

Legal Business Solutions Academy:

Managing International Business Reorganisations

May 2023



Managing International Business Reorganisations

The session will focus on key transactions and considerations when working on business restructuring projects.



PwC International business reorganisations



Our team advises clients on various corporate legal matters, with majority of our work being related to international business reorganisations (**IBR**) projects for global clients linked to the deals market and macro-economic changes. Our work in the IBR sphere includes carve outs, separations, spin-off projects and post-deal integration work. We also continue to support our clients on a range of other key matters including, among other things, commercial restructurings, legal entity reductions and supply chain transformations, as well as cash repatriations, shares/asset transfers, mergers/demergers and balance sheet tidy-ups.



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Agenda

- | | |
|----|------------------------|
| 01 | Share Transfers |
| 02 | Capital reductions |
| 03 | Distributions |
| 04 | Business transfers |
| 05 | Entity elimination |
| 06 | Questions and feedback |



1

Share transfers



Share transfers – Introduction

<p>Transfer of shares in a target entity from the transferor (one who transfers) to the transferee (one who receives). Under the laws of England and Wales, legal and/or beneficial interest in shares can be transferred.</p>	<p>No requirement for a formal valuation of the shares and the transfer itself does not have to be supported by financial statements, though, such financial information may be required where there is a transfer at or below book value to certain group companies.</p>	
Purpose	1	2 Requirements
Documents Typically a share purchase agreement (operative document) and stock transfer form (UK legal instrument that transfers title in shares).	3	4 Considerations <ul style="list-style-type: none">• Requirement for a price adjustment clause.• Any pre-emptive rights on transfer under the articles of the target company.• Requirement for register of members to be up to date and accurate.



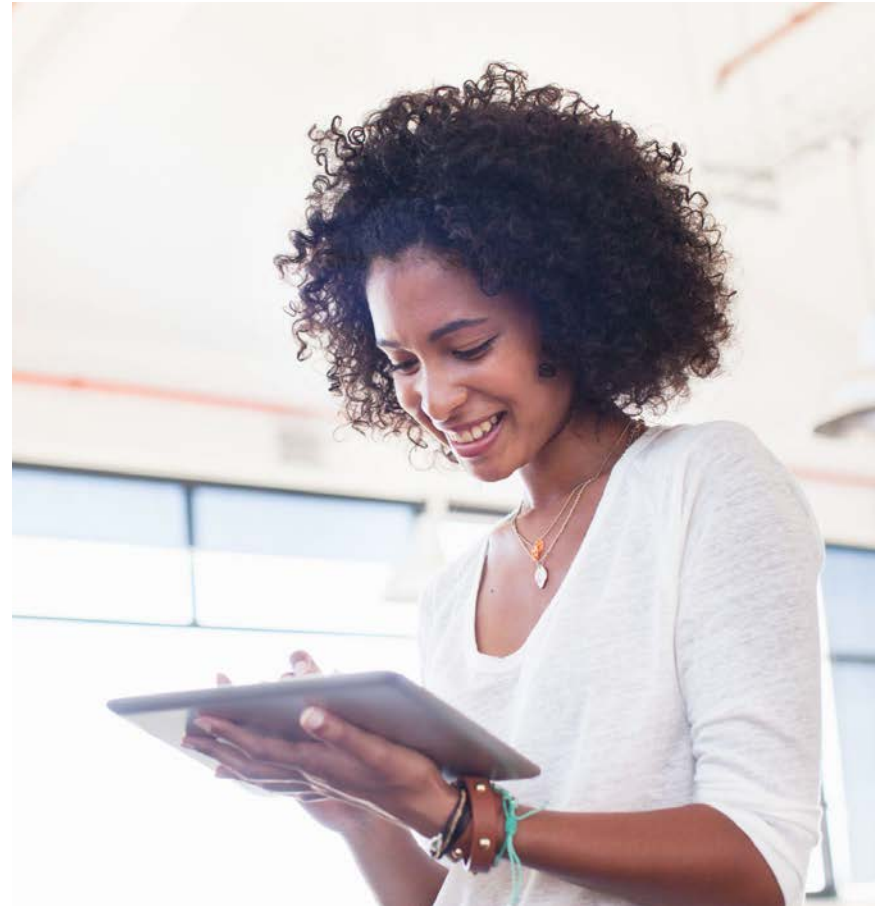
Main considerations

01 When does the transfer become effective?

02 Book value vs Fair market value.

03 Legal v Beneficial Transfer of Interest.

04 Declaration of Trust Route.



Quiz – Has the share transfer been recorded correctly?

Familiarise yourself with the scenario to determine if the share transfer has been correctly reflected in the company's books.

The Target is a private company incorporated in England and Wales.

The parties have executed all the relevant formalities and the purchase price falls within a stamp duty exemption so no stamping of the stock transfer form is required. The documents were dated 25 May 2023.

The Company Secretary dated the share certificate on 25 May 2023 but as she was working from home she only managed to update the register of members of the Target a few days later.

Have the transfer of shares been correctly reflected in the books of the Target?



2

Share capital
reductions



Capital reductions – Introduction

Purpose



- When returning capital to its shareholders a company must ensure that the interests of its creditors are protected.
- A private limited company can return capital to its shareholders by way of capital reduction supported by a solvency statement.

Requirements



- Upon completion of the reduction the company needs to have at least one non-redeemable share remaining.
- Non-statutory reserves (for example the merger reserve) can't be reduced/cancelled.
- Last annual/interim accounts required to determine the financial position of the company, as the directors need to confirm that the company will be able to pay its debts as they fall due within the next 12 months after reduction (unless the company is to be wound up).

Types of reductions



Reduction or extinguishment of share premium account:

- Cancellation or reduction of the number of issued shares
- Reduction of the nominal value of the issued share capital.

The reserves created upon the reduction of capital can either be:

- Returned to the members as a capital return; or
- Returned to the profit and loss accounts of the company to further allow it to make a distribution to its shareholders

Documents



- Corporate approvals from the entity and shareholder
- Special resolution
- Solvency statement and confirmation statement
- Updated share certificate (if required)



Main considerations

- | | |
|----|---|
| 01 | Return of Capital vs Income (driven by jurisdiction of parent i.e. US/Australia). |
| 02 | Cancellation of shares in their entirety v reduction of nominal value. |
| 03 | Solvency issue/Risk averse directors? |
| 04 | Common approach in practice. |



Quiz– Capital reduction sequencing



What is the correct order in which the capital reduction documents should be executed?

Use chat function to share your thoughts!

Option A

1. Board meeting's minutes.
2. Solvency statement.
3. Shareholder's resolution to approve the reduction.
4. Statement of compliance of directors.

Option C

1. Board meeting's minutes.
2. Shareholder's resolution to approve the reduction.
3. Solvency statement.
4. Statement of compliance of directors.

Option B

1. Shareholder's resolution to approve the reduction.
2. Board meeting's minutes.
3. Solvency statement.
4. Statement of compliance of directors.

3

Distributions



Distributions – Introduction



Types

- Cash or
- Non-cash distributions e.g. shares, receivable, assets

Requirements

- Latest annual accounts and (if possible) interim accounts showing sufficient distributable reserves.
- If the latest annual accounts do not show sufficient distributable reserves, then recent unaudited interim accounts showing sufficient distributable reserves.
- For any newly incorporated companies, initial accounts.

Supporting documents

Additionally, the directors should also have access to forward looking projections e.g. cash flow projections, current, prospective and contingent creditor portfolio etc.

Documents

- Corporate approvals for distributing and receiving entity.
- If shares: share certificate, stock transfer form and a deed.
- If a receivable: a deed and notice of assignment.
- Shareholder resolution approving distribution.

Main considerations

01

A company must have profits available for distribution in order to make a distribution. These are its accumulated realised profits less its accumulated realised losses.

02

If a company does not have sufficient distributable reserves to make a distribution, it can undertake a reduction of capital to create such profits.

03

If a distribution is paid in breach of the statutory requirements and the shareholder(s) has knowledge or reasonable grounds for belief of this fact, the shareholder(s) is liable to repay the distribution to the Company.

04

It is imperative that directors have the required financial information available to them to support their decision to make a distribution.
A director who is a party to a decision approving an unlawful distribution could be personally liable to repay an improperly-paid distribution and be in breach of their fiduciary and statutory duties owed to the company.

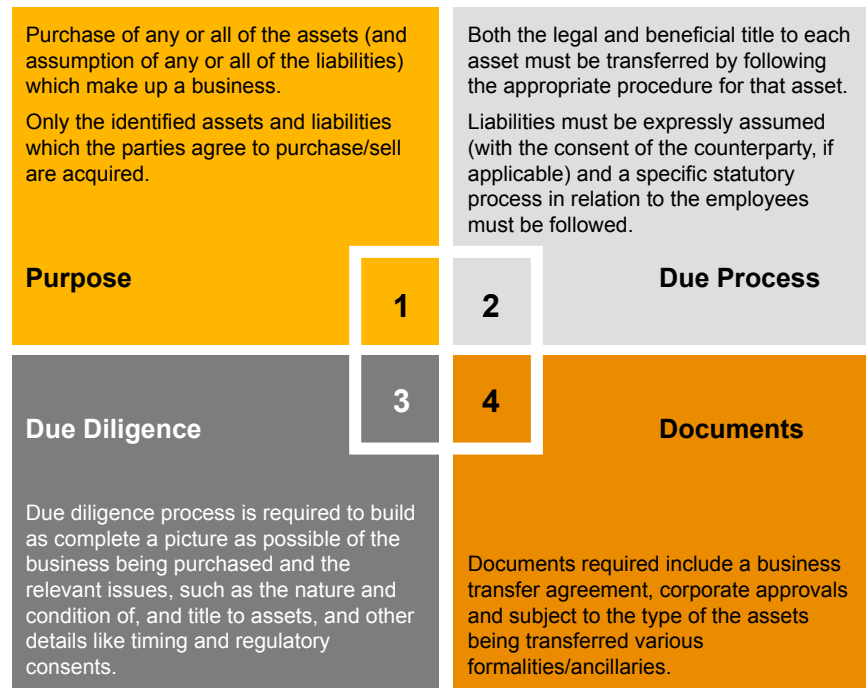


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Business transfers



Business transfers – Introduction



Key considerations

- | | |
|----|--------------------------------------|
| 01 | Types of assets. |
| 02 | Contracts. |
| 03 | Licenses and consents. |
| 04 | Real estate and employment consider. |



5

Entity Elimination



Entity elimination – Introduction

Members Voluntary Liquidation 'MVL'		Strike-off
Background	A tried and tested mechanism for bringing a company's life to an end, involving the appointment of a licensed Insolvency Practitioner as liquidator.	<ul style="list-style-type: none">• 'Short cut' procedure, undertaken by the directors of the company with/without assistance from professional advisers.• The company must have been dormant – no trading, name change, sale of property or rights or other activity in the past three months.
Process overview	<ul style="list-style-type: none">• The directors swear a 'declaration of solvency'.• The shareholders pass a special resolution.• The liquidator is appointed and proceeds to realise the assets, seek out/pay creditor claims, before returning any surplus to shareholders.• The liquidation is closed and the company dissolved.	<ul style="list-style-type: none">• The directors make an application to the Registrar for the company to be removed from the register.• All interested parties must be notified of the application.• The Registrar advertises his intention to strike the company from the register, following which it is dissolved two months later.
When can it be used?	<ul style="list-style-type: none">• The company is no longer required and/or needs to be liquidated to release capital or for tax reasons.• There is a lack of corporate memory eg entity has been recently acquired or there has been a change in personnel.	<ul style="list-style-type: none">• No or minimum historic trading.• May not have contracted with the third parties.• Probably has never had employees• Minimal net assets.• Tax, legally and commercially dormant

Entity elimination – Pros and cons

Members Voluntary Liquidation 'MVL'

Pros

- The liquidation process affords the directors (and/or the Group) protection from creditors/claimants.
- If the company is restored, the directors and shareholders have no responsibilities whatsoever.
- Return of capital via a liquidation often provides more tax benefit for shareholders (both corporate and personal).
- Flexible timing (although cost savings if affairs wound up and balance sheet tidied up before liquidator appointed).
- No need for distributable reserves to distribute assets.

Cons

- The reduced risk resulting from a liquidation brings with it a cost in terms of the liquidator's fees, together with advertising and other associated expenses.
- A liquidation will typically take longer to complete than a strike-off.

Strike-off

- Strike-off involves no direct cost other than the filing fee
 - The procedure is typically completed more quickly than MVL
 - The strike-off procedure can be used in conjunction with the simplified 'reduction of capital' mechanism to create distributable reserves to enable a distribution of all assets subject to amount of available share capital and additional costs.
-
- A claimant emerging after dissolution can, for 6 years, restore the company and potentially pursue the directors personally.
 - If the company is restored the directors are back in office and have the responsibility to file all outstanding accounts/returns.
 - All tax and other matters must be finalised prior to strike-off.
 - HMRC or any other interested party may object to the strike off application once filed.
 - Any assets, present or future, are lost to the Crown.

Quiz- Which entity can apply for strike off?

Which of these three companies can be struck off?
Use the chat function to share your thoughts!

Company A

Company A has been dormant for over 4 months, however, last month the group to which the company belongs was acquired by ABC PLC.

The whole group, including company A had to change its names to correspond with the XYZ Group's names.

Company C

Company C is a holding company of the ABC Group. It has not been trading in over 4 months and in preparation for the elimination it plans to transfer the shares in its subsidiaries to a newly incorporated NewCo.

Company B

Company B has not been trading for over 2 months, however, it seems to have a charge registered to its name at Companies House.

The charge has been satisfied with the lender a while ago but Companies House was not notified.



Questions and feedback



Thank you

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