sheets (pre- and post-merger) of the companies involved in the merger are required to be prepared and must be approved by the respective share/quota holders.	None, however the business should be transferred at fair market value to avoid any gift tax liability.
1.5	Legal Effective Date of Integration	Three months after the publication of the share/quotaholders' meeting resolving upon the merger. This term can be waived provided there is evidence of the payment of all debts and if all creditors have consented to the merger.	Date of publication of the bulk sale after registration at the competent Commercial Registry Office of the bulk sale agreement.

VENEZUELA		Merger	Asset Sale
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Not from a tax perspective.	Not from a tax perspective.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Not statutorily, however the merger will only be effective following a three-month waiting period.	Not mandatory, however it is advisable to comply with the requirement prescribed by the Code to publish three notices in national newspapers at 10-day intervals in order to avoid the buyer becoming joint and severally liable with the seller.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Normally between three months to one year depending on the complexity of the plan.	Normally between one and three months depending on the complexity of the plan.

2 Asia Pacific Region

AUSTRALIA		Merger	Asset Sale
1.1	Local integration method	No merger procedure is available in Australia. Court-sanctioned scheme of arrangement rarely used.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	N/A.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	N/A.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	N/A.	No formal valuation or audit requirements.
1.5	Legal Effective Date of Integration	N/A.	Normally date of completion of the asset transfer as described in the transfer agreement.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	N/A.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	N/A.	No.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	N/A.	Approximately three months depending upon the specific assets to be transferred and whether government approvals are required.

CHINA		Merger	Asset Sale
1.1	Local integration method	Merger by absorption.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes, unless otherwise agreed contractually.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Merging companies must prepare balance sheets and property lists. No audit requirements for filings with the Administration for Industry and Commerce. For filings with other government authorities (eg, tax authorities), it should be confirmed at the locality.	An independent valuation is often prepared to determine the transaction price for tax and accounting purposes however this is not a statutory requirement. No formal audit requirements.
1.5	Legal Effective Date of Integration	Date of issue of a revised/new business license reflecting completion of the merger.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives?	N/A.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes. Creditor notice must be given by means of: (i) notices to individual creditors within 10 days of the merger agreement; and (ii) public announcement within 30 days of the merger agreement. The creditors may require the company to pay off its debts or provide corresponding guarantees within 30 days of receipt of the notice, or if the creditors fail to receive the notice, within 45 days of the public announcement.	No.

CHINA		Merger	Asset Sale
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Normally 12 months from initial filing of the merger application. A further one to four months will be required if anti-monopoly filing and review is required.	Two months if the buyer needs to expand its business scope to cover new business activities. Three to four months if a new company is to be established as the buyer. Additional two to three months to set up branches for the asset sale, if required. Additional one to four months if anti-monopoly filing and review is required. Additional time will also be required if there are industry-specific requirements.

HONG KONG		Merger	Asset Sale
1.1	Local integration method	Court-free amalgamation available for merging sister companies (horizontal amalgamation) or parent/subsidiary companies (vertical amalgamation). Court-sanctioned scheme of arrangement available for more complex amalgamations, though this is rarely used in practice.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	Brother/sister (horizontal amalgamation) is more time efficient.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes, on the effective date of the amalgamation, each amalgamating company ceases to exist as an entity separate from the amalgamated company and the amalgamated company succeeds to all the property, rights and privileges, and all the liabilities and obligations, of each amalgamating company.	No.

HONG KONG		Merger	Asset Sale
1.4	What financial statements or independent valuations are required?	The directors of each amalgamating company must prepare a solvency statement in relation to the amalgamation. Therefore, the amalgamating company should prepare management accounts to provide the basis for the solvency statement.	None, however the business should be transferred for fair market value.
1.5	Are there audit requirements for both companies?	The shareholders' resolutions should specify a date on which the amalgamation is intended to become effective. If that date is the same as or later than the date on which the Companies Registry of Hong Kong registers the required documents, the specified date will be the effective date of amalgamation. If the specified date is earlier than the date of registration by the Companies Registry, the effective date will be the date of the certificate of amalgamation issued by the Companies Registry.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.

HONG KONG		Merger	Asset Sale
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	The amalgamating companies are required to given written notice of the proposed amalgamation to every secured creditor and publish a notice of the proposed amalgamation in an English and a Chinese newspaper in Hong Kong: ▪ at least 21 days before the date of the general meeting approving a vertical or a horizontal amalgamation ▪ on or before the circulation date of the written resolutions approving a horizontal amalgamation For a vertical amalgamation, there is a waiting period of 21 days. This does not apply to a horizontal amalgamation.	No, but creditors' consent is required for legal transfer of their debts.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	For straightforward cases, approximately two months from finalizing the plan. This excludes the time required to obtain third-party consents, if applicable.	Approximately one to two months depending on employee issues.

INDONESIA		Merger	Asset Sale
1.1	Local integration method	Merger.	Asset sale
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Financial statements of the relevant companies for three years and, depending on the tax approach, valuations may be required.	Assets should be transferred at fair market value for tax, corporate benefit, and preference reasons on a potential bankruptcy. No audit requirements, however the Tax Office may conduct a random audit request in relation to certain transactions of the entities involved in the transaction.

INDONESIA		Merger	Asset Sale
1.5	Legal Effective Date of Integration	This can be either: (i) the date specified in the merger deed; (ii) the date of approval of the merger by the Ministry of Law and Human Rights; or (iii) the date of the merger deed.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes. Thirty days' notice must be given before the shareholders' meetings to approve the merger. Creditors have the right to make claims within 14 days of the merger announcement (such claims must be settled before the shareholders' meetings).	No.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Three to five months, depending on complexity.	Can take between two to three weeks to three to four months from execution of the asset sale agreement, depending on complexity of the sale.

JAPAN		Merger	Asset Sale
1.1	Local integration method	Merger by absorption.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	Generally, parent/subsidiary (simpler procedure), although this depends on the tax or financial position of the companies.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	The financial statements of both companies for the latest financial year must be disclosed (as a pre-merger disclosure document). There are no audit requirements for either entity.	None, however the business should be transferred for fair market value. There are no audit requirements for either entity.

JAPAN		Merger	Asset Sale
1.5	Legal Effective Date of Integration	An effective date as agreed in the merger agreement.	The date of transfer as agreed between the selling entity and the buyer entity.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes, a minimum of one month before the effective date.	No.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Two to three months.	Depends on size and complexity of sale.

MALAYSIA		Merger	Asset Sale
1.1	Local integration method	No merger procedure is available in Malaysia. Amalgamation under scheme of arrangement rarely used.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	N/A.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	N/A.	No.
1.4	What financial statements or independent valuations are required?	N/A.	None. However, due to undue preference provisions (which can result in offending transactions being held void against a liquidator) the buyer should obtain an independent valuation where the target is in financial difficulty. If land is being transferred, an independent valuation of the land may also be beneficial to avoid the stamp office over-assessing potential stamp duty.

MALAYSIA		Merger	Asset Sale
1.5	Legal Effective Date of Integration	N/A.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	N/A.	No preference.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	N/A.	No. However, creditors' consent is required for legal transfer of their debts.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	N/A.	Can take between two to three weeks to three to four months from execution of asset sale agreement, depending on complexity of the sale.

PHILIPPINES		Merger	Asset Sale
1.1	Local integration method	Mergers and consolidations.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required?	The merging companies are required to submit audited financial statements as at a date not earlier than 120 days prior to the date of filing of the merger application with the Philippine SEC. The audited financial statements of the absorbed entity must be accompanied by a long-form audit report.	None, however the assets should be transferred at fair market value. If the assets are transferred in exchange for issuance of shares stock, Philippine SEC approval of the valuation of the assets is required.
1.5	Legal Effective Date of Integration	Date of issuance by the Philippine SEC of the Certificate of Filing of the Articles of Merger.	Normally the date of completion of asset transfer. Certain types of assets (for example, land and shares of stock) require registration for the transfer to be effective.

PHILIPPINES		Merger	Asset Sale
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No. A merger is deemed effective on the date of issuance by the Philippine SEC of the Certificate of Filing of the Articles of Merger. The tax implications for each constituent company and the surviving company are determined by reference to the date the merger is deemed effective. Each company must continue to file returns in its own name and comply with its tax obligations up to the date immediately before the effective date of the merger.	Generally, no. An asset sale is effective on the date of completion of the asset transfer. In cases involving certain types of assets (for example, land and shares of stock), the subsequent registration of ownership of the assets in the name of the buyer at the corresponding registry is also required.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	No, unless one of the merging entities is insolvent, in which case publication of the merger and obtaining the consent of creditors are required.	Yes. Under the Bulk Sales Law, the seller must notify its creditors at least 10 days prior to the transfer.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Two to three months.	One to two months, although this will depend on the type of assets involved and whether or not regulatory approvals are required.

SINGAPORE		Merger	Asset Sale
1.1	Local integration method	Amalgamation in accordance with the Singapore Companies Act.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	No preference from a legal perspective. From an accounting perspective, a parent/ subsidiary relationship tends to be preferred to avoid issues arising in relation to the accounting treatment of a brother/sister amalgamation.	Generally, parent/subsidiary, although this varies depending on business needs.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.

SINGAPORE		Merger	Asset Sale
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	There is no statutory requirement to prepare financial statements, or to conduct independent valuations or an audit for the amalgamation. The board of directors of each of the amalgamating companies is however required to make a solvency statement in the form of a declaration in writing. To this end, the directors should have regard to the latest financial statements prepared for the relevant company.	None, however the business is typically transferred at fair market value.
1.5	Legal Effective Date of Integration	Date shown in the notice of amalgamation issued by the Singapore Accounting and Corporate Regulatory Authority ("ACRA"). Note that the date will usually reflect the date specified in the amalgamation proposal submitted to ACRA, but such date cannot be earlier than the date of submission to ACRA.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.

SINGAPORE		Merger	Asset Sale
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	The directors of the amalgamating company are required, not less than 21 days before the requisite general meeting to approve the amalgamation, to give notice of the proposed amalgamation to every secured creditor of the amalgamating companies (if any). If there are any such creditors then this will preclude shortening the notice period for the general meeting. There are no mandatory waiting periods.	No. However, creditors' consent will be required for legal transfer of their debts.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Approximately three to four weeks from the date of submission to ACRA.	Approximately one to two months.

TAIWAN		Merger	Asset Sale
1.1	Local integration method	Merger (only available for companies limited by shares). If a party to the merger is another form of limited company, the surviving entity must be a company limited by shares. The Enterprises Merger and Acquisition Law includes: • statutory mergers • simple parent/subsidiary mergers.	Statutory acquisition of assets under the Enterprises Merger and Acquisition Law, including: • transfer of all or an essential part of a business or assets • acquisition of another's entire business or assets which would have a significant impact on the buyer
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.

TAIWAN		Merger	Asset Sale
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	None for private companies.	None for private companies.
1.5	Legal Effective Date of Integration	The closing date specified in the merger agreement.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes, 30 days after public announcement and individual notification.	Yes, publication of an announcement to the creditors is required by law for general assumption of assets/ business.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Approximately three months from board approval of the merger.	Approximately three months from board approval of the acquisition.

THAILAND		Merger	Asset Sale
1.1	Local integration method	Amalgamation, where two or more companies are amalgamated to create a new company.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.

THAILAND		Merger	Asset Sale
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	None. In the amalgamation, the newly created company will carry the value of assets and liabilities recorded in the books of account of the amalgamating companies in its accounts for the purposes of depreciation and future disposal.	In a normal sale of assets, the selling entity is required to sell assets at not less than market value, unless there are justifiable grounds for not doing so. If this is not done, the Revenue Department may assess corporate income tax against the seller. Determination of market price is a question of fact. In a sale of assets via an entire business transfer scheme, where the selling entity is required to transfer all assets and liabilities to the buyer entity and register the dissolution with the Ministry of Commerce in the same accounting period, the transfer of assets and liabilities can be made at book value. The buyer must use the book value of the assets in its accounts for depreciation and future disposal purposes, regardless of the actual transfer price.
1.5	Legal Effective Date of Integration	Date of registration of the amalgamation with Ministry of Commerce.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes, notice must be published at least once in a local newspaper and a notice must be sent to all creditors giving them 60 days to object.	No.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	One to three months.	One to two weeks.

VIETNAM		Merger	Asset Sale
1.1	Local integration method	Merger (either by absorption or consolidation).	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Independent valuations are not required. Financial statements of any foreign invested companies must be audited by an independent auditor.	Independent valuations are not required. Financial statements of any foreign invested companies must be audited by an independent auditor.
1.5	Legal Effective Date of Integration	The date on which an Enterprise Registration Certificate is issued to the surviving company as the result of the merger.	For assets that require registration of ownership or use rights, the date the buyer is registered with the pertinent authorities as the legal owner or the legal user of the assets. For other assets, the date the relevant asset is delivered to the buyer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	The merger contract must be sent to creditors within 15 days of signing. There are no mandatory waiting periods.	Generally no, unless required under the agreements between the company and the relevant creditor.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	One to three months, however potentially longer if there will be employee redundancies.	One to three months, however potentially longer if there will be employee transfers and/or redundancies.

3 Europe, Middle East and Africa

AUSTRIA		Merger	Asset Sale
1.1	Local integration method	Merger.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Closing balance sheet of the disappearing company (annual financial statements may be used). This is only required to be audited if the annual financial statements are required to be audited. In addition, a merger balance sheet must be drawn up by the disappearing company. Both companies may need to prepare an interim balance sheet if the last regular balance sheet was prepared more than six months prior to signature of the merger agreement (although this requirement may be waived). Neither the merger balance sheet nor interim balance sheet need to be audited.	None. Business transfer must meet various arm's length criteria, including that the purchase price corresponds to fair market value. Obtaining a valuation from a third party is advisable.
1.5	Legal Effective Date of Integration	Date of registration by the Commercial Court.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Yes, up to nine months from the date of the merger accounts (which cannot be more than nine months old). The merger application must be filed within nine months of the date of the merger accounts.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	No. However, creditors may make a request for security over their claims for a period of six months after completion of the merger.	No. However, creditors have the right to object to the transfer of the respective legal relationship.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	One to two months, depending on employee consultation.	One to two months, depending on employee consultation.

AZERBAIJAN		Merger	Asset Sale
1.1	Local integration method	Merger.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes, except for non-assignable items (such as non-assignable licenses). Rights in certain assets (eg, immovable property, securities and other types of movable property) are subject to state registration in the name of the surviving company.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	As a matter of practice, audited financial statements, balance sheets and other financial documents of both companies may be required for examination by the local authority (ie, the Ministry of Taxes of the Republic of Azerbaijan).	A balance sheet or inventory of the surviving company's assets describing the composition and value of the assets may be required for tax or accounting purposes. The business should be transferred for fair market value.
1.5	Legal Effective Date of Integration	Date entered into the State Register of Legal Entities showing cessation of the activities of the disappearing company (ie, the date it is removed from the registry).	Effective date of the asset sale and purchase agreement (ie, the completion date) or the registration date of the property (for movable or immovable assets) subject to state registration with the respective state authorities.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Creditors must be provided with written notice under the Civil Code. There is no mandatory waiting period.	Although not expressly required under Azerbaijani law, delivery of a written notice to creditors is advisable. In the case of a transfer of liabilities, consent from the respective creditors is required.

AZERBAIJAN		Merger	Asset Sale
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Approximately five to six months. The merger may also trigger a mandatory requirement to obtain merger control clearance.	Approximately one to six months depending on form of assets and complexity of the plan. The transfer of assets may also trigger a mandatory requirement to obtain merger control clearance.

BELGIUM		Merger	Asset Sale
1.1	Local integration method	Simplified merger (ie, parent/subsidiary merger) and full merger (ie, any merger other than a parent/ subsidiary merger).	The transfer of assets can be done by means of an asset/ business transfer agreement (ie, the contractual way) or pursuant to a merger-like procedure (as set out in the Belgian Company Code).
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/ sister?	Parent/subsidiary (fewer corporate formalities).	Not relevant in an asset sale.
1.3	Do all rights and obligations transfer by operation of law?	Yes (with a few exceptions).	No (unless the merger-like procedure as set out in the Belgian Company Code is followed).
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Statutory accounts of both companies for the previous three fiscal years (and the related annual board reports and statutory auditor reports if any) are required. If the most recent statutory accounts are more than six months old (counting from the date of the merger proposal), an interim balance sheet as at a date not more than three months from the date of the merger proposal is also required. This requirement can however be waived by unanimous consent of the shareholders of both merging companies. No independent valuations are required from a legal point of view.	None, however the business should be transferred for fair market value.

BELGIUM		Merger	Asset Sale
1.4		If the merger is not a parent/ subsidiary merger, the following are also required (unless waived by unanimous consent of the shareholders of the merging companies): ▪ statutory auditor's report for both companies (or, if there is no statutory auditor, external accountant's report) on the merger ▪ directors' report on the financial condition of the merging companies If these are waived by the shareholders, the following are required: ▪ report of the statutory auditor for the surviving company (or, if there is no statutory auditor, external accountant's report) ▪ directors' report for the surviving company, on the capital increase (by contribution in kind) resulting from the merger	
1.5	Legal Effective Date of Integration	Date specified in the merger deeds (although the merger will only become binding upon third parties following publication of an extract of the merger deeds in the Belgian Official Gazette).	Date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Yes. From a tax and accounting perspective, retrospective effect up to a maximum of seven months generally allowed (providing this does not go beyond the end of the previous fiscal year of the merging companies).	No.

BELGIUM		Merger	Asset Sale
1.7	Is a creditor's notice period required?	No. However, a mandatory six-week waiting period must be observed between filing the merger proposal with the clerk's office of the competent commercial court and the shareholders' meeting to approve the merger. Creditors have a two-month period from publication in the Belgian Official Gazette to demand prior security for claims that existed prior to the publication but were not yet due.	No. However, creditors' consent is required for the legal transfer of their receivables.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Three to four months. This includes a six-week waiting period between filing the merger proposal with the competent Commercial Court and publication of the merger proposal in the Annexes to the Belgian Official Gazette and the shareholders' meeting approving merger (publication generally takes place two weeks after filing of the merger proposal).	Approximately three to four months, depending on the implementation of any new labor conditions (ie, if transferred employees oppose the new conditions) and the nature of the assets transferred.

CZECH REPUBLIC		Merger	Asset Sale
1.1	Local integration method	Merger (merger by amalgamation).	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	Parent/subsidiary (simplified procedure).	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes, except for trade licenses, concessions and other administrative certificates.	No.

CZECH REPUBLIC		Merger	Asset Sale
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Final audited financial statements of both companies are required. If the final annual financial statements, or last annual/extraordinary financial statements of both companies were made as at a date more than six months before the proposed date of the merger, interim audited financial statements of both companies will be required. An opening audited balance sheet of the surviving entity will also be required. An independent valuation of the disappearing entity will be required if the registered capital of the surviving entity is increased in consideration for the receipt of the assets of the disappearing entity.	None, however the business should be transferred for fair market value.
1.5	Legal Effective Date of Integration	The date of registration of the merger at the Commercial Register (upon which the employees, assets and contracts are transferred to the surviving entity and the transferor entity ceases to exist).	Normally the date of completion of the asset transfer (in the case of a transfer of a business as a going concern, title to the business as a whole will transfer upon publication of confirmation of the purchase of the enterprise in the Collection of Documents).
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Yes. The merger can have retrospective effect from accounting and corporate income tax perspectives provided the effective date is not more than 12 months in advance of the date of filing the application for registration of the merger with the Commercial Register.	No.

CZECH REPUBLIC		Merger	Asset Sale
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes. The board of directors of each company must publish a notice to the company's creditors of the merger (and their right to apply for either settlement of their claims against the company or for additional security if this is not possible) at least 30 days before the date of the general meeting to approve the merger.	No. However, creditors' consent is required for the legal transfer of their debts.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Three to nine months, depending on the legal form of the companies, the speed of the court registration process and any employee consultation.	Approximately one to two months, depending on whether real estate transfers are involved and on any employee consultation.

EGYPT		Merger	Asset Sale
1.1	Local integration method	Merger by: (i) amalgamation of one entity into the surviving entity; or (ii) the incorporation of a new entity by two or more existing entities.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes, within the limits of the merger agreement (and without prejudice to creditors' rights).	Yes.

EGYPT		Merger	Asset Sale
1.4	What financial statements or independent valuations are required?	An independent valuation of the merging company's assets and debts is required to be submitted with the draft merger agreement to the Egyptian Investment Authority (which then verifies its accuracy). A valuation committee at the Investment Authority will conduct an evaluation and issue a valuation report to the merging company's board of directors or managers before the merger agreement may be signed. The board of directors or managers of both companies must refer the valuation committee's report to the company's auditor who will then issue a report on the merger procedures to be conducted (this will be presented at the shareholder meetings to approve the merger).	A valuation of the assets must be prepared by the selling entity's auditors and presented at the shareholder meeting to approve the acquisition.
1.5	Legal Effective Date of Integration	Date of issue of the relevant ministerial decree by the competent minister.	Date of completion of the sale of each asset. This can vary depending on the type of asset.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Yes. Retrospective effect is possible up to the first day of the fiscal year. There is no legally required deadline for filing the merger application.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	No.	No.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Approximately four to seven months.	Approximately two to three months.

FRANCE		Merger	Dissolution	Asset Sale
1.1	Local integration method	Simplified merger (*fusion simplifiée*) between stock companies or limited liability companies. Merger between stock companies or limited liability companies in other cases.	Dissolution without liquidation (*Transmission Universelle du Patrimoine*, "TUP") if between parent/100% subsidiary.	Asset sale — "transfer of a going concern" (*cession de fonds de commerce*).
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	Parent/subsidiary.	Parent/subsidiary.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes, except for administrative contracts and for agreements entered into or permits granted on a personal basis.	Yes, except for administrative contracts and for agreements entered into or permits granted on a personal basis.	No. All assets and liabilities (if any) to be transferred should be listed in the business transfer agreement.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	No valuation and no contribution appraiser required for a parent/100% subsidiary merger. A valuation and contribution appraiser is required in other cases. Statutory accounts of the disappearing company as at the merger effective date are required from an accounting and tax perspective. If more than six months old, interim accounts dated less than three months from the date of execution of the merger agreement must be prepared and verified by a statutory auditor (limited review).	No valuation and no contribution appraiser required for a parent/100% subsidiary dissolution without liquidation. No financial statements are required.	None, however the business should be transferred for fair market value (in euros).

FRANCE		Merger	Dissolution	Asset Sale
1.5	Legal Effective Date of Integration	Date of final decision of the shareholder(s) of the surviving entity to approve the merger.	At the end of a 30-day creditor opposition period or upon settlement of all oppositions if any are filed during the opposition period.	Effective date indicated in the business transfer agreement.
1.6	Can merger/ asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Yes. The merger may have retrospective effect from tax and accounting perspectives up to the first day of the fiscal year in which the merger occurs.	The TUP may have retrospective effect for tax purposes up to the first day of the fiscal year during which the TUP occurs. The TUP cannot have retrospective effect for accounting purposes.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes. There is a 30-day opposition period from publication of the draft merger agreement. Oppositions do not prevent the merger process from being effected/completed. The companies must comply with the conditions imposed for the merger to be binding against the creditor concerned.	Yes. There is a 30-day opposition period from publication of the TUP. Oppositions will delay legal effectiveness of the TUP to the date the oppositions are ruled upon by the Commercial Court.	Sale must be registered with the French tax administration and notices published. Creditors of the seller can oppose payment of the purchase price during a 10-day period following the second publication of the sale (can be a four-and-a-half-month period vis-à-vis the tax or social security administration).
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Three to four months, depending on employee consultation and appraiser intervention.	Between four to six weeks depending on employee consultation.	Approximately one to two months, depending on employee consultation. The purchase price must be held in escrow until the end of the creditors' opposition period.

GERMANY		Merger	Asset Sale
1.1	Local integration method	Merger (*Verschmelzung*).	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	Parent/subsidiary. Brother/sister mergers may require a capital increase by the absorbing entity for tax purposes and valuation of the merged business for the capital increase.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Statutory accounts for the disappearing company only. The accounts must be in the same form and meet the same audit requirements as the company's annual accounts. Interim accounts are admissible if the annual accounts are older than eight months on the day of the filing of the merger for registration with the German Commercial Register. A valuation from a CPA is required if a capital increase is also completed in the context of the merger.	None, however the business should be transferred for fair market value (potentially triggering a taxable gain). Exemptions are available in certain cases.
1.5	Legal Effective Date of Integration	Date of registration of the merger by the Commercial Register Court of surviving company.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from <u>tax and accounting</u> perspectives? If yes, what is deadline for filing merger application?	Merger may only be retrospectively effective provided the merger is filed with register court within a period of eight months from date of merger accounts.	No, unless assets are transferred as a result of a reorganization measure (eg, merger).
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	No.	No, however creditors' consent is required for the legal transfer of their receivables.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Two to three months, depending on whether there is a delay due to works council information. Registration of the merger takes between four to six weeks.	One to three months, depending on social plans or any other employee consultation.

HUNGARY		Merger	Asset Sale
1.1	Local integration method	Merger — amalgamation.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Audited closing balance sheets and inventory of assets of the merging companies, as at the date specified in the first shareholders' resolution concerning the merger. The audit must be conducted by an auditor independent of both companies. An opening balance sheet and inventory of assets of the surviving company must also be prepared.	None. However, transfer pricing rules must be observed and parties must retain documentation justifying the transfer price stated in the sale agreement.
1.5	Legal Effective Date of Integration	Date of registration of the merger by the Court of Registration in the Trade Registry. Subject to satisfaction of certain procedural requirements, the merging companies may request the court to register a particular merger effective date. In practice, the court of registration usually accepts the chosen merger effective date if the procedural requirements are met.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.

HUNGARY		Merger	Asset Sale
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes. Thirty-day period following the publication of the second set of merger announcements in the Official Gazette (unless, in the case of limited liability companies or companies limited by shares, the equity of the merged company is higher than that of its predecessors).	No.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Three to six months, depending on the legal form of merging companies and the speed of the court registration process.	One to three months.

ITALY		Merger	Asset Sale
1.1	Local integration method	Merger.	Asset sale — sale of business unit.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	Parent/subsidiary or brother/sister (simplified procedure).	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	Yes, in principle, to the extent that the relevant rights and obligations pertain to the business. However, pursuant to mandatory provisions of law (and despite any contrary agreement between the parties): ▪ the selling entity will not be released from any liabilities relating to the transferred business and arising before transfer of the business, unless the relevant creditors have explicitly agreed to release the seller

ITALY		Merger	Asset Sale
			▪ the seller and the buyer of an ongoing business are jointly and severally liable vis-à-vis third parties for liabilities pertaining to the transferred business shown in the selling entity's accounts ▪ the seller and the buyer are jointly liable for all employee-related liabilities as at the date of the transfer (following certain statutory procedures, the employees can release the selling entity from its obligations deriving from the original employment relationship) As to contracts, contracts pertaining to the business not having a personal nature are transferred to the buyer. The counterparty can however terminate such agreement within three months from notice of the assignment providing it has evidence of a good cause supporting the termination.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Statutory accounts of both companies for a financial year ending less than six months prior to the date of filing of the merger plan are required, or unaudited financial statements of both companies for the period ended less than 120 days prior to the date of filing of the merger plan (formal step required to start the merger process). The requirement to prepare interim financial statements can be waived by unanimous consent of the stockholders of the merging companies.	None, however the business should be transferred for fair market value. Updated interim financial statements will be required to determine the value of the transferring business and to identify the assets and liabilities to be transferred.

ITALY		Merger	Asset Sale
1.5	Legal Effective Date of Integration	Date of registration by the Companies Register or any subsequent date specifically identified in the merger deed.	Date of completion of the asset transfer (ie, execution before a notary public) or any other date subsequently agreed.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Yes. The merger can have retrospective effect, provided the effective date does not precede the end of the last fiscal year of any of the companies participating in the merger or, if more recent, the end of the last fiscal year of the surviving company.	No.
1.7	Is a creditor's notice period required?	Yes. The creditors have 60 days (30 days where both companies are s.r.l. companies and they are parent/subsidiary or brother/sister) to oppose the merger following filing of the special shareholders' resolution, unless: (i) individual creditors' consent is obtained; (ii) bank guarantees are given sufficient to discharge the debts owed to the dissenting creditors; (iii) the dissenting creditors are paid; or (iv) a statement from an independent auditing firm is obtained confirming that the financial situation of the merging companies does not make any guarantee for the benefit of the creditors necessary.	No.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Two months if all companies are s.r.l. (limited liability companies) and three months if all companies are S.p.A. (joint stock corporations). In August, the creditor's notice period stops running (court summer holidays).	One to two months, depending on employee consultation period (being 25 days prior to the execution of a binding sale agreement).

KAZAKHASTAN		Merger	Asset Sale
1.1	Local integration method	Merger.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/ sister?	Parent/subsidiary or brother/ sister (simplified procedure).	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Statutory accounts for the last three financial years of both merging companies are required. If, at the time of the merger filing, more than six months have passed since the end of the last financial year, the management must prepare an (unaudited) interim statement of assets and liabilities.	If the assets are sold as a going concern, an inventory list, balance sheet and statement from an independent auditor will need to be prepared by the seller to confirm the composition of the assets. If the assets are not sold as a going concern, no statements or valuations are required.
1.5	Legal Effective Date of Integration	First day following the date of execution of the notarial deed of merger.	If the transfer of assets requires registration (for example, in respect of real estate or vehicles), the date on which this registration is completed. Otherwise, the date determined in the sale and purchase agreement.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Yes. The merger can be retrospective up to the beginning of the financial year, provided that: ▪ from such date, the financial information of the disappearing company is included and reported in the annual accounts of the surviving company ▪ the notarial deed of legal merger is executed within 12 months of such date ▪ no one-off profit is expected or realized	No.

KAZAKHSTAN		Merger	Asset Sale
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Creditors may oppose to the merger during a period of one month following the announcement that the merger proposal has been filed. If an opposition is raised the merger may only be executed upon the withdrawal of the opposition or upon a court order setting aside the opposition.	If the assets are sold as a going concern, any creditors affected must be notified of the sale prior to the transfer. Creditors who have not consented to the transfer may, within three months after receipt of the notice, demand early termination, performance or termination of the relevant obligations and reimbursement of damages, or, alternatively, unwinding of the transfer. If the assets are not sold on a going concern basis, notifications will not generally be necessary.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Two to three months, depending on employee consultation period.	Five to six months for sale of the assets as a going concern and one to two months for sale not as a going concern.

LUXEMBOURG		Merger	Asset Sale
1.1	Local integration method	Merger.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	Parent/subsidiary (simplified procedure).	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes, except for IP rights or for rights *in rem* other than collateral established on movable or immovable properties. Certain contracts, such as contracts including a non-assignment clause or agreements entered into on personal basis may also be excluded.	No.

LUXEMBOURG		Merger	Asset Sale
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Interim financial statements of the merging companies, dated less than three months prior to the date of the draft terms of the merger, must be drawn up by the managers/directors of each company. If the financial year of the merging companies ended less than six months before the date of the draft terms of the merger, annual accounts may be used.	None.
1.5	Legal Effective Date of Integration	The date of the last shareholder general meeting of the merging companies approving the merger (in the case of a common merger), or the date of the execution of a notary certificate ascertaining the effectiveness of the merger (in the case of a simplified merger). However, the merger only becomes effective against third parties as from the date of publication of the minutes of the extraordinary shareholder general meeting or notary certificate mentioned above in the Luxembourg electronic filing platform (*Recueil Electronique des Sociétés et Associations*) ("RESA").	On the effective date stated in asset transfer agreement.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	From an accounting perspective, the merger may be retrospectively effective, provided this is not prior to the start of the current financial year of the surviving company. From a tax perspective, the merger cannot be retrospectively effective.	Yes.

LUXEMBOURG		Merger	Asset Sale
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes. The deeds ascertaining the effectiveness of the merger, ie, the minutes of the last extraordinary shareholder general meeting approving the merger or the notary certificate in case of a simplified merger) must be published in the RESA within five days of registration of the merger with the Luxembourg Trade and Companies Register. Creditors of the merging companies who have existing claims dating prior to publication may request, within two months of the publication, adequate security for any debts, where the merger makes this protection necessary.	No.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	At least six weeks to two months.	Approximately one to two months, depending on employee consultation.

MOROCCO		Merger	Asset Sale 1	Asset Sale 2
1.1	Local integration method	Simplified merger (*fusion simplifiée*) between stock companies or limited liability companies.	Asset sale — transfer of a going concern (*cession de fond de commerce*).	Asset contribution (*apport partiel d'actif*).
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	Parent/subsidiary.	No preference.	No preference.

MOROCCO		Merger	Asset Sale 1	Asset Sale 2
1.3	Do all rights and obligations transfer by operation of law?	Yes, although certain rights and obligations are subject to administrative/ regulatory authorizations and permits.	No transfer by operation of law, except for the employment contracts. All transferred assets and liabilities (if any) should be listed in the sale agreement.	No transfer by operation of law, except for the employment contracts. All transferred assets and liabilities (if any) should be listed in the sale agreement.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Auditor's valuation and report are not required for a parent/100% subsidiary merger. Approved financial statements for the previous three years must be provided. If more than six months old, interim accounts dated less than three months from the date of the merger agreement are required.	No specific legal requirements.	Under the law on joint stock companies, a contributions auditor must provide a valuation of the contribution and a report. There are no other specific legal requirements.
1.5	Legal Effective Date of Integration	Date of final decision of the shareholder(s) of the surviving entity. In all other cases, the effective date of integration is the date of the last general assembly approving the transaction, unless specified otherwise in the merger agreement. The specified date must be between the fiscal year start date of the disappearing company, and the fiscal year end date of the surviving company.	Effective date specified in the sale agreement.	Effective date specified in the sale agreement.

MOROCCO		Merger	Asset Sale 1	Asset Sale 2
1.6	Can merger/ asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Yes. If agreed in the merger agreement, the effective date of integration may be set no earlier than the fiscal year start date of the disappearing company. The deadline for filing is one month following the signing date.	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	The law on joint stock companies provides creditors with a right to object during a 30-day period following the last publication of the merger. This period does not suspend the merger.	The sale must be registered with the tax administration and notices published. Creditors of the seller can oppose payment of purchase price during a 15-day period following the second publication of the sale.	The sale must be registered with the tax administration and notices published. Creditors of the seller can oppose the transaction during a 15-day period following the second publication of the transfer.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Up to three to four months.	Up to three months.	Up to three months.

NETHERLANDS		Merger	Asset Sale
1.1	Local integration method	Legal merger.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/ sister?	Parent/subsidiary (simplified procedure).	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.

NETHERLANDS		Merger	Asset Sale
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Statutory accounts of both companies for the financial year ending less than six months prior to merger filing. If more than six months have elapsed since the end of the last financial year, management must prepare annual accounts or an (unaudited) interim statement of assets and liabilities. The previous three years' statutory accounts of both companies are also required.	None, unless the parties agree otherwise.
1.5	Legal Effective Date of Integration	First day after the date of execution of the notarial deed of merger.	The effective date of the asset transfer agreement. The transfer of specific assets, with specific additional transfer formalities (eg, real estate), will become legally effective upon completion of these additional transfer formalities (eg, upon execution of a notarial transfer deed).
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Yes. The merger can be retrospectively effective up to the beginning of the financial year, provided that: ▪ merger facility for roll-over at book value applies ▪ the financial information of the disappearing company is included and reported in the annual accounts of the surviving company from the effective date ▪ the notarial deed of legal merger is executed within 12 months of the effective date ▪ no one-off profit is expected or realized	No.

NETHERLANDS		Merger	Asset Sale
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Creditors have one month following publication of the merger proposal to oppose the merger. If an opposition is raised, the merger may only be executed upon the withdrawal of the opposition or upon a court order setting aside the opposition.	No.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Two to three months, depending on employee consultation period.	Approximately one to two months, depending on employee consultation period, specific transfer formalities and required approvals.

POLAND		Merger	Sale of Business	Asset Sale
1.1	Local integration method	Merger by absorption: all assets of the target company are transferred to the surviving company in exchange for the issue of shares to the shareholders of the target company. Merger by combination (rarely used): creation of a new company to which the assets of the merging companies are contributed in exchange for the issue of shares. Simplified merger: merger may be carried out without increasing the share capital of the surviving company if that company owns shares in the target company.	Sale of business as a going concern.	Sale of assets.

POLAND		Merger	Sale of Business	Asset Sale
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	Parent/subsidiary (simplified procedure).	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes, except for the following: ▪ statute or decision granting a permit, concession or relief with transferability restrictions ▪ if public authorities object to the transfer of permits and/or concessions granted to a company which is a financial institution	Rights — yes, unless transfer is restricted by law or contract. Creditor consent is required to transfer liabilities, however, the buyer bears joint and several liability with the seller for the liabilities associated with the business.	Rights — yes, unless transfer is limited by law or contract. Liabilities — no, creditors' consent is required.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	The merger plan must have annexed to it: ▪ a valuation of the assets of the target company as at a date in the month before filing of the application for announcement of the merger plan ▪ accounting statements of both merging companies drawn up for the purposes of the merger, as at the date referred to above, using the same methods and the same layout as the last annual balance sheet The merger plan must be audited by an independent auditor appointed by the court (unless a simplified merger is used or all shareholders consent not to audit the merger plan).	None, but directors may be liable for improper valuation.	None, but directors may be liable for improper valuation.

POLAND		Merger	Sale of Business	Asset Sale
1.5	Legal Effective Date of Integration	Date of registration by Registration Court.	Date of execution of the agreement unless statutory provisions of law or the parties provide otherwise.	Date of execution of the agreement unless statutory provisions of law or the parties provide otherwise.
1.6	Can merger/ asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	A retrospective treatment of the merger for both tax and accounting purposes is not possible. However, a merger can be retrospective for tax purposes to the beginning of the fiscal year, provided that certain accounting conditions are satisfied.	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	No notice or waiting periods are required. Following the merger the assets of both companies must be separately managed by the surviving company, however, until creditors who gave notice of their claims within six months following the announcement of the merger are satisfied or the relevant debts are secured. Both the merger plan and the merger itself must be published in an official journal for court and corporate announcements.	No. However, creditors' consent is required for legal transfer of their liabilities.	No. However, creditors' consent is required for legal transfer of their liabilities.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Three months.	Approximately two to three months, depending on the position of the parties.	Approximately two to three months, depending on the position of the parties.

QATAR		Merger	Asset Sale
1.1	Local integration method	Merger.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	None.	None.
1.5	Legal Effective Date of Integration	Date of filing with Ministry of Economy and Commerce.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes — 30 to 45 days depending on the Ministry of Economy and Commerce instructions. Additional waiting periods may be imposed by the Ministry of Finance for tax reasons.	No. However, creditors' consent may be required to transfer obligations.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	May be effected immediately following the date of filing with Ministry of Economy and Commerce, provided all waiting periods have expired.	May be effected immediately.

RUSSIA		Merger	Sale of Separate Assets	Sale of Enterprise
1.1	Local integration method	Merger.	Sale of separate assets.	Sale of an enterprise.
1.2	Preferred pre-integration structure, for example: parent/ subsidiary or brother/sister?	No preference.	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes, except for non-transferable items of the disappearing company such as licenses, type approvals (permissions and authorizations issued by governmental bodies or special organizations) and certificates of compliance.	No.	Yes.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	No mandatory valuation requirements. The merger may trigger an unscheduled tax audit of the companies involved in the merger.	No mandatory valuation requirements (however this is recommended for tax purposes).	Statement of an independent auditor on the composition and valuation of the enterprise is required.
1.5	Legal Effective Date of Integration	In the case of a merger of one company into another, the date of exclusion of the disappearing company from the Unified State Register of Legal Entities. Where two companies merge to create a new company — date of state registration of the new company.	Date of execution of sale and purchase agreement.	Date of state registration of the sale agreement and of the new ownership/rights to the enterprise in the State Register of Rights to Real Estate.
1.6	Can merger/ asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.	No.

RUSSIA		Merger	Sale of Separate Assets	Sale of Enterprise
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes. The company must publicly announce the merger twice within two months after registering the decision to merge with the state authorities. Creditors have 30 days after the date of the last announcement to demand early termination or early performance of the company's obligations and compensation for damages.	No notice requirements.	Yes. Creditors with obligations related to the enterprise must be notified about the sale prior to the transfer of the enterprise to the purchaser under the act of transfer and acceptance.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Approximately 6 to 12 months or longer, depending on how long the tax authorities audit takes.	Approximately two to three weeks.	Approximately six months.

SAUDI ARABIA		Merger	Asset Sale
1.1	Local integration method	▪ Merger by absorption: two entities are merged into a surviving entity and the non-surviving entity ceases to exist. ▪ Merger by fusion: two entities are merged into one new entity and the two entities disappear automatically without any process of dissolution or liquidation.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	Normally the assets are transferred without transfer of liabilities unless the selling entity and the buyer entity agree otherwise.

SAUDI ARABIA		Merger	Asset Sale
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	The Companies Law provides that, where shares will be issued in consideration, both the surviving and the disappearing companies' net assets must be valued in order for the merger to become valid.	None.
1.5	Legal Effective Date of Integration	The merger resolution becomes enforceable after 30 days from the date of its publication.	Normally date of completion of asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	The creditors of the merging entities may, within the 30-day period from the date of publication of the shareholders' resolution approving the merger, object to the merger. If creditors object to the merger, the merger will be suspended until: (i) the creditors have waived their objections; or (ii) the entities have repaid the objecting creditor(s) or offered sufficient security for the satisfaction of the debt(s) of the objecting creditor(s) that are not immediately due and payable. If no objection is made within the said period, the merger will be considered valid. If one of the merged entities has outstanding loans then it is likely that the consent of the lenders would need to be secured.	No. However, if the selling entity and the buyer entity agree to transfer the liabilities related to the purchased assets, then the creditors' consent would be required for legal transfer of their debts.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Approximately six to nine months.	Approximately two to four months depending on complexity. The purchase of industrial facilities (plants) needs to be approved by the Ministry of Commerce and Investment; in which case the process may take six months.

SOUTH AFRICA		Merger	Business Sale	Asset Sale
1.1	Local integration method	Merger (since May 2011 under the South African Companies Act), which can be structured in a number of ways. Due to some remaining uncertainty on the practical implementation of some of the statutory merger provisions and potentially cumbersome procedural requirements vis-à-vis creditors and undesired tax consequences, this integration method is currently very rarely used in practice.	Transfer of a business as a going concern.	Transfer of specified assets.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	No preference.	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No. Parties have complete contracting freedom and can agree to exclude certain rights and/or obligations from operation of the sale of business agreement.	No. Parties have complete contracting freedom and can agree to exclude certain rights and/or obligations from operation of the asset sale and purchase agreement.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Neither financial statements nor independent valuations are required as a matter of corporate law, but are generally recommended for larger mergers. There are no audit requirements.	Neither financial statements nor independent valuations are required as a matter of corporate law, but are generally recommended for larger business transfers. There are no audit requirements.	Neither financial statements nor independent valuations are required as a matter of corporate law, but are generally recommended for larger asset sales. There are no audit requirements.

SOUTH AFRICA		Merger	Business Sale	Asset Sale
1.5	Legal Effective Date of Integration	Merger takes effect on the effective date determined in the merger agreement.	Business sale takes effect on the effective date determined in the business sale agreement, which is typically the day after satisfaction of any conditions precedent.	Asset sale takes effect on the effective date determined in the business sale agreement, which is typically the day after satisfaction of any conditions precedent.
1.6	Can merger/ asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes. After the requisite resolution approving the merger has been adopted, each company that is a party to the merger agreement must give notice of the merger to every known creditor of that company. Within 15 business days after delivery of the notice to creditors, a creditor may seek leave to apply to court for a review of the merger on the grounds that the creditor will be materially prejudiced by the merger.	Under section 34 of the SA Insolvency Act, if the seller fails to publish a notice of the business transfer in the Government Gazette and in newspapers circulating in the district in which that business is carried on, not less than 30 days and not more than 60 days before the date of the business transfer, the transfer is void against the seller's creditors for a period of six months after the business transfer. Parties commonly contract out of the operation of section 34, by agreeing not to publish a section 34 notice on the basis that the seller agrees to indemnify the purchaser from any loss the purchaser may suffer by reason of any recourse taken by the seller's creditors in respect of the transferred business assets.	No.

SOUTH AFRICA		Merger	Business Sale	Asset Sale
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Approximately two to three months, assuming no creditors' review application.	Approximately one to three months, depending on, inter alia, transaction size/complexity, whether business assets include real estate and obtaining any applicable regulatory approvals.	Approximately one to three months, depending on whether sale assets include real estate and obtaining of any applicable regulatory approvals.

SPAIN		Merger	Asset Sale
1.1	Local integration method	Merger.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	Parent/subsidiary or brother/sister (simplified procedure).	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Financial statements for the six months prior to the merger. Audit may be compulsory for both companies depending on the size of the company. No independent valuation is required in parent/subsidiary (upstream or downstream) or brother/sister mergers. A merger between parent/subsidiary or brother/sister companies may profit from a simplified procedure, whereby the merger may take place without a capital increase in the absorbing company.	None, however, transfer pricing rules apply.
1.5	Legal Effective Date of Integration	Date of filing with the Commercial Registry, providing registration takes place within two months following the filing.	Normally date of completion of the asset transfer.

SPAIN		Merger	Asset Sale
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Compulsory retrospective accounting effect to the latest of: (i) the date on which the merged companies started to belong to the same group; and (ii) the first day of the fiscal year in which the merger takes place. The public deed of merger must be filed with the Commercial Registry by the last day of the fiscal year in which retrospective effect is desired.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes. The corporate resolution to merge must be publicly announced and the merging companies will satisfy the creditors who oppose the merger during one month following the public announcement.	No. However, creditors' consent is required for legal transfer of their debts.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Approximately four months.	One to two months.

SWEDEN		Merger	Asset Sale
1.1	Local integration method	Merger by absorption or combination (the latter is rarely used).	Contractual asset transfer. Legal demerger also available.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/ sister?	Parent/subsidiary.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	No independent valuation required but the merger plan must be examined by the auditors of the parent and subsidiary.	None.

SWEDEN		Merger	Asset Sale
1.5	Legal Effective Date of Integration	Date of registration by Companies Registration Office.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Yes. There is no deadline, however, for tax purposes the book year in which the merger is executed cannot be more than 18 months, ie, the beginning of the last book year for the subsidiary to the end of the parent company's book year.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes, approximately two months.	No.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Four to five months, depending on employee consultation.	One to two months, depending on employee consultation.

SWITZERLAND		Merger	Asset Sale
1.1	Local integration method	Merger by absorption.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	Parent/subsidiary or brother/sister (simplified procedure).	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	The parties may choose between: (i) special procedure for the transfer of a business under the Merger Act, whereby the assets and liabilities will be transferred by operation of law; or (ii) ordinary sale transaction, where no assets or liabilities will be transferred by operation of law.

SWITZERLAND		Merger	Asset Sale
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Audited statutory accounts, not older than six months. If material changes in the financial position of the legal entities involved have occurred since the last balance sheet, a new interim balance sheet has to be drawn up.	None, however the business should be transferred for fair market value. Transfer at book value is possible in certain circumstances.
1.5	Legal Effective Date of Integration	Date of registration of the merger by the trade register.	In the case of a transfer under the Merger Act, the date of registration of the transfer. In the case of an ordinary sale transaction, usually on the date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Yes, up to six months.	Yes, up to six months.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes. After the entry of the merger in the trade register, the merging companies must publish three calls to the creditors in the Swiss Official Gazette of Commerce, unless an independent auditor's report confirms there is no risk for creditors, and informs creditors of their right to request sureties for their claims within a three-month period (following the effective date of merger).	No waiting periods with respect to creditors. However, in case of a transfer under the Merger Act, consent from contract parties of transferred contracts should be obtained. In addition, the transferring company remains jointly liable for the liabilities transferred with a business as a going concern for a period of three years. In the case of an ordinary sale transaction, consent from creditors of transferred debts and contract parties to transferred contracts should be obtained.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Two to four months (shorter in the case of a simplified merger).	Time needed to inform and possibly consult with the employees, ie, approximately two to three weeks.

TURKEY		Merger	Asset Sale
1.1	Local integration method	Merger.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/ sister?	Parent/subsidiary or brother/ sister (simplified procedure).	N/A. The asset transfer process does not vary according to the relationship between the buying and selling entity. Also, the preferred structure will need to be determined taking into consideration the nature of the assets to be transferred.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	Yes.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Financial statements: a financial cut-off date must be determined for merger purposes. This cannot be older than six months than the date of the merger agreement. Balance sheets as at that date must be prepared and be used as the basis of a report to be prepared by a local certified public accountant. Audit requirement will apply if the local entities are subject to independent audit under Turkish law.	None.
1.5	Legal Effective Date of Integration	Date of the registration with the Trade Registry.	Date of execution of the asset transfer agreement, unless registration with the Trade Registry is required.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	No.	No.

TURKEY		Merger	Asset Sale
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Usually approximately one and a half to two months. Registration may take three or four business days from submission of the documents, depending on the workload of the Trade Registry.	This depends on the nature of the assets to be transferred and the transfer formalities. Where none of the assets are registered before specific registries/ governmental authorities, the process usually takes one to one and a half months.

UNITED KINGDOM		Merger	Asset Sale
1.1	Local integration method	No merger procedure available in the UK. Court-sanctioned scheme of arrangement or reconstruction rarely used.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/ sister?	N/A.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	N/A.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	N/A.	None, however the business should be transferred for fair market value.
1.5	Legal Effective Date of Integration	N/A.	Normally date of completion of the asset transfer.
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	N/A.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	N/A.	No. However, creditors' consent required for the legal transfer of their debts.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	N/A.	Approximately one to two months, depending on employee consultation.

UKRAINE		Merger	Asset Sale
1.1	Local integration method	Merger.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	No. Obligations under agreements may be transferred by execution of separate assignment agreements and usually requires consent of the counterparty. Some items of the disappearing company are non-transferable, such as licenses, certain types of approvals (permissions and authorizations issued by governmental bodies or special organizations) and certificates of compliance.	No, unless the sale constitutes a "Transfer of Integral Property Complex."
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	None.	None.
1.5	Legal Effective Date of Integration	In the case of a merger of one company into another — date of exclusion of the disappearing company from the Unified State Register of Legal Entities, Private Entrepreneurs and Public Organizations. Where two companies merge together to create a new company — date of state registration of the new company.	Normally, date of completion of asset transfer.

UKRAINE		Merger	Asset Sale
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	No.	No.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	Yes, a two-month period following the publication of a notice by the disappearing company.	No.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Approximately six to eight months.	Approximately four to five months.

UNITED ARAB EMIRATES		Merger	Asset Sale
1.1	Local integration method	Merger.	Asset sale.
1.2	Preferred pre-integration structure, for example: parent/subsidiary or brother/sister?	No preference.	No preference.
1.3	Do all rights and obligations transfer by operation of law?	Yes.	No.
1.4	What financial statements or independent valuations are required? Are there audit requirements for both companies?	Requirements depend on the form of the merging companies, but generally good practice to have an independent valuation for both the surviving company and the disappearing company.	Valuation only required if real estate or vehicles are being transferred.
1.5	Legal Effective Date of Integration	Around three to four months after the date of registration of the resolution in the Commercial Register or later if a creditor objects.	Normally date of completion of asset transfer for movables and non registered assets, however registered assets (eg, real estate properties, vehicles, IP rights) will be transferred upon registration in the name of the transferee at the relevant registry.

UNITED ARAB EMIRATES		Merger	Asset Sale
1.6	Can merger/asset sale be retrospectively effective from tax and accounting perspectives? If yes, what is deadline for filing merger application?	Accounting: yes. Tax: the United Arab Emirates currently has no federal tax law. Tax legislation does exist in individual Emirates; however, in practice, it is rarely applied. To date, only oil, gas and petrochemical companies and branch offices of foreign banks are required to pay taxes. The UAE will be levying VAT at 5% effective on a federal basis from 1 January 2018. The precise operation of UAE VAT is still to be determined.	Accounting: yes. Tax: the United Arab Emirates currently has no federal tax laws. Tax legislation does exist in individual Emirates; however, in practice, it is rarely applied. To date, only oil, gas and petrochemical companies and branch offices of foreign banks are required to pay taxes. The UAE will be levying VAT at 5% effective on a federal basis from 1 January 2018. The precise operation of UAE VAT is still to be determined.
1.7	Is a creditor's notice period required? If yes, are there mandatory waiting periods?	The notice period depends on the jurisdiction in the UAE (free zone or mainland) where the merger will be effected. In the mainland, a creditor can object within 30 days of the date of the notice that the surviving company or the disappearing company has given to its creditors. Time periods vary between free zones but are generally between one and three months.	No.
1.8	How long will integration take from finalization of plan and all information provided (including financial statements)?	Approximately three to four months.	Approximately two to four months (depending on the nature of assets being transferred).

Section 11
Baker McKenzie Offices Worldwide

Baker McKenzie Offices and Associated Firms

Offices marked with an asterisk (*) are associated firms.

Argentina Buenos Aires

Baker & McKenzie Sociedad Civil
Avenida Leandro N. Alem 1110, Piso 13
Buenos Aires C1001AAT
Argentina

Tel: +54 11 4310 2200
Fax: +54 11 4310 2299

Australia Brisbane

Baker & McKenzie
Level 8, 175 Eagle Street
Brisbane QLD 4000
Australia

Tel: +61 7 3069 6200
Fax: +61 7 3069 6201

Australia Melbourne

Baker & McKenzie
Level 19, 181 William Street
Melbourne VIC 3000
Australia

Tel: +61 3 9617 4200
Fax: +61 3 9614 2103

Australia Sydney

Baker & McKenzie
Level 27, A.M.P. Centre
50 Bridge Street
Sydney, NSW 2000
Australia

Tel: +61 2 9225 0200
Fax: +61 2 9225 1595

Austria Vienna

Diwok Hermann Petsche Rechtsanwälte
LLP & Co KG
Schottenring 25
1010 Vienna
Austria

Tel: +43 1 24 250
Fax: +43 1 24 250 600

Azerbaijan Baku

Baker & McKenzie - CIS, Limited
The Landmark Building
90A Nizami Street
Baku AZ1010
Azerbaijan

Tel: +994 12 497 18 01
Fax: +994 12 497 18 05

Bahrain Manama

Baker & McKenzie Limited
18th Floor West Tower, Bahrain Financial Harbour
P.O. Box 11981
Manama
Kingdom of Bahrain

Belgium Antwerp

Baker & McKenzie CVBA/SCRL
Meir 24
2000 Antwerp
Belgium

Tel: +32 3 213 40 40
Fax: +32 3 213 40 45

Belgium Brussels

Baker & McKenzie CVBA/SCRL
Louizalaan 149 Avenue Louise
11th Floor
1050 Brussels
Belgium

Tel: +32 2 639 36 11
Fax: +32 2 639 36 99

Brazil Brasília*

Trench, Rossi e Watanabe Advogados
SAF/S Quadra 02,
Lote 04, Sala 203
Ed. Comercial Via Esplanada
Brasília - DF - Brasil - CEP 70070-600
Brazil

Tel: +55 61 2102 5000
Fax: +55 61 3323 3312

Brazil Porto Alegre*

Trench, Rossi e Watanabe Advogados
Av. Borges de Medeiros, 2233 - 4º andar
Porto Alegre - RS - Brasil - CEP 90110-150
Brazil

Tel: +55 51 3220 0900
Fax: +55 51 3220 0901

Brazil Rio de Janeiro*

Trench, Rossi e Watanabe Advogados
Av. Rio Branco, 1 - 19º andar - (Ed. RB1 - Setor B)
Rio de Janeiro - RJ - Brasil - CEP 20090-003
Brazil

Tel: +55 21 2206 4900
Fax: +55 21 2206 4949

Brazil São Paulo*

Trench, Rossi e Watanabe Advogados
Rua Arquiteto Olavo Redig de Campos 105 - 31 floor - (Ed. EZ Towers - Torre A)
São Paulo - SP - Brasil - CEP 04711-904
Brazil

Tel: +55 11 3048 6800
Fax: +55 11 5506 3455

Canada Toronto

Baker & McKenzie LLP
Barristers & Solicitors
Brookfield Place, Bay/Wellington Tower
181 Bay Street, Suite 2100
Toronto, Ontario M5J 2T3
Canada

Tel: +1 416 863 1221
Fax: +1 416 863 6275

Chile Santiago

Baker & McKenzie Ltda.
Avenida Andrés Bello 2457 Piso 19,
Providencia
Santiago
Chile

Tel: +56 2 2367 7000
Fax: +56 2 2362 9876

China Beijing

Baker & McKenzie
Suite 3401, China World Office 2
China World Trade Center
1 Jianguomenwai Dajie
Beijing 100004
China

Tel: +86 10 6535 3800
Fax: +86 10 6505 2309

China Hong Kong - SAR

Baker & McKenzie
14th Floor, Hutchison House
10 Harcourt Road, Central
Hong Kong SAR
China

Tel: +852 2846 1888
Fax: +852 2845 0476

China Shanghai

Baker & McKenzie
Unit 1601, Jin Mao Tower
88 Century Avenue, Pudong
Shanghai 200121
China

Tel: +86 21 6105 8558
Fax: +86 21 5047 0020

Colombia Bogota

Baker & McKenzie S.A.S.
Avenue 82 No. 10-62 6th Floor
Bogota
Colombia

Tel: +57 1 634 1500/644 9595
Fax: +57 1 376 2211

Czech Republic Prague

Baker & McKenzie, s.r.o., advokátní
kancelár
Klimentská 46
110 02 Prague 1
Czech Republic

Tel: +420 236 045 001
Fax: +420 236 045 055

Egypt Cairo*

Helmy, Hamza and Partners
Nile City Building, North Tower
21st Floor 2005C, Cornich El Nil Ramlet
Beaulac
Cairo
Egypt

Tel: +20 2 2461 9301
Fax: +20 2 2461 9302

France Paris

Baker & McKenzie SCP
1 rue Paul Baudry
75008 Paris
France

Tel: +33 1 4417 5300
Fax: +33 1 4417 4575

Germany Berlin

Baker & McKenzie
Partnerschaft von Rechtsanwälten,
Wirtschaftsprüfern und Steuerberatern
mbB
Friedrichstraße 88/Unter den Linden
10117 Berlin
Germany

Tel.: +49 30 2 20 02 810
Fax: +49 30 2 20 02 81 199

Germany Dusseldorf

Baker & McKenzie
Partnerschaft von Rechtsanwälten,
Wirtschaftsprüfern und Steuerberatern
mbB
Neuer Zollhof 2
40221 Dusseldorf
Germany

Tel: +49 211 3 11 16 0
Fax: +49 211 3 11 16 199

Germany Frankfurt

Baker & McKenzie
Partnerschaft von Rechtsanwälten,
Wirtschaftsprüfern und Steuerberatern
mbB
Bethmannstrasse 50-54
60311 Frankfurt/Main
Germany

Tel: +49 69 2 99 08 0
Fax: +49 69 2 99 08 108

Germany Munich

Baker & McKenzie
Partnerschaft von Rechtsanwälten,
Wirtschaftsprüfern und Steuerberatern
mbB
Theatinerstrasse 23
80333 Munich
Germany

Tel: +49 89 55 23 80
Fax: +49 89 55 23 8 199

Hungary Budapest

Kajtár Takács Hegymegi-Barakonyi
Baker & McKenzie Ügyvédi Iroda
Dorottya utca 6.
1051 Budapest
Hungary

Tel: +36 1 302 3330
Fax: +36 1 302 3331

Indonesia Jakarta*

Hadiputranto, Hadinoto & Partners
The Indonesia Stock Exchange Building
Tower II, 21st Floor
Sudirman Central Business District
Jl. Jendral Sudirman Kav. 52-53
Jakarta 12190
Indonesia

Tel: +62 21 2960 8888
Fax: +62 21 2960 8999

Italy Milan

Studio Professionale Associato a Baker &
McKenzie
Piazza Meda, 3
20121 Milan
Italy

Tel: +39 02 76231 1
Fax: +39 02 7623 1620

Italy Rome

Studio Professionale Associato
a Baker & McKenzie
Viale di Villa Massimo, 57
00161 Rome
Italy

Tel: +39 06 44 06 31
Fax: +39 06 4406 3306

Japan Tokyo

Baker & McKenzie (Gaikokuho Joint Enterprise)
Ark Hills Sengokuyama Mori Tower, 28th Floor
1-9-10 Roppongi, Minato-ku
Tokyo 106-0032
Japan

Tel: +81 3 6271 9900
Fax: +81 3 5549 7720

Kazakhstan Almaty

Baker & McKenzie - CIS, Limited
Samal Towers, 8th Floor
97 Zholdasbekov Street
Almaty Samal-2, 050051
Kazakhstan

Tel: +7 727 330 05 00
Fax: +7 727 258 40 00

Luxembourg

Baker & McKenzie
10 - 12 Boulevard Roosevelt
2450 Luxembourg
Luxembourg

Tel.: +352 26 18 44 1
Fax: + 352 26 18 44 99

Malaysia Kuala Lumpur*

Wong & Partners
Level 21, The Gardens South Tower
Mid Valley City
Lingkaran Syed Putra
Kuala Lumpur 59200
Malaysia

Tel: +603 2298 7888
Fax: +603 2282 2669

Mexico Guadalajara

Baker & McKenzie Abogados, S.C.
Av. Paseo Royal Country 4596
Torre Cube 2, 16th Floor
Fracc. Puerta de Hierro
Zapopan, Jalisco 45116
Mexico

Tel: +52 33 3848 5300
Fax: +52 33 3848 5399

Mexico Juarez

Baker & McKenzie Abogados, S.C.
P.O. Box 9338 El Paso, TX 79995
P.T. de la República 3304, Piso 1
Juarez, Chihuahua 32330
Mexico

Tel: +52 656 629 1300
Fax: +52 656 629 1399

Mexico Mexico City

Baker & McKenzie Abogados, S.C.
Edificio Virreyes
Pedregal 24, Piso 12
Lomas Virreyes/Col. Molino del Rey
Mexico, D.F. 11040
Mexico

Tel: +52 55 5279 2900
Fax: +52 55 5279 2999

Mexico Monterrey

Baker & McKenzie Abogados, S.C.
Oficinas en el Parque
Torre Baker & McKenzie, Piso 10
Blvd. Antonio L. Rodríguez 1884 Pte.
Monterrey, N.L. 64650
Mexico

Tel: +52 81 8399 1300
Fax: +52 81 8399 1399

Mexico Tijuana

Baker & McKenzie Abogados, S.C.
P.O. Box 1205 Chula Vista, CA 91912
Blvd. Agua Caliente 10611, Piso 1
Tijuana, B.C. 22420
Mexico

Tel: +52 664 633 4300
Fax: +52 664 633 4399

Morocco Casablanca

Baker & McKenzie Maroc SARL
Ghandi Mall - Immeuble 9
Boulevard Ghandi
20380 Casablanca
Morocco

Tel: +212 522 77 95 95
Fax: +212 522 77 95 96

Myanmar Yangon

Baker & McKenzie Yangon
1203 12th Floor Sakura Tower
339 Bogyoke Aung San Road
Kyauktada Township
Yangon
Myanmar

Tel: +95 1 255 056

Netherlands Amsterdam

Baker & McKenzie Amsterdam N.V.
Claude Debussylaan 54
1082 MD Amsterdam
P.O. Box 2720
1000 CS Amsterdam
The Netherlands

Tel: +31 20 551 7555
Fax: +31 20 626 7949

Peru Lima*

Estudio Echecopar
Av. De la Floresta 497
Piso 5 San Borja
Lima 41
Peru
Tel: +51 1 618 8500
Fax: +51 1 372 7171/372 7374

Philippines Manila*

Quisumbing Torres
12th Floor, Net One Center
26th Street Corner 3rd Avenue
Crescent Park West
Bonifacio Global City
Taguig City 1634
Philippines

Tel: +63 2 819 4700
Fax: +63 2 816 0080

Poland Warsaw

Baker & McKenzie Krzyzowski i
Wspólnicy Spólka Komandytowa
Rondo ONZ 1
Warsaw 00-124
Poland

Tel: +48 22 445 3100
Fax: +48 22 445 3200

Qatar Doha

Baker & McKenzie
Al Fardan Office Tower, 8th Floor
Al Funduq 61
PO Box 31316
Doha
Qatar

Tel: +974 4410 1817
Fax: +974 4410 1500

Russia Moscow

Baker & McKenzie - CIS, Limited
White Gardens
9 Lesnaya Street
Moscow 125047
Russia

Tel: +7 495 787 2700
Fax: +7 495 787 2701

Russia St. Petersburg

Baker & McKenzie - CIS, Limited
BolloevCenter, 2nd Floor
4A Grivtsova Lane
St. Petersburg 190000
Russia

Tel: +7 812 303 9000
Fax: +7 812 325 6013

Saudi Arabia Jeddah*

Legal Advisors, Abdulaziz I. Al-Ajlan & Partners, in association with Baker & McKenzie Limited
Bin Sulaiman Center, 6th Floor,
Office No. 606
Prince Sultan Street and Rawdah Street Intersection
Al-Khalidiyah District
P.O. Box 128224
Jeddah 21362
Saudi Arabia

Tel: + 966 12 606 6200
Fax: + 966 12 692 8001

Saudi Arabia Riyadh*

Legal Advisors, Abdulaziz I. Al-Ajlan & Partners, in association with Baker & McKenzie Limited
Olayan Complex, Tower II, 3rd Floor
Al Ahsa Street, Malaz
P.O. Box 4288
Riyadh 11491
Saudi Arabia

Tel: +966 11 265 8900
Fax: +966 11 265 8999

Singapore*

Baker & McKenzie.Wong & Leow
8 Marina Boulevard
#05-01 Marina Bay Financial Centre
Tower 1
Singapore 018981
Singapore

Tel: +65 6338 1888
Fax: +65 6337 5100

South Africa Johannesburg

Baker & McKenzie Johannesburg
Block 1 Commerce Square
39 Rivonia Road
Sandhurst
Sandton
Johannesburg 2196
South Africa

Tel: +27 11 911 4300
Fax: +27 11 784 2855

South Korea Seoul

Baker & McKenzie LLP
Foreign Legal Consultant Office
17/F, Two IFC
10 Gukjegeumyung-ro
Yeongdeungpo-gu
Seoul 150-945
South Korea

Tel: +82 2 6137 6800
Fax: +82 2 6137 9433

Spain Barcelona

Baker & McKenzie Barcelona S.L.P.
Avda. Diagonal, 652
Edif. D, 8th floor
Barcelona 08034
Spain

Tel: +34 93 206 0820
Fax: +34 93 205 4959

Spain Madrid

Baker & McKenzie Madrid S.L.P.
Paseo de la Castellana, 92
Madrid 28046
Spain

Tel: +34 91 230 4500
Fax: +34 91 391 5149

Sweden Stockholm

Baker & McKenzie Advokatbyrå KB
P.O. Box 180
Vasagatan 7, Floor 8
Stockholm SE-101 23
Sweden

Tel: +46 8 566 177 00
Fax: +46 8 566 177 99

Switzerland Geneva

Baker & McKenzie Geneva
Rue Pedro-Meylan 5
Geneva 1208
Switzerland

Tel: +41 22 707 9800
Fax: +41 22 707 9801

Switzerland Zurich

Baker & McKenzie Zurich
Holbeinstrasse 30
Zurich 8034
Switzerland

Tel: +41 44 384 14 14
Fax: +41 44 384 12 84

Taiwan Taipei

Baker & McKenzie, Taipei
15/F, 168 Dunhua North Road
Taipei 10548
Taiwan

Tel: +886 2 2712 6151
Fax: +886 2 2712 8292

Thailand Bangkok

Baker & McKenzie Ltd.
25th Floor, Abdulrahim Place
990 Rama IV Road
Bangkok 10500
Thailand

Tel: +66 2636 2000
Fax: +66 2636 2111

Turkey Istanbul*

Esin Attorney Partnership
Ebulula Mardin Cad., Gül Sok. No. 2
Maya Park Tower 2, Akatlar-Be ikta
Istanbul 34335
Turkey

Tel: + 90 212 339 8100
Fax: + 90 212 339 8181

Ukraine Kyiv

Baker & McKenzie - CIS, Limited
Renaissance Business Center
24 Bulvarno-Kudriavska (Vorovskoho) Street
Kyiv 01601
Ukraine

Tel: +380 44 590 0101
Fax: +380 44 590 0110

United Arab Emirates Abu Dhabi*

Baker & McKenzie Habib Al Mulla
Level 8, Al Sila Tower
Abu Dhabi Global Market Square, Al Maryah Island
P.O. Box 44980
Abu Dhabi
United Arab Emirates

Tel: +971 2 696 1200
Fax: +971 2 676 6477

United Arab Emirates Dubai*

Baker & McKenzie Habib Al Mulla
Level 14, O14 Tower
Al Abraj Street, Business Bay
P.O. Box 2268
Dubai
United Arab Emirates

Tel: +971 4 423 0000
Fax: +971 4 447 9777

and

Level 3, Tower 1
Al Fattan Currency House, DIFC
P.O. Box 2268
Dubai
United Arab Emirates

Tel: +971 4 423 0005
Fax: +971 4 447 9777

United Kingdom Belfast

Baker & McKenzie LLP
City Quays One, 7 Clarendon Road
Belfast BT1 3BG
United Kingdom

Tel: +44 28 9555 5000

United Kingdom London

Baker & McKenzie LLP
100 New Bridge Street
London EC4V 6JA
United Kingdom

Tel: +44 20 7919 1000
Fax: +44 20 7919 1999

United States Chicago

Baker & McKenzie LLP
300 East Randolph Street, Suite 5000
Chicago, Illinois 60601
United States

Tel: +1 312 861 8000
Fax: +1 312 861 2899

United States Dallas

Baker & McKenzie LLP
2300 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201
United States

Tel: +1 214 978 3000
Fax: +1 214 978 3099

United States Houston

Baker & McKenzie LLP
700 Louisiana, Suite 3000
Houston, Texas 77002
United States

Tel: +1 713 427 5000
Fax: +1 713 427 5099

United States Miami

Baker & McKenzie LLP
Sabadell Financial Center
1111 Brickell Avenue, Suite 1700
Miami, Florida 33131
United States

Tel: +1 305 789 8900
Fax: +1 305 789 8953

United States New York

Baker & McKenzie LLP
452 Fifth Avenue
New York, New York 10018
United States

Tel: +1 212 626 4100
Fax: +1 212 310 1600

United States Palo Alto

Baker & McKenzie LLP
660 Hansen Way
Palo Alto, California 94304
United States

Tel: +1 650 856 2400
Fax: +1 650 856 9299

United States San Francisco

Baker & McKenzie LLP
Two Embarcadero Center, 11th Floor
San Francisco, California 94111
United States

Tel: +1 415 576 3000
Fax: +1 415 576 3099

United States Washington, DC

Baker & McKenzie LLP
815 Connecticut Avenue, N.W.
Washington, District of Columbia 20006
United States

Tel: +1 202 452 7000
Fax: +1 202 452 7074

Venezuela Caracas

Baker & McKenzie SC
Centro Bancaribe
Intersección Avenida Principal de Las
Mercedes con inicio de Calle París,
Urbanización Las Mercedes
Caracas 1060
Venezuela

Tel: +58 212 276 5111
Fax: +58 212 993 0818; 993 9049

Venezuela Valencia

Baker & McKenzie SC
Urbanización La Alegria
P.O. Box 1155
Valencia Estado Carabobo
Venezuela

Tel: +58 241 824 8711
Fax: +58 241 824 6166

Vietnam Hanoi

Baker & McKenzie (Vietnam) Ltd.(Hanoi)
Unit 1001, 10th floor, Indochina Plaza
Hanoi
241 Xuan Thuy Street, Cau Giay District
Hanoi 10000
Vietnam

Tel: +84 4 3825 1428
Fax: +84 4 3825 1432

Vietnam Ho Chi Minh City

Baker & McKenzie (Vietnam) Ltd. (HCMC)
12th Floor, Saigon Tower
29 Le Duan Blvd.
District 1
Ho Chi Minh City
Vietnam

Tel: +84 8 3829 5585
Fax: +84 8 3829 5618