



TN Partners

An independent Hong Kong law firm and
a member of the PwC network

International Business Reorganisations: Building Blocks for Success

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Table of contents

01 Introduction	02
02 Building Block #1: Putting in Place the Correct Holding Structure	03
Authors / Let's Talk	05

Introduction

Each solvent business reorganisation of a company or group typically involves a series of steps. These steps comprise legal, regulatory, tax, accounting, HR and other administrative and commercial processes and considerations. Complexity arises when these steps are condensed into a tight, interdependent timeframe to be managed by different teams or professional advisers across multiple jurisdictions. Poorly sequenced or siloed execution across these workstreams can create unintended tax exposures, governance gaps or regulatory breaches.

Our experience advising on international business reorganisation (**IBR**) projects, operating as part of an experienced team of legal, tax, accounting and HR professionals from PwC globally, has given us insights into how companies can optimise the restructuring process for more successful outcomes. In this series of articles, we will suggest ways that companies can prepare for their IBR projects by ensuring that the various 'building blocks' for a business reorganisation are properly considered.

The building blocks of an IBR project are often familiar corporate actions. However, as the reasons for a corporate reorganisation vary (see below left), there is no one-size-fits-all structure that can be followed for every case, even if it involves similar building blocks. Inadequate planning by the company or a lack of feasibility analysis by professionals can lead to unexpected, unwelcome and costly outcomes.

"International Business Reorganisations: Building Blocks for Success" is a series of short articles, each examining a different building block and highlighting some issues which a company may encounter in the process if not suitably advised.

Reasons for Solvent Corporate Reorganisation

Corporate groups embark on IBR projects for a variety of reasons, including:

- Enhancing multi-jurisdictional tax positions
- Preparing for future changes in law and/or tax rules
- Effecting operational changes
- Pre-deal carve-outs and business separation
- Post-deal integrations
- Simplifying or rationalising corporate structures
- Pre-IPO tidy-ups
- Reaction to changing market dynamics (e.g. trade disputes)

Building Block #1: Putting in Place the Correct Holding Structure

Rep Office, Branch or Subsidiary?

Local representative office:

Restrictive by design, generally limited to non-revenue generating activities (e.g. marketing or liaison), useful for businesses who wish to analyse the local market prior to market entry.

Local branch: Foreign parent benefits from being able to execute limited commercial contracts with third parties and operate using their own credit and contracting profile. However, exposure to local tax and legal obligations as a branch is not a separate legal entity from its parent.

Subsidiary: Most common method of establishing a business presence overseas. Enables separate legal identity to enter contracts while limiting the liability from the wider group structure. In Hong Kong, a subsidiary only requires one shareholder, one director and a company secretary, with no Hong Kong residency requirements for the shareholder or director.

Businesses operating in a single jurisdiction are often established as private companies with limited liability and separate legal personality. In Hong Kong, they are commonly incorporated as a "private company limited by shares". Company administration and governance arrangements will generally be straightforward, although this can vary by jurisdiction.

Once the business expands to operate in more than one jurisdiction, the stakeholders need to pay careful consideration to their corporate presence in the new market(s). Depending on the local jurisdiction, options generally range from setting up a local representative office or branch to incorporating a subsidiary (see below left). Failure to properly consider the most appropriate form of presence could lead to compliance breaches, unexpected taxes and burdensome administration.

An effective holding structure for overseas businesses should maximise tax efficiency, governance and operational readiness for the group, while ensuring compliance with all applicable laws and regulations (locally and in each other jurisdiction in which the group operates). It is vitally important to appoint professional experts to conduct a feasibility analysis before establishing or changing an existing group structure. For example, placing valuable operating businesses beneath an intermediate holding company might seem like a straightforward exercise. However, if local taxes have not been carefully considered before set-up or restructure, a future repatriation of profits (e.g. by way of dividend) or a future sale or divestment of the operating entity or intermediate holding company could trigger unintended tax leakage by way of withholding taxes, an unexpected liability for capital gains taxes or even indirect transfer taxes.

We often see businesses putting in place a holding structure involving a variety of subsidiaries and branches overseas. While it can be beneficial for there to be more than one local entity in the structure (e.g. for tax efficiencies, simplifying succession or future sales of business units and for streamlined management and operations), it is common to encounter redundant or unused group companies scattered across the group. Obtaining professional advice which considers the entirety of the structure and the group's business and commercial considerations each time a new entity is added will avoid snowballing administration costs and unwelcome tax, legal and regulatory problems further down the line.

Our top tips for choosing a holding structure are:

Pick the correct local presence

- Misalignment between the intended business model of the group and the chosen legal form (such as opting for a branch or representative office where a subsidiary may be more appropriate) can trigger adverse consequences, including permanent establishment risks, regulatory shortfalls (such as lack of appropriate licenses) and constraints on commercial contracting. In addition, overlooking substance and accounting implications when establishing holding structures can undermine tax objectives, delay statutory approvals and complicate future reorganisations or exits.
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Consider tax implications in positioning entities within a corporate structure

- Aside from commercial and business factors, consideration should be given to potential tax leakage arising from the positioning of entities in a corporate structure, including, but not limited to, withholding tax on repatriation of income or profits through a holding structure e.g. dividends, interest, royalties together with potential direct or indirect capital gains taxes upon a future exit. Tax structures may be able to be streamlined through the use of double tax agreements (**DTAs**). However, given the OECD's recent focus on tax treaty abuse and beneficial ownership, there is heightened emphasis on ensuring alignment of economic and commercial substance before being able to take advantage of any reduced withholding tax and exemptions under an applicable DTA.
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Do not underestimate incorporation timelines

- While setting up a private limited liability company is usually an efficient process, the time needed to complete KYC/AML procedures and open a bank account for local funding are common bottlenecks when planning the launch of a business. When undertaking entity establishment in a foreign jurisdiction, local laws may dictate the need for notarisations, apostille or even consularisations, significantly adding to incorporation delays as signatories are flown in for wet-ink execution. Timing varies between jurisdictions and the types of entities involved.
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Appoint professional advisers

- Companies should ensure that experienced professional advisers are engaged to conduct coordinated feasibility analyses and detailed steps plans to pre-empt missteps, ensuring the choice of holding structure and design of the IBR project aligns with operational realities and governance requirements. Validating tax and accounting treatment upfront and calibrating sequencing, documentation and stakeholder approvals to avoid bottlenecks is the key to a successful IBR project.
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Authors / Let's Talk

This publication was jointly published by PricewaterhouseCoopers (PwC) and TN Partners (TNP).

TN Partners (formerly Tiang & Partners) is an independent Hong Kong law firm and a member of the PwC network. PwC and TNP are experienced in all aspects of IBR projects, from initial feasibility planning to implementation and project management, and often collaborate between TNP (legal), PwC tax, PwC accounting and other professionals globally to complete complex IBR projects under tight timeframes.

For a deeper discussion of how this impacts your business, please contact us.

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