

# UNWINDING AND RESTRUCTURING THE ENTITY

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## Nuts and Bolts of Business Reorganization

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## UNWINDING AND RESTRUCTURING THE ENTITY

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- Overriding principles for Board and Officer Guidance
  - Following applicable law and regulations
  - Following governing entity documents
  - Properly discharging fiduciary duties
    - Conflicts of interest
    - Special committees
  - Establishing and following a transparent and deliberative process to demonstrate compliance with legal and fiduciary duties
  - Properly considering contractual obligations, including credit and employment agreements and other compensatory arrangements

## UNWINDING AND RESTRUCTURING THE ENTITY

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- Unwinding and Restructuring Transactions
  - Mergers
  - Sales of assets
  - Changes of control
  - Dividends and other distributions to equity holders
  - Recapitalizations
  - Arranging and rearranging debt
  - Restructuring or terminating material contracts
  - Reductions in force
  - Winding up and terminating businesses

## UNWINDING AND RESTRUCTURING THE ENTITY

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- Significant concerns
  - Choice of entity
  - Regulatory environment, compliance
  - Lienholders and other counterparties, including key employees
  - Demonstrating proper discharge of fiduciary duties
    - Conflicts of interest
    - Special committees
    - Expert advice, including appraisal and fairness opinion

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- Significant concerns (con't)
  - Equity holder consent
    - Full disclosure of proposed transactions
  - Preserving indemnification rights
  - D&O insurance
  - Tail policies
  - Transaction insurance

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- Choice of entity
  - Corporations
    - Certificate of formation
      - Exculpation
      - Preemptive rights
      - Classes of stock – blank check or not
        - » Voting
        - » Preferences
        - » Convertibility
      - Amendment requirements
      - Special powers of directors

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## Title search: Unwinding and Restructuring the Entity

Also available as part of the eCourse

[2018 Corporate Counsel eConference](#)

First appeared as part of the conference materials for the

40<sup>th</sup> Annual Corporate Counsel Institute session

"Unwinding and Restructuring the Entity"