

10 Succession of Labor Contracts

Significance of the two legal revisions

Corporate reorganization consists of three types, namely transfer of operations, amalgamations and divisive reorganization. The succession of labor contracts is a point of concern in each of these cases.

The conventional method of corporate reorganization was either through the transfer of operations or corporate amalgamation. Of these, transfer of operations requires the individual consent of workers under Article 625 of the Civil Code, which makes the procedure cumbersome from the point of view of the company. While a corporate amalgamation does not necessitate the consent of workers, it was not suited for reorganizing a part of the business operations since it involves the succession of all labor contracts to another company.

The Commercial Code was revised in the year 2000, making corporate reorganization easier. The method was divisive reorganization, where worker consent is not required. It thus became possible for the companies involved to make a decision among themselves regarding the labor contracts for succession.

The business divisions to be succeeded are listed in the Divisive Reorganization Plan/Contract (hereinafter referred to as "Reorganization Plan"). Labor contracts belonging to business divisions listed in the Reorganization Plan are succeeded en bloc by the formed companies.

However, since this could cause the positions dictated by the labor contract to become unstable, the Law Concerning the Succession of Labor Contracts was enacted simultaneously with the revision of the Commercial Code in the year 2000 in order to protect the workers.

According to this law, when conducting a divisive reorganization a company shall, on or before the day two weeks before the general meeting of shareholders that approves the divisive reorganization, notify the workers of whether there is any statement in the divisive reorganization plan concerning how the new

company will succeed to the labor contract.

Labor contracts of workers in the main business units to be reorganized will be succeeded to the formed company. On the other hand, workers who are part of the main business units to be reorganized and who are not listed in the reorganization plan subject to succession may file a written notice of objection up until one day before the general meeting of shareholders and have their labor contract succeeded to the formed company.

Setting a system in place for the transfer of ownership

Workers belonging to a business unit which will not be reorganized but undertake work from a business unit which will be divisively reorganized can, in the event of being listed for succession by the formed company, file a written notice of objection up until one day before the general meeting of shareholders and refuse the succession.

In other words, the succession of labor contracts is ensured for those working in the main business units to be divisively reorganized, and likewise it is ensured that workers not belonging to a business unit that is to be reorganized can remain in the original company. Since the divisive reorganization of corporations is a new system, such laws for protection are essential and hold vital significance.

On the other hand, there is no institutional provision in the case of transfer of business ownership. The research group of the Ministry of Health, Labour and Welfare holds that the individual consent of workers is required, but that legislative provisions are not required that since dismissals, alterations in working conditions or personnel relocation, and labor-management relations at the time of transfer of business ownership are protected through rules from previous court decisions and other legislations.

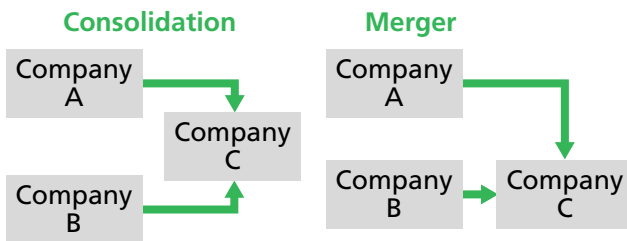
The terms and context of a transfer in business vary widely, and it is unquestionably difficult to set across-the-board rules, especially if one considers

that some transfers of business may be conducted in the case of managerial failure or in order to disbranch a loss-making division. However, it is for this reason itself that the succession of labor contracts becomes

the most problematic, and is the reason why I believe that a type of corporate reorganization is needed where at least some form of system which can protect workers is assured.

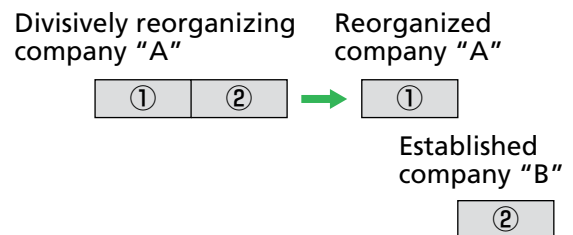
10-1 Image diagram representing corporate reorganization

Amalgamation



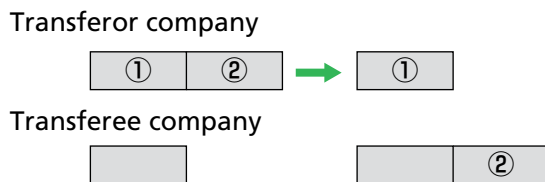
Divisive reorganization

Reorganization through the establishment of a new organization

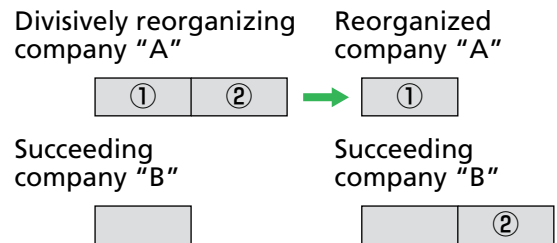


Transfer of business ownership

Partial transfer



Reorganization through a merger



Complete transfer

