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Mason Hayes & Curran - Corporate Simplification

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23 July 2020

Introduction

The global economy is being severely impacted by the effects of Covid-19.

To ensure long-term protection and sustainability, organisations are likely to be considering ways to reduce costs and improve business efficiencies.

Simplifying your corporate structure by removing dormant or inactive companies is a way to achieve both of these objectives.

Benefits of Corporate Simplification

- Reduces annual compliance, audit and taxation costs of group in the long term.
- Allows management, legal & compliance teams to focus their time on core companies required to run and expand the business.
- Mitigates risk, including personal liability of directors, by reducing possibility of error, fraud or failure to meet compliance requirements.

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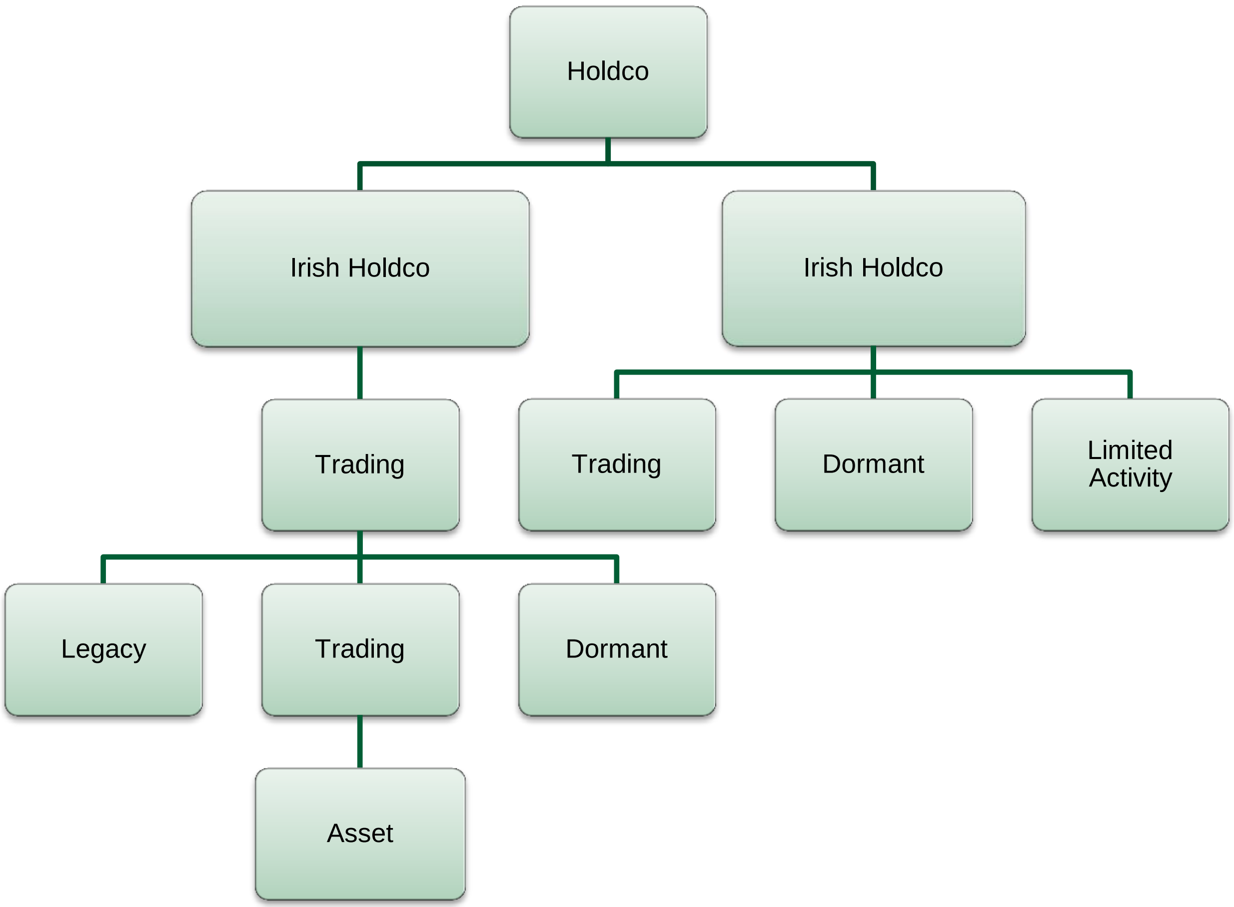
Benefits of Corporate Simplification

- Increased governance and transparency.
- May resolve tax inefficiencies within organisation and allow for improved tax planning.
- Taking the time now to do this type of project could utilise and motivate employees.

Poll

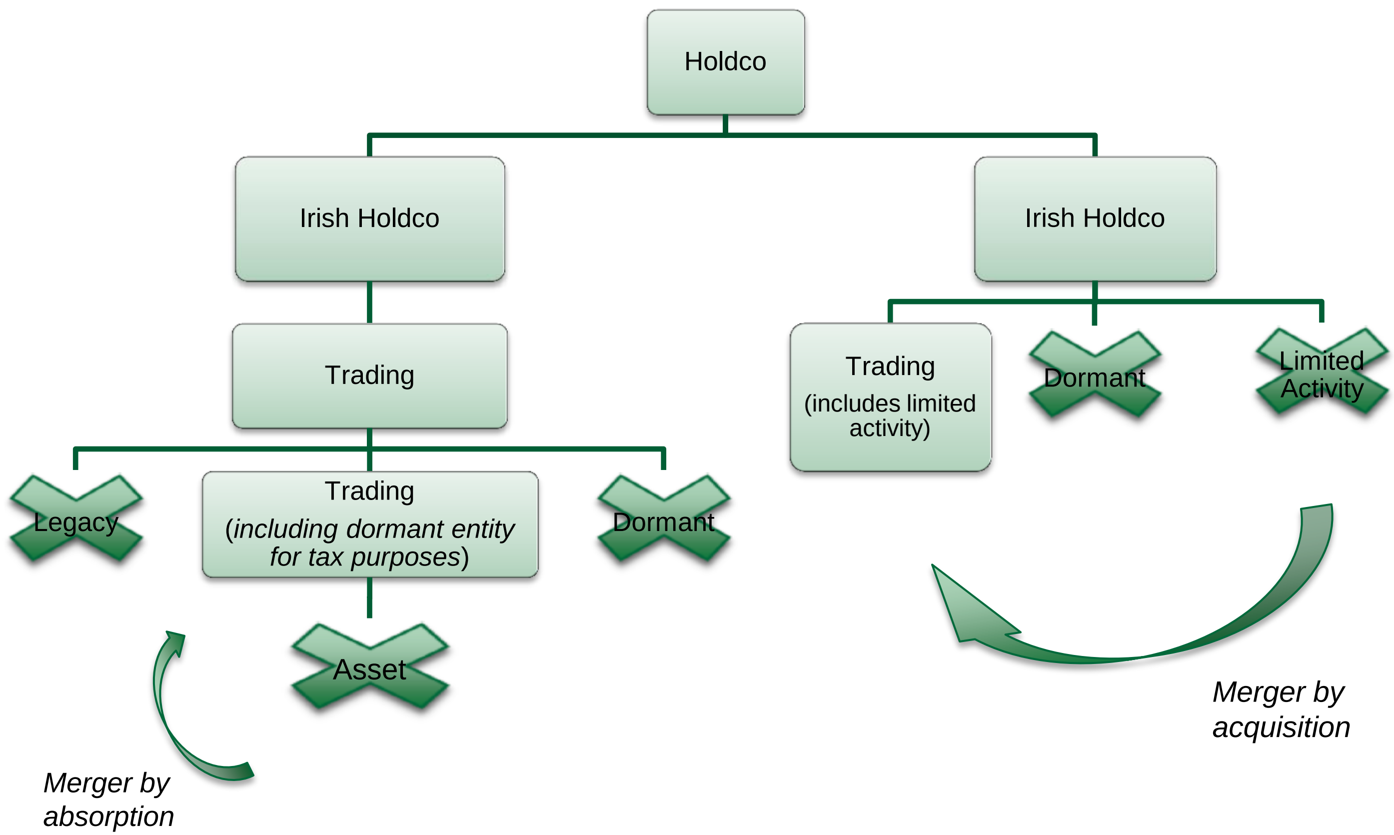
Example of Corporate Simplification

Current structure



Example of Corporate Simplification

Proposed changes to structure



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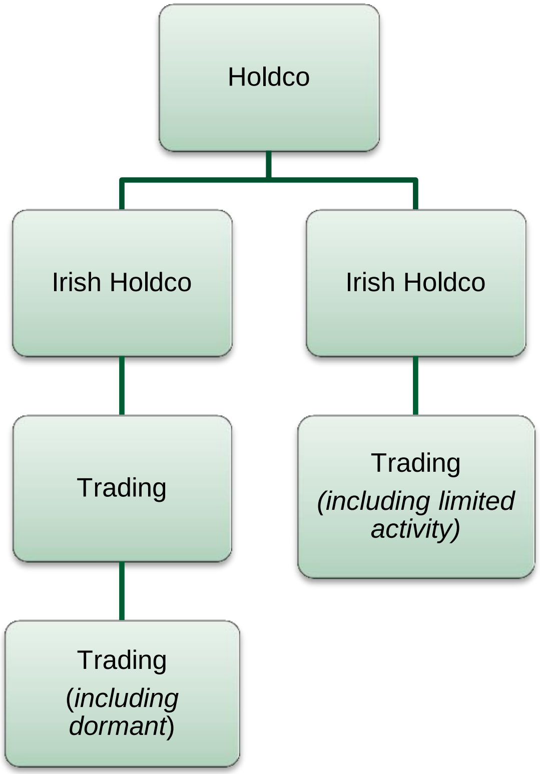
Example of Corporate Simplification

Proposed alternative structure



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How to simply your structure

Various methods of simplification for solvent companies

Transfer & Wind Up

Transfer all assets out of the Company and subsequently wind up the dormant company by way of:

- voluntary strike off; or
- members voluntary liquidation.

Domestic Merger

Merge two, or more, entities within your corporate structure:

- all assets and liabilities of the transferring entity will transfer to one successor company by operation of Irish law;
- the transferring entity will be dissolved without going into liquidation.

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Transfer of assets and subsequent wind up

Aspects of Procedure

Prior to being wound up, the company will likely transfer any assets to another member of the group and settle its liabilities. It can do this by transfer agreement, distribution or contribution.

Considerations:

Where it transfers its assets, what will the consideration be and will this be sufficient to settle its liabilities?

Where it proposes to distribute its assets, does it have sufficient profits available for distribution to do so?

Where it proposes to contribute or "gift" its assets, will this trigger a deemed distribution?

Tax….

Voluntary Strike Off ("VSO")

Aspects of Procedure

Must comply with:

- It must not have assets in excess of €150 or liabilities in excess of €150.
- It must not be a party to on-going or pending litigation.
- All of its statutory filings must be up to date.

Must ensure that:

- It is not carrying on business or in operation.
- All creditors have been paid and all tax affairs are up to date (ceased trading).
- It has divested itself of all assets which otherwise will vest in the State on the company's dissolution.

May be restored to the register within 20 years of the date of dissolution.

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Members' voluntary liquidation ("MVL")

Aspects of Procedure

Liquidator is appointed by the members to wind up the company and distribute surplus assets to members.

MVL is commenced using the summary approval procedure.

Declaration of solvency and an independent person's report confirming declaration is not "unreasonable".

For an MVL:

- The company must be solvent.
- It tends to be the preference of a liquidator (but it is not essential) that the company's assets and liabilities have been dealt with prior to the company being placed in liquidation.

May be restored to the register within 2 years of the date of dissolution.

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Domestic Mergers

Aspects of Procedure

In a domestic merger, the assets and liabilities of the transferring company (“**Transferor**”) pass by operation of law to the successor company (“**Successor**”).

Following the merger, the Transferor is automatically dissolved without going into liquidation.

Three forms of merger:

(1) by absorption (2) by acquisition (3) by formation.

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Merger by Absorption

Requires a parent and wholly owned subsidiary relationship.

Successor

Parent company.

All assets and liabilities transfer by operation of law from the Transferor.

No consideration payable.

Transferor

Wholly owned subsidiary.

All assets and liabilities transfer by operation of law to the Successor.

Transferor dissolved automatically without going into liquidation.

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Merger by acquisition

Often utilised for merging sister entities within group

Parent

Approves Common Draft Terms of Merger to effect the merger.

Shares are allotted to the parent in the capital of the Successor (with or without a cash payment) as consideration for the merger.

Transferor

All assets and liabilities transfer by operation of law to the Successor.

Transferor dissolved automatically without going into liquidation.

Successor

All assets and liabilities transfer by operation of law from the Transferor.

Consideration for the merger is the allotment of shares in the capital of the Successor (with or without a cash payment) to the holders of shares in the Transferor.

Merger by formation

Allows one or more companies merge into a newly formed entity.

Parent of Transferor 1 and Transferor 2

Approves Common Draft Terms of Merger to effect merger.

Shares are allotted to the parent in the capital of the Successor (with or without a cash payment) as consideration for the merger.

Successor

Newly formed company

All assets and liabilities transfer by operation of law from the Transferor.

Consideration for the merger is the allotment of shares in the capital of the Successor (with or without a cash payment) to the holders of shares in the Transferor.

Transferor 1

All assets and liabilities transfer by operation of law to the Successor.

Transferor dissolved automatically without going into liquidation.

Transferor 2

All assets and liabilities transfer by operation of law to the Successor.

Transferor dissolved automatically without going into liquidation.

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Domestic Mergers

Aspects of Procedure

Mergers may be put into effect using the summary approval procedure (SAP) or by application to court.

The SAP is quicker, more cost efficient and an internal procedure. Often more suitable for a simplification project where there are no solvency considerations.

Requires a declaration of solvency from the directors of each merging entity.

A merger cannot be undone nor can the dissolved company be restored.

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Merger considerations

Nature of assets & liabilities of the Transferor

Location of assets of the Transferor

(additional steps if outside Ireland)

Tax implications

Post merger registrations

(ie PRAI, CRO, EUIPO)

Poll Results

Corporate Simplification - Why Now?

The earlier the steps in a corporate simplification project are taken, the sooner your organisation can enjoy the benefits.

Will allow you to engage your legal or compliance teams on an important project at a time when their workload may be lighter due to the impact of Covid19.

Demonstrates your organisation's focus on long term sustainability which may help to improve employee motivation and focus.

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Corporate Simplification – Five Steps

Five Steps to successfully implement a corporate simplification project:

Step 1
Assess the efficiency of your current corporate structure

Step 2
Consider the cost of maintaining your current corporate structure

Step 3
Carry out an internal due diligence exercise

Step 4
Draft a corporate simplification plan

Step 5
Implement the steps of the corporate simplification plan

Result
Improved corporate structure

MHC Corporate Simplification Guide

All attendees on the webinar will receive our complimentary Corporate Simplification Guide.

Our Guide includes the tools to allow you undertake the initial analysis and assessment of your corporate structure.

(**Steps 1 to 3**)

MHC Tools:	(i)	Simplification Assessment
	(ii)	Costing Saving Calculator
	(iii)	Due Diligence Questionnaire

We can assist you by designing a suitable, simplified structure and the implementation of the steps necessary to effect that corporate structure.

(**Steps 4 and 5**)

Mason Hayes & Curran - Corporate Simplification

Webinar 27 July 2020

Any Questions?

For future information please contact:

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Thank you for attending.