

## Reorganisation of a Ukrainian company: the main forms

### Introduction

#### 1. Merger

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#### 5. Transformation of a legal entity

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Reorganisation of a company in Ukraine is a full or partial replacement of the owners of corporate rights of a company, change of the organisational and legal form of business, liquidation of certain structural units or creation of several companies on the basis of one company, resulting in the transfer or acceptance of its property, funds, rights and obligations by a legal successor.

There are various reasons for reorganising a company:

- business expansion or reduction;
- liquidation or spin-off of unprofitable business lines;
- financial rehabilitation of the company (optimising taxation and expenses);
- the need to create a transparent corporate structure;
- acquisition of competing businesses;
- concentration of company assets or property rights in a single hand.

The types of reorganisation differ depending on the primary objectives. Below, the forms of reorganisation procedure will be discussed.

## 1. Merger of Ukrainian companies

A merger is defined as the termination of the activities of 2 or more enterprises as legal entities and the transfer of their property rights and obligations to a legal successor created as a result of the merger. A merger is essentially the termination of 2 or more companies by transforming them into one. In the event of a merger, the tax authorities are required to conduct an unscheduled audit of all companies that cease to operate.

At the final stage of company termination through merger, a new legal entity is created, and all assets of the terminated companies are transferred by a transfer deed to the new entity's balance sheet. The constituent documents of the newly formed company must state that it was created through the merger of legal entities (with their names, identification codes and registration number).

To initiate the merger procedure, each company shall convene a general meeting and adopt the relevant resolutions. The resolutions should, inter alia, determine the composition of the participants/shareholders and the executive body (director or management) of the new company, the share distribution, and the procedure for covering losses.

## 2. Acquisition of Ukrainian companies

An acquisition is a process whereby the assets of 2 (or more) companies are merged. As a result, one legal entity ceases to exist, while the other continues to operate. All property, monetary and non-monetary assets are transferred to the successor company, which is liable for the reorganised company's obligations. An acquisition follows the same principle as a company merger, except for the final stage, as no new legal entity is established.

A merger is used mainly when there is a need to expand the business. For example, assets, licences, etc. belong to different companies in the same group. In this case, if it is not commercially viable to maintain all the companies, they can be merged into one main company, which will receive all these assets and property rights, along with the obligations to the counterparties of the acquired companies.

Prior to the acquisition procedure, it is advisable to check the current contractual obligations of the predecessor to determine whether there is an obligation to notify or agree with creditors on reorganisation or other changes in the corporate structure. In practice, there can be contractual provisions requiring the debtor to obtain the creditor's written consent to the reorganisation, and in case of failure to do so, the debtor may be subject to penalties (sometimes in substantial amounts).

## 3. Split of a legal entity in Ukraine

A split-up is a method of reorganisation whereby one legal entity ceases to operate and several new companies are established on its basis,

which are registered as independent legal entities. In the case of a split, the assets and liabilities, property rights and obligations of the reorganised company are transferred to the new companies created as a result of the split in their respective parts under a distribution act.

This procedure is primarily used by antitrust authorities under the legislation on protection of economic competition. During the split, an unscheduled audit is mandatory. At the final stage, a distribution balance sheet is approved.

Separation is also used to optimise the taxation system. The small size of enterprises allows them to switch to a simplified taxation system. Additionally, split is used when there are risks to the main company, allowing for a legal way to protect the company's assets from being compromised.

#### **4. Spin-off of a legal entity in Ukraine**

A spin-off is a form of company reorganisation that involves the creation of a new legal entity by transferring part of the property and liabilities of the company being reorganised.

When one or more new companies are spun off from an enterprise, the property rights and obligations of the reorganised company are transferred to each of them in their respective parts under the distribution act (balance sheet).

In the course of reorganisation by way of spin-off, a part of the reorganised company's assets and liabilities is transferred to a successor or several successors created as a result of the reorganisation. The reorganised company continues its financial and economic activities. It is not excluded from the state register and does not lose its status as a legal entity, but only amends its constituent documents in line with the applicable law.

It is not mandatory to separate owners in the course of reorganisation of a legal entity by spin-off. The reorganised company may be the founder of a legal entity created as a result of a spin-off (or to which the spun-off part of assets and liabilities is merged). In this case, the legal entity to which part of the property rights and obligations are transferred may take the form of a subsidiary.

#### **5. Transformation of a legal entity in Ukraine**

A transformation is a method of reorganisation that involves changing the form of ownership or organisational and legal form of a legal entity without terminating the enterprise's business activities. When one company is transformed into another, all property rights and obligations of the former company are transferred to the newly formed company.

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The most common examples of business transformation are:

- a limited liability company is reorganised into a joint stock company;
- a private enterprise is reorganised into a limited liability company.

The procedure for registering a company's reorganisation depends on the chosen form and the specifics of the company's financial and economic activities.

The main reorganisation stages of a Ukrainian company include the following:

- holding a general meeting of participants or shareholders;
- making a decision on reorganisation and establishing a commission for its implementation;
- notifying creditors;
- conducting an inventory and valuation of property;
- termination of labour relations with employees;
- passing an audit by regulatory authorities;
- transfer of documents subject to long-term storage to an archival institution;
- drafting a transfer (distribution) act;
- state registration of reorganisation and changes to the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations.

The state registration of a legal entity's reorganisation is carried out by a state registrar at the place of business. The procedure consists of two stages:

Entering into the Unified State Register a relevant record of the decision of the participants or an authorised person to reorganise.

Registration of a legal entity's reorganisation on the basis of documents submitted to the registrar, including the following: an application for state registration from a legal entity regarding its reorganisation;

an original copy (notarised copy) of the transfer deed or distribution balance sheet approved by the participants;

a certificate of the archival institution on the acceptance of documents that are subject to long-term storage as per the law;

a new version of the legal entity's constituent document – in case of amendments to the constituent document.

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In case of termination of a legal entity as a result of a transformation, the documents required are the same as those for registration of a new legal entity.

Moreover, it is necessary to monitor the companies involved in the reorganisation to ensure that there is no information about them and their shareholders in the registers of debtors, enforcement proceedings and other registers and lists (as the state registrar may refuse to complete the reorganisation procedure).

The reorganisation is deemed to be completed from the moment of state registration of the relevant changes to the legal successor's constituent documents, state registration of the established companies and state registration of the termination of legal entities.