

Corporate Relocations – A Swiss Perspective on Cross-border Restructurings of Groups

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 - b) Foreign and Swiss Redomiciliation Requirements
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Introduction

Cross-border restructurings

Description of a corporate relocation

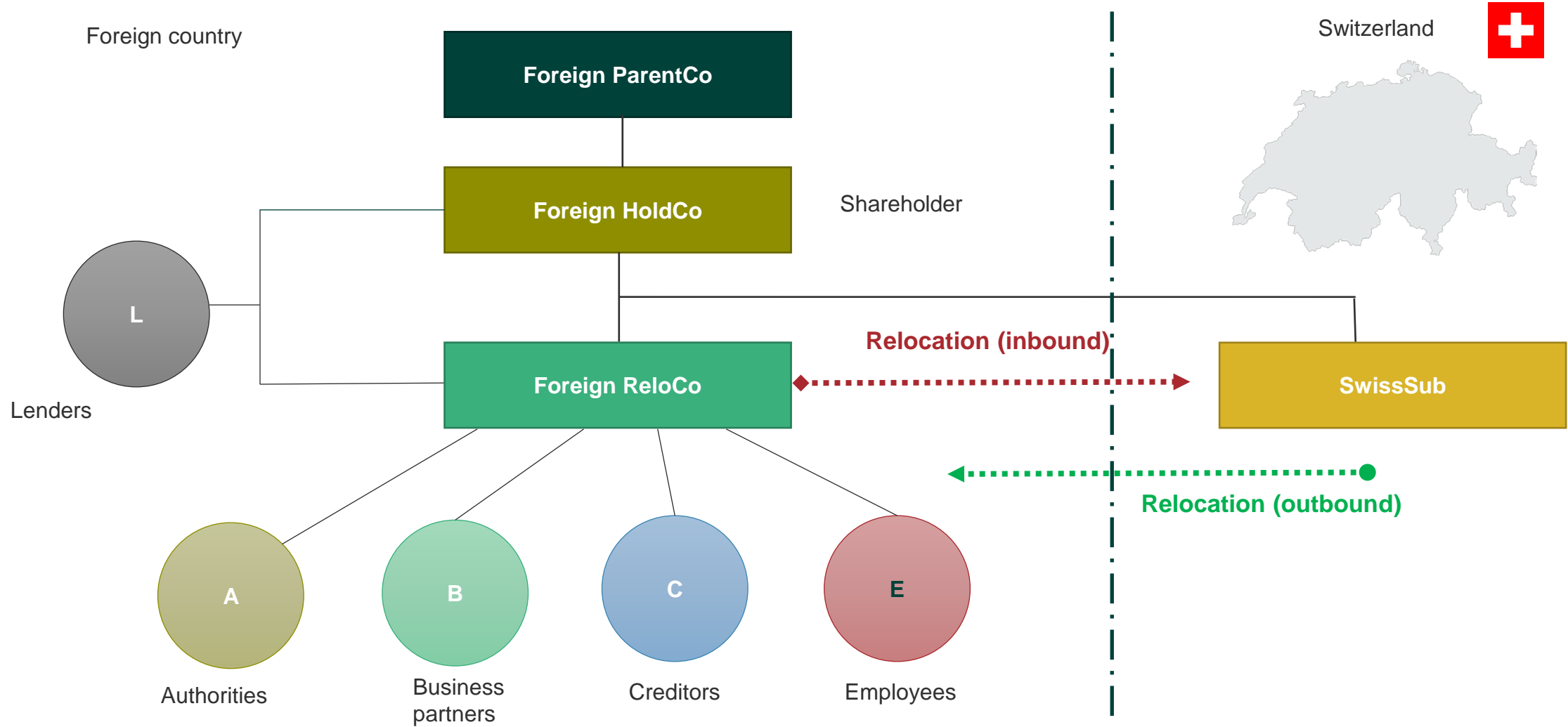
Drivers for relocations and criteria for choosing locations

Freedom of establishment / free movement of companies?

Stakeholders, interests involved

Inbound vs. outbound relocations

Case Study – Overview on Restructuring Scenario



Case Study – Facts

International group of companies

Foreign HoldCo and ReloCo are based abroad

Group has existing operations in Switzerland (Swiss SubCo)

Relocation of ReloCo to Switzerland (centralize functions)

ReloCo is an LLC organized under foreign law

ReloCo's operations and legal relationships

Continuation of ReloCo as legal entity is key

Instruments for case study

Typical instruments for corporate relocations and transfer of businesses to Switzerland (inbound)

Transfer of ReloCo to Switzerland / Redomiciliation:

- a) Foreign ReloCo relocates to /continues in Switzerland without liquidation and re-incorporation
- b) Legal entity transfers its registered office, submits to Swiss law and continues in the form of a Swiss company (e.g. as Swiss LLC/GmbH)

Cross-border merger:

- a) Foreign ReloCo merges with Swiss SubCo based on merger agreement
- b) All assets, liabilities and contracts transfer by operation of law
- c) Foreign ReloCo disappears; business continues in Swiss SubCo
- d) Feasibility (e.g. availability of merger and feasibility in both jurisdictions)

Transfer of assets:

- a) Sale and transfer of assets and liabilities by ReloCo to Swiss SubCo
- b) Subsequent liquidation of ReloCo
- c) Asset deal with individual transfers and assumptions or statutory business transfer (if instrument is available in both jurisdictions)

Transfer of a Foreign Company to Switzerland (Redomiciliation)

- (1) **Cross-border / international setting**
- (2) **Mechanics: Transfer of registered office of Foreign ReloCo and submission to Swiss law without liquidation and re-incorporation**
- (3) **Corporate law applicable to redomiciliation**

- a. **Swiss Federal Code on Private International Law (CPIL) :**

Starting point: Law applicable to company (incorporation theory) (art. 154 para. 1 CPIL)

Transfer of Foreign Company (art. 161 para. 1 CPIL):

A foreign company may, without liquidating and reincorporating, submit itself to Swiss law if the governing foreign law so permits. The company must satisfy the requirements fixed by the foreign law and must be able to adopt one of the forms of organization of Swiss law.

- b. **Foreign law applicable to ReloCo**


- c. **Swiss corporate law**

Principle of cumulative application of mandatory provisions of law

- (4) **Other sources of law relevant for re-domiciliation**

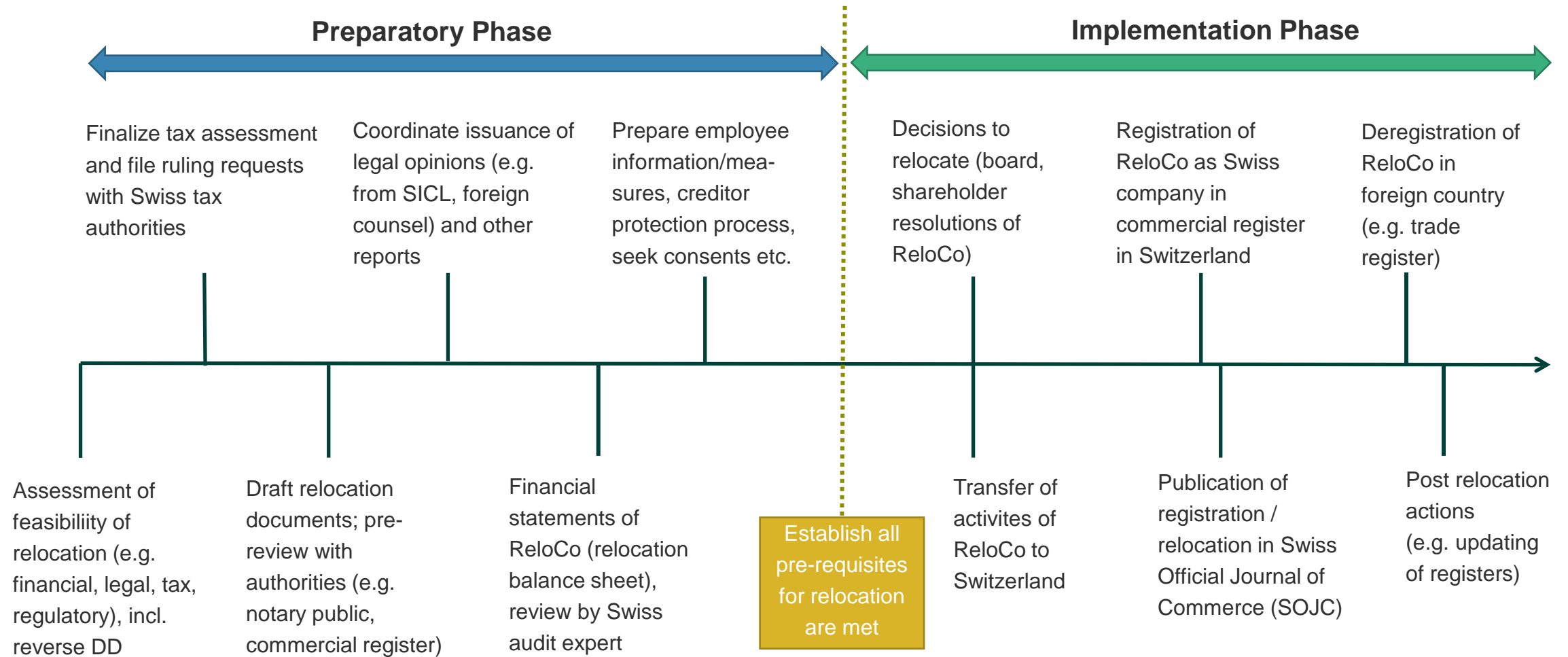
Examples: tax law, contract law, public/administrative law, employment law

Foreign and Swiss Requirements for Redomiciliation (inbound)

Foreign company law	Swiss company law	Other legal / tax issues
<p>Admissibility of Redomiciliation under Foreign Company Law</p> <p>(1) Foreign law permits the relocation of ReloCo to Switzerland in principle</p> <ul style="list-style-type: none"> Foreign law assessment Legal opinion of foreign counsel or authority <p>(2) Requirements under foreign law have been met</p> <ul style="list-style-type: none"> Corporate steps (e.g. board and shareholder resolutions, creditor protection process, notifications)** Other approvals (e.g. regulatory)** <p>(3) ReloCo must legally exist in foreign jurisdiction</p> <ul style="list-style-type: none"> Trade register extract or similar document (e.g. certificate of good standing) 	<p>(4) Legal form of ReloCo is compatible with equivalent Swiss company form</p> <ul style="list-style-type: none"> Comparative legal assessment (e.g. by Swiss Institute of Comparative Law (SICL) in Lausanne, www.isdc.ch) Numerus clausus of available Swiss company forms Examination of equivalence and adaptability based on specific structure and features of ReloCo Mandatory features of Swiss company law (e.g. share capital, rights and obligations of share- or quotaholders) <p>(5) Company capital covered by assets</p> <ul style="list-style-type: none"> Relocation balance sheet Review by Swiss audit expert, report <p>(6) Center of business activities</p> <p>(7) (Formal) registration requirements</p>	<p>Examples:</p> <p>(a) Tax aspects (both jurisdictions)</p> <ul style="list-style-type: none"> Exit and other taxes Advance planning / tax ruling requests in Switzerland <p>(b) Employment law issues (both jurisdictions)</p> <p>(c) Governmental permits</p> <p>(d) Existing contracts of ReloCo</p> <ul style="list-style-type: none"> Notification and/or consent requirements Termination rights <p>(e) Legal proceedings / litigation?</p> <p>(f) Other issues</p> <p style="text-align: right;">  Reverse DD review </p>

** For illustration, depends on local law

Corporate Relocation to Switzerland / Principal Steps and Implementation



(1) Adaptation of ReloCo to Swiss company form

- a) Name of Swiss company
- b) Language of articles of association
- c) Structure of share capital and type of shares
- d) Rights and obligations of shareholders / quotaholders
- e) Capital protection

(2) Corporate resolutions of ReloCo, decision-taking

- a) Resolutions required pursuant to foreign law
- b) Resolutions required pursuant to Swiss law

(3) Legal effectiveness of redomiciliation

- a) Effective time of redomiciliation
- b) Registration in Switzerland - deregistration in foreign country
- c) Register entries reflecting continuation?

(4) Complexity of corporate relocation projects

- a) Cooperation among client, legal counsel(s) and tax advisor(s)
- b) Involvement of various third parties in involved jurisdictions
- c) Different workstreams
- d) Need for planning and coordination (step plans, timeline, etc.)

- **Inbound corporate relocations in other jurisdictions**
- **Say on relocations by different stakeholders**
- **Cross-border corporate relocations on the rise or decline?**
- **Impact of globalism and protectionism on relocations**
- **Key drivers for relocations and other types of cross-border restructurings**



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