Navigating change
Delivering your strategic corporate reorganizations
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The global regulatory landscape is constantly changing. When you add in the need for complex groups to have efficient corporate and operating business reporting lines, it is clear to see why companies have regularly to review their own global entity structures.

When combined with strategic acquisitions or divestitures, business transformation plans, financial reporting or fiscal changes in any particular jurisdiction or releasing capital within a group, in-house teams whether legal, compliance, finance, treasury or tax can become stretched.

Eversheds Sutherland’s cross-border teams routinely advise on and implement restructuring and rationalization projects designed to achieve the business needs outlined and to minimise the burdens of complex corporate structures. The teams also work on integration projects post acquisition as well as reorganizations or carve outs required for a disposal. Cash and dividend release programs are also a core strength of the team.

Working alongside your financial, commercial risk, tax and legal teams we can add valuable support, either via one-off projects or regular retainer arrangements, through each restructuring or rationalization process.

We have undertaken these projects for more than 200 global clients that are headquartered in virtually every part of the world. The team works closely with multinational corporations that need to reorganize regularly to release capital and create business integration and efficient global corporate structures.

Our global proposition delivers strength in depth from a multi-disciplinary team, consisting of our global Corporate, Tax, Employment and Finance practices to deliver on the ground support wherever you do, or are planning to do business. We present our commercial advice with the use of technology and project management solutions to ensure you get the right legal guidance, delivered in the most efficient manner, seamlessly coordinated with your local teams and counsel in any jurisdiction in real time.

Typical corporate reorganizations

Change is the new norm and each month companies are contemplating how to transform their current business set-ups to create efficiencies, maximize use of invested capital, simplify corporate structures and entity management, or improve fiscal and regulatory compliance.

Although each reorganization is unique, the majority of business transformations will typically fall into one of the following categories:

- spin-offs, separations and carve-out
- legal entity rationalization and simplification
- cash utilization (e.g. cash pools, dividends payments, intra-group financing) and cash repatriation
- establishment of corporate headquarters and holding company structures
- cross-border mergers, redomestications and migrations
- post-merger/acquisition integrations
- establishment of fiscal units between group companies
- establishment of supply chain structures
- joint ventures
- other types of business transformations
Key design and implementation considerations

Regardless of the type of reorganization you seek to undertake, there are a number of legal and strategic considerations that are instrumental to the success of your business transformation:

Tax

With the tax landscape becoming even more complex with greater scrutiny from regulatory authorities in the US and the EU, any corporate reorganization must be fully evaluated from a taxation perspective. For multi-national clients this can be a complex, time consuming process and it is important that you receive advice from tax lawyers well versed in working on global reorganization projects so this can be provided quickly, efficiently and in a joined up way with other legal services, so nothing “falls between the cracks.”

We are active in every area of taxation, from structuring complex transactions to advising on cross-border business operations, to reduce costs or achieve simplification. So whether you are looking to expand into new jurisdictions, consolidate assets or simply review your existing corporate or business structure, our multi-national Tax team can help you navigate the tax landscape and provide you with taxation advice to help you achieve your business objectives. With 160-plus tax attorneys across more than 19 countries, we have a robust Tax team that delivers high-quality tax advice and tax transactional support across a large number of jurisdictions. Whatever the needs of your business and where you operate, we are on hand to help.

Our Tax team can also assist you with DAC6 reporting obligations, an EU regulation currently being implemented which requires the disclosure of information on certain cross-border arrangements to the tax authorities of EU Member States. DAC6 has been brought in to fight certain aggressive tax planning arrangements, but may also be required in cases where a tax advantage is not the main benefit of the arrangement.

Working closely with Eversheds Sutherland’s Corporate practices to formulate and implement strategies, we ensure that all tax aspects of a project have been carefully addressed and that taxation implications are understood by all parties. Our international Tax team handles transactional tax matters including mergers and acquisitions, dispositions, joint ventures, spin-offs, internal restructuring and reorganizations, as well as issues related to financing these matters.

Commercial

A material consideration in almost every corporate reorganization involves how to deal with the existing contracts of the relevant entities. A full and proper understanding of the whole contracting structure at the outset is key. This understanding will enable us to formulate the right structure for the reorganization and identify potential risks and benefits in the planning phase.

Understanding the contractual matrix will also help to ensure the right project management and the right resource to implement the necessary contractual changes as part of the process.

Each reorganization has its own issues and challenges in relation to existing contracts. It will always be necessary to establish what contracts to amend, or split between businesses and, if so, how. It will also be necessary to consider how contracts requiring transfer will be assigned or novated and, if third party consents to transfers are required, how that process can best be achieved and managed.

The Eversheds Sutherland Commercial Contracts team is highly experienced in assisting organizations with the smooth and effective implementation of contracting change resulting from a business transformation.

Our team’s vast experience helps us to prioritize key contractual issues and identify those which can be dealt with in a more commercial, less time consuming way and in a manner which minimizes the impact of the reorganization on the organization’s contractual relationships.

Our international and highly experienced team regularly helps to:
- identify relevant in scope contracts
- undertake diligence reviews of those contracts to:
  - identify any material issues within any key contracts that may affect the structure of the proposed reorganization
  - identify required contractual change and plan a strategy to effect that change
  - ensure provisions in transaction documentation is effective to achieve the required transfer of contracts
  - project manages the interface with third parties to obtain consent and make necessary contract variations to deliver a completed contract transfer within reorganization timetables
  - implement the contractual change with the assistance of technology to simplify the task, particularly where the volume of contracts is high, and to assist the management and tracking of the contracts transfer

Directors’ Duties

Corporate governance is critical for any organization and complies/multi-national structures enhance the legal, regulatory and compliance burden placed on corporate groups. As well as meeting their commercial goals, directors are responsible for the actions of their companies and individuals are increasingly being appointed to boards in multiple jurisdictions. Directors have an obligation to understand their statutory duties and, while there are common themes globally, many jurisdictions have specific local requirements.

In the context of corporate reorganizations, a failure to comply with statutory requirements could result in:
- reputational risk for the group
- personal liability for individual directors
- regulatory or compliance breaches and associated reporting
- transactions rendered void
- payment of illegal distributions

Eversheds Sutherland has corporate secretarial and governance lawyers based in 120 jurisdictions (through a combination of Eversheds Sutherland local offices and third-party partners) who provide support and ensure any reorganization adheres to local requirements.

In addition, we can provide training and materials to ensure your directors understand their obligations:
- Directors’ Duties Training: we can work with you to develop a training programme for your directors, incorporating bespoke topics relevant to your business
- Directors’ Duties Handbooks: our handbooks cover over 60 jurisdictions and provide directors with up-to-date practical information covering their legal duties, powers and liabilities
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Case studies

Post-merger integration: US aerospace and defence manufacturer

Eversheds Sutherland advised a US-based aerospace and defence manufacturer on a complex reorganization following a multi-billion dollar acquisition of a leading global aircraft components supplier. Jurisdictions involved: Germany, Luxembourg, UK, France, the Netherlands, Jersey, Barbados, US, Japan, Brazil and India.

Following the acquisition of a leading global aircraft supplier, we advised on the integration of the international operations of both groups. The purpose was to consolidate the international operations underneath a single holding company structure.

Eversheds Sutherland could offer the client advice in relation to all jurisdictions involved with one single point of contact. Our project management approach and experience facilitated the completion process of this very complex project for the client.

After high-level tax structuring of the transaction by one of the Big Four accounting firms, we set out the legal micro-steps for the implementation of the project. Documents were shared via an online share point solution, whereby all stakeholders could review and amend the documents relating to the individual sub-steps.

Feedback:

“VisitBritain implemented a global reorganization and downsizing exercise across 20 jurisdictions. Implementing the changes was extremely complex, often working to tight deadlines across different cultures and time zones. We were impressed with the level of legal advice and support Eversheds Sutherland were able to provide. They were unfailingly helpful, calm and professional throughout the project. I would have no hesitation in recommending them for future projects of this nature.”

Employment

With any re-organization, communication is key. We work with clients from early planning to implementation of strategy, ensuring employee buy-in to proposed changes. We use tools to meet deadlines and work with employee representatives, delivering training on their role, so they effectively engage in the processes.

How we can help?

- strategic, cross-border HR planning
- due diligence
- post-completion integration
- managing employee transfers
- dealing with trade unions, works councils and employee representatives
- establishing new businesses
- global mobility of workforces

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Cross-border reorganizations

Cross-border corporate reorganizations bring with them a whole host of employment, pensions and tax considerations. In some jurisdictions consultation with employee representatives will be mandatory before any firm decisions can be taken and it is key that any approvals are anticipated and planned into the timeline to avoid any unexpected delays. Our team is experienced in helping clients get ready for any type of corporate reorganizations, carrying out multi-jurisdictional due diligence, advising on information and consultation and HR communications and negotiating the HR related provisions in the transaction documents.

Cross-border employee transfer

Embarking upon a business transfer or outsourcing across different legal jurisdictions can involve a patchwork of legal requirements and interaction with different employee-representatives in different ways, at different times, depending on the jurisdictions involved.

Failure to adhere to local laws or to navigate legal nuances can have serious financial, as well as practical, consequences for a business transfer and end up delaying, if not preventing progress.

There is much for employers and HR practitioners to think about and plan for once the possibility of transfer arises. Our international HR lawyers understand the many challenges and potential pitfalls that can lie ahead, including more nuanced aspects, such as cultural differences, and can help you to plan for these comprehensively and effectively. With more than 220 employment lawyers across our international offices, we can provide an unrivalled combination of local knowledge with the resources and capability of a global business, to steer you through a business transfer or outsourcing.
“The Eversheds Sutherland team made a significant contribution to the design and execution of this transaction. The competence, skill and attitude of the team has enabled us to complete this complex deal in record time. Colleagues from other divisions are already asking for support from the attorneys involved, which can serve as a clear indication of what Eversheds Sutherland has done on this project.”

Lars Sjobring, General Counsel of Autoliv

**Carve-out: Autoliv**

Eversheds Sutherland has advised its long-standing client Autoliv Inc on its reorganization whereby Autoliv’s two business segments, Passive Safety and Electronics have been separated and a new brand – Veoneer – in automotive safety electronics and systems has been created.

Eversheds Sutherland’s multi-jurisdictional team provided advice on the overall structuring of the new corporate entity and the separation process. A number of workstreams were carried out to implement the reorganization, including the establishment of new entities in several jurisdictions, due diligence investigation, asset transfer, share transfers, licensing agreements and transition services agreements.

The Eversheds Sutherland cross-border team was led from the Stockholm office and included Eversheds Sutherland teams from Germany, France, Italy, Romania, UK, China, Ireland, Spain and Switzerland.

We offered the client advice in relation to all jurisdictions involved with one single point of contact. Our project management approach and experience, as well as our familiarity with the client, facilitated the completion process of this very complex project for the client. The project has also built on our in-depth knowledge of global spin-offs which are currently trending among corporates.

Eversheds Sutherland’s expertise in handling transactions of this nature and demonstrates our ability to provide first-rate, cross-industry leaders in handling transactions of this nature and demonstrates our ability to provide first-rate, cross-industry leaders in handling transactions of this nature and demonstrates our ability to provide first-rate, cross-industry leaders in handling transactions of this nature.

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National Grid is one of the world’s largest investor-owned utilities companies focused on transmission and distribution activities in electricity and gas in the UK and the US. The Eversheds Sutherland team advised National Grid on the separation and subsequent sale of a majority stake of its UK Gas Distribution Business. The separated business (now known as Cadent Gas) comprises around 15% of the UK’s energy infrastructure, consisting of 132,000 km (82,000 miles) of pipeline and delivering gas to around 11 million customers.

The winning consortium, selected after a competitive auction, comprised Macquarie Infrastructure and Real Assets, Allianz Capital Partners, Hermes Investment Management, CIC Capital Corporation, Qatar Investment Authority, Dalmore Capital and Amber Infrastructure Limited/International Public Partnerships, with the deal valuing the separated business at £13.8 billion.

**Deal highlights**

Eversheds Sutherland led the business separation and supported the utilities giant on the sale. The separation involved the creation of a separate company which became the asset owner and regulatory licence holder for the gas distribution business prior to the sale. The mandate included the identification of the assets required for transfer and implementation of the hive off, together with separation and vendor due diligence.

Due to the complexity of the business, the Eversheds Sutherland team utilized several practices, including corporate, commercial, pensions, employment, health and safety, data protection, litigation and IP. Eversheds Sutherland worked in collaboration with a Magic Circle firm to deliver the transaction.

“The separation and sale of our UK Gas Distribution business has been a huge undertaking. The gas distribution business, if separately listed, would be a FTSE 50 company and comprises around 15% of the UK’s energy infrastructure. The Eversheds Sutherland team has played a major part in the success of the transaction - working in partnership with the National Grid team and other panel law firms. I have been very impressed with the team, the use of technology and their commitment to working collaboratively to deliver this outstanding result.”

*Mark Noble, Deputy Group General Counsel at National Grid*
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Our approach to corporate reorganizations

**Phase I — Strategic planning and the road map for your corporate reorganization**

Our focus is on building long-term trusted advisor relationships. We are committed to investing time getting to know your organization and business and in understanding the drivers behind your reorganization.

At the start of any restructuring or reorganization, we will work directly with your in-house and business teams and third party advisors, to develop a clear understanding of your overarching commercial objectives. We will conduct a detailed review of your particular circumstances – as we know that each corporate reorganization is different and no one size fits all.

Business transformations often create legal, fiscal and operational challenges. Implementing reorganization steps subject to challenging timelines requires a pragmatic plan which addresses all key legal and fiscal considerations. This approach is crucial for the successful delivery of your corporate reorganization and minimum disruption to your day-to-day business.

Building macro and micro plans for the implementation of your project, prepared in close cooperation with our local lawyers in relevant jurisdictions, will ensure full compliance with regulatory, local industry-specific, corporate, commercial, employment and fiscal requirements.

**Phase II — Effective implementation**

The implementation phase is typically coordinated by the global Eversheds Sutherland Corporate team, which produces the transaction documentation necessary to comply with all legal, fiscal and regulatory requirements on a local level. A coordinated approach means that opportunities to create efficiencies and add value to shareholders, identified during the planning phase, are fully exploited.

Any significant change in your organization will likely present challenges. Eversheds Sutherland is uniquely positioned to provide you with bespoke structuring advice and the right project management solutions. Our cross-disciplinary and cross-jurisdictional teams work closely together to anticipate and manage issues proactively in all jurisdictions and across different functional workstreams.

We also recognize that a second pair of eyes can provide a scrutiny that can refine corporate reorganization plans when reviewed at a micro level. In addition to initial strategic planning, our depth of experience means we are also equipped to implement structures which have been brought to us by our clients.

Appointing Eversheds Sutherland will mean an effective and robust management of your corporate reorganization. Our commercial, solution-driven and collaborative approach has been recognized by our clients as adding real value to their organizations and delivering the “best of both worlds”.

Legal documentation preparation
Preparatory Steps
Macro and micro plans
Legal structure review
Document review
Execution and closing
Post-closing actions
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We adopt a structured approach to corporate reorganization projects, resulting in greater budget transparency and more efficient project control. We use defined project management methodologies, designed for a legal environment and which are embedded in our legal service delivery.

By integrating legal project management workflows into corporate reorganizations, we ensure:

- accurate scoping at the outset but with the flexibility to adjust and track changes as they arise
- optimum resource allocation throughout the project
- costs management and regular fee updates
- timely communication of tailored information that meets your needs, across different workstreams and jurisdictions

Many of our project managers are legally qualified and therefore understand your business, the legal processes involved and the transaction drivers. With strong dedicated management of your project we ensure that the right work gets done and is done well. Additionally, your legal project manager acts as the single conduit to real time information on progress, red flags and costs, regardless of the complexity of the matter or the number of lawyers involved.

DealMaster is Eversheds Sutherland’s digital collaboration platform, aimed at enabling the successful and efficient delivery of any corporate reorganization project. If this innovative tool is of interest for you, we will work with you to understand how the solution can deliver further value to you and the wider process, for example creating status reports to meet your internal requirements.

Key features of DealMaster for any corporate reorganization include:

- **document management** – centralized storage of the key information documents together with the draft (and ultimately signed) transaction documents/contracts, accessible by the global Legal and Tax teams at both the client and Eversheds Sutherland (and other advisers, if applicable)
- **structure paper** – a digital copy of the latest corporate reorganization structure steps linking through to the relevant documents, ensuring all members of the project team recognize the steps involved
- **status updates** – given the scale of most corporate reorganization we will maintain live trackers to detail the status of each of the steps
- **tasks** – functionality to project manage the global team, enabling the assignment and tracking of the detailed tasks throughout the project
- **global advice** – a streamlined process of providing advice on the corporate reorganization structure utilizing a Q&A based approach across the jurisdictions, ensuring consistency of advice and feeding directly into our report to you to identify any red flag issues for attention at the outset
- **documents list** – a live breakdown of each document required for the project including responsibility for production, status updates, signing formalities and requirements, together with a direct link to the draft document
- **automated document review** – cutting-edge AI tools assist legal review by analyzing data room contents, identifying key documents and extracting relevant clauses for review
- **e-signatures** – subject to legal applicability and your internal preferences, we can use our integration with a leading online e-signature platform (DocuSign) to project manage the signing of each stage of the project documents. This allows a signatory to sign multiple documents electronically on their computer or smartphone in a fraction of the time and without error – particularly useful on projects involving multiple jurisdictions, as signatories need not be in the same place and can sign multiple documents at the same time, on the move if necessary, all project managed by us
How will Brexit affect your corporate reorganizations?

We are committed to giving clear, straightforward and objective advice on what Brexit may mean for your business and corporate reorganization projects. The issues are not the same for every business or project and we will ensure that our legal advice is tailored to your needs.

As the outcomes of the Brexit negotiations become clearer, our cross-functional teams are ready to engage with your business to consider the impact on your corporate structure and the necessity for or benefits of any resulting restructuring.

We are one of nine practices awarded Tier 1 status for our legal advice by the Legal 500, a go-to practice for Brexit contingency planning and legal advice, monitoring of developments and client and industry specific briefings.

DAC6 reporting obligations will apply regardless of the outcome of Brexit, as the Government continues to negotiate, implement and apply EU legislation until exit negotiations are fully concluded.

If you require more information on DAC6, including an interactive map with the implementation status of EU Member States, visit: www.eversheds-sutherland.com/DAC6
## Our experience

### Spin-offs, separations and carve-outs

- **Global education provider**
  - Multi-jurisdictional corporate reorganization involving a Dutch limited liability partnership and a Dutch cooperative, with the main aim of a tax efficient separation of the non-US business from the main group and sale of various subsidiaries.

- **Automotive safety supplier**
  - Multi-jurisdictional separation of its two business segments in preparation for creating a new public listed company. We advised on all the legal aspects of this reorganization in approximately ten different jurisdictions around the world.

- **Engineered solutions provider**
  - Multi-jurisdictional pre-divestiture carve-out of business from the core entity across seven jurisdictions in Europe and the Middle East. Consequently a separate group of companies has been created.

### Legal entity rationalization and simplification

- **Diversified industrials solutions provider**
  - Advised on the intra-group entity rationalization by way of a simplified cross-border merger of a French entity into a Dutch entity – implemented through a dissolution without liquidation under French corporate law rather than the EU Merger Directive.

- **Fashion retail brand**
  - Advised on an internal simplification and consolidation of its European group structure, involving France, the Netherlands, Belgium and Denmark.

- **Chemicals/ Biocides company**
  - Advised on a post-acquisition corporate reorganization by consolidating the number of Italian entities following merger.

### Cash utilization and cash repatriation

- **Dairy and ice cream producer**
  - Advised on a loan portfolio refinancing, involving the UK, Latvia, Estonia, Romania, Norway, Denmark, Belarus and Cyprus. This involved establishing a local corporate treasury entity in Latvia with a primary function of ensuring the Group's financial and operational risk and liquidity management.

- **Chemicals producer**
  - Advised on a global dividend project distributing funds throughout various group entities to be extracted at the relevant parent company level. This has involved coordinating advice for a number of jurisdictions including Taiwan, Singapore, Hong Kong, Spain, the Netherlands, Hungary and Italy.

- **Multi-national telecommunications conglomerate**
  - Advised on a number of intra-group reorganizations, involving cash repatriations, dividends, capital reductions and intra-group loan arrangements.

### Establishment of corporate headquarters and holding company structures

- **Pharmaceutical company**
  - Advised on a complex European holding company reorganization across 18 jurisdictions. As a result of the reorganization, the new UK company became the main holding company for the European subsidiaries.

- **American multi-national engineering firm**
  - Advised on a global corporate reorganization and restructuring, including the provision of structuring tax advice, creating a new Irish holding company, subdividing shares of existing entities, intra-group share transfers, capital contribution and share for share exchange agreements and loan agreements.

- **Korean HQ’d diversified industrials company**
  - Advised on the restructuring of their European operations involving several jurisdictions, including domestic and cross-border mergers in Luxembourg, Ireland and the Czech Republic as well as the relocation of their regional headquarters from Belgium to the Czech Republic. As a result of the reorganization, the group holding structure has been simplified.
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Cross-border mergers, redomiciliations and migrations

Consumer crediting company
Advised on a cross-border merger involving Latvia, Lithuania, Estonia and Finland. This involved the extensive structuring advice on the cross-border merger aspects and legal assistance with the implementation of the cross-border merger and conversion of local companies to branch offices in the respective countries.

Healthcare and life sciences company
Advised on the cross-border merger of multiple non-Irish entities. This is one of the first cross-border mergers under the Companies Act 2014 (Ireland) under the EU Merger Directive 2003/56/EC and involved a separate application to the High Court in Dublin.

Agrochemical company
Advised on a complex multi-jurisdictional reorganization of one of its European businesses. This has involved the migration of a Dutch entity to Luxembourg, followed by the cross-border merger into a Swiss entity and setting up of an intermediary holding company.

Post-merger/ acquisition integrations

Construction and engineering for the energy industry
Advised on a multi-jurisdictional post-combination integration and global entity realignment of its global business in oil and gas projects, technologies, systems and services. Specifically, this has involved multiple intra-group share sales, contributions, dividend distributions and a joint venture.

Paper and packaging manufacturer
Advised a US group on a complex post-acquisition integration following the US$ 2.3bn public takeover of a packaging solutions provider in the form of a reverse triangular merger, involving the UK, the Netherlands, Germany, Luxembourg and Bermuda.

Global food and beverage company
Advised on a multi-jurisdictional post-acquisition integration, involving multiple intra-group share transactions, contributions, dividend distributions, liquidations and setting up new Dutch limited partnerships.

Establishment of supply chain structures

Online retail company
Advised on the internal reorganization of its business operations in Romania, Poland and Italy in order to consolidate two different business lines. This has also involved coordinating advice on related commercial aspects and relocation of a warehouse.

Home improvement retailer
Advised on the internal reorganization of its Romanian operations, including a carve out and partial outsourcing of a number of business lines.

Natural resources group
Advised an energy group in connection with the transfer of its UK onshore and shale gas assets to a third party in exchange for 18% shares in the third party. This represents the first time that UK petroleum licence interests have been split and reorganized on stratigraphic lines rather than on geographic lines.

Joint-ventures

Pharmaceutical business
Advised on a spin-off of its oncology manufacturing business into a new dedicated entity, in preparation for a joint venture with a strategic Indian investor, including the legal assistance with the overall investment structure, joint-venture agreement and corporate implementation of the new structure.

Diversified industrials manufacturer
Advised on a complex global intragroup reorganization of its automated transmission business and its subsequent transfer to a JV company in Switzerland.

Global pest control
Advised in connection with the reorganization in Sweden preceding the creation of a JV. The purpose of the JV was to create a leading supplier of work wear and hygiene services with aggregate turnover of € 11 billion. The reorganization has involved asset and share carve-outs of those business segments not intended to be included in the JV.
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Notes
For more information, please don’t hesitate to contact us at: corporatereorgs@eversheds-sutherland.com