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Carve-out transactions: Mastering legal, operational, and IT challenges



Introduction & Structure

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Outline

- I. Introduction and overview
- II. IT carve-out: Identifying and overcoming legal challenges
- III. Operational Carve-Out: Interdependencies between the operational and legal perspectives
- IV. Use of generative AI (GenAI)
- V. Summary



I. Introduction and overview

Carve-out

Overview



Strategic focus

- Concentration on core competencies
- Realignment of corporate strategy: A division no longer fits with the long-term vision or portfolio.

Value enhancement

- Independent valuation: A carved-out division can often be valued higher on the market as an independent company.
- Investor access: Enables targeted investments in the carved-out division, e.g., through private equity or an initial public offering (IPO).





Operational reasons

- Flexibility and agility: The carved-out division can make decisions more quickly and adapt better to market conditions.
- **Different business models**: When requirements (e.g., technology, customers, processes) differ greatly from one another.

Financial motives

- Liquidity gain: The sale of the carve-out generates capital for investments or debt repayment.
- Cost optimization: Reduction of overhead and complexity within the group.



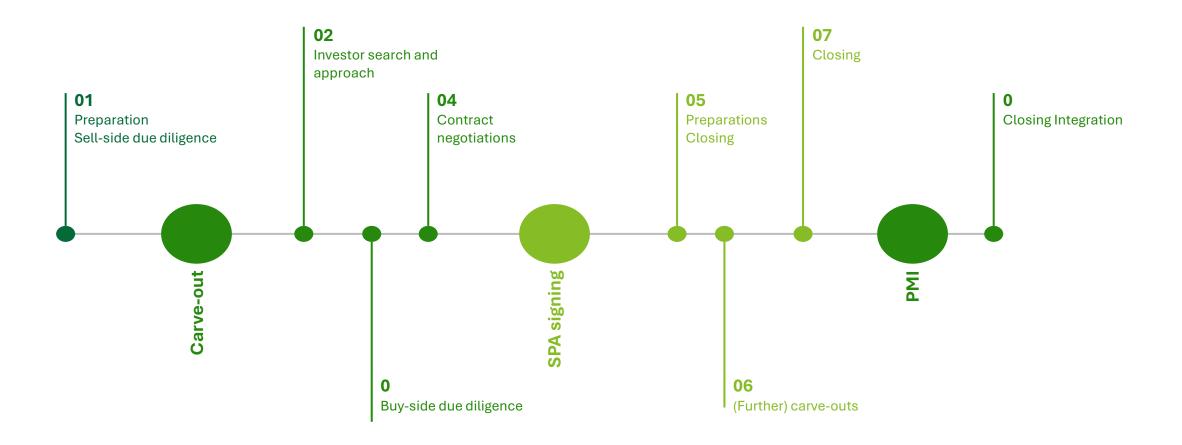


Regulatory or legal reasons

- Antitrust requirements: Carve-outs may be mandatory in the case of mergers or acquisitions.
- Compliance requirements: Different regulatory frameworks for different business areas.

Carve-outs in the context of M&A

Transaction phases



Carve-out

Risks

1. Operational risks

- **Complexity of separation**: IT systems, processes, and supply chains are often highly integrated. Separation can be expensive and time-consuming.
- Loss of expertise: Key employees may leave the company if their future is unclear.
- **Disruptions to business operations**: Transition phases can lead to production or service outages.

3. Strategic risks

Loss of synergies: Shared resources, purchasing advantages, or brand strength are lost.

Market reaction: Customers and investors may view the carve-out negatively.

5. Cultural risks

Loss of identity: Employees in the carved-out division need to reorient themselves.

Motivation problems: Uncertainty can reduce productivity.

2. Financial risks

- **High transaction costs**: Consulting, legal reviews, IT migration, and transition services incur significant costs.
- **Misvaluation**: The carve-out may be sold below market value or generate less synergies than expected.
- Tax risks: Complex tax implications during the spin-off.

4. Legal and regulatory risks

Compliance issues: Separation may trigger new regulatory requirements.

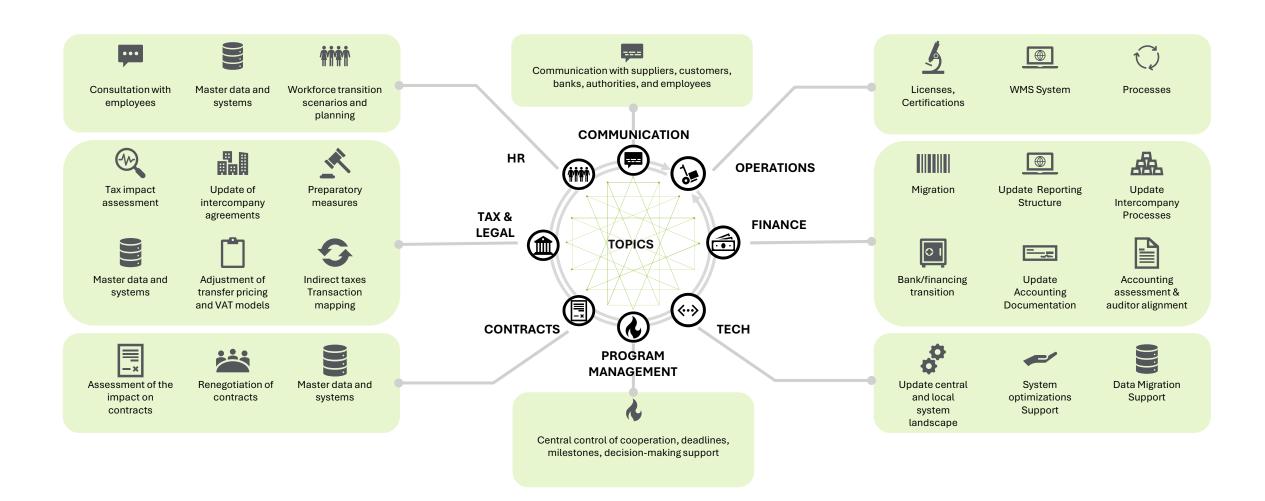
Contractual risks: Supplier and customer contracts must be renegotiated.

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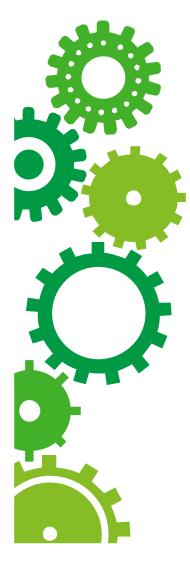
Carve-out

Topics & Stakeholders



II. IT Carve-Out: Recognizing and Overcoming Legal Challenges

Initial situation (from a legal perspective)



IT operations are a crucial component of every company...

- IT operations are a key success factor for companies.
- They are crucial for **maintaining the operational continuity** of the company.
- Day-1 readiness is therefore crucial and an important contractual condition in most transactions.



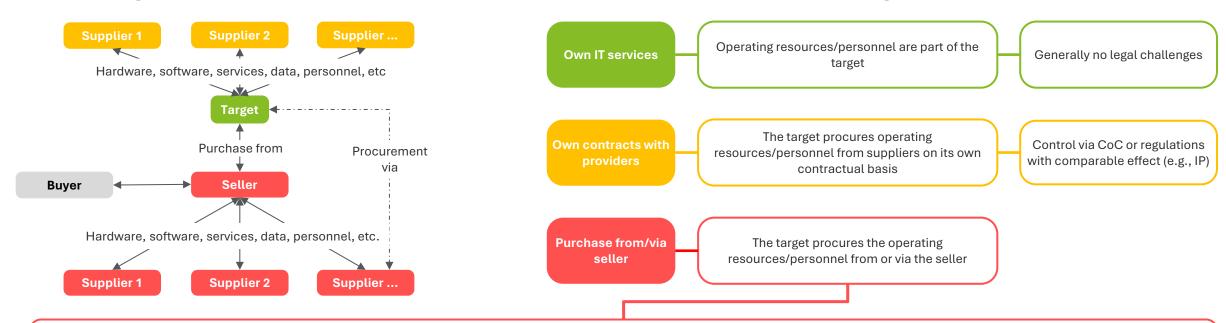
...whereby the operational aspects are usually taken into account, but the legal components are often underestimated...

- The legal complexity of integrating or separating operational units into/from an existing conglomerate is usually underestimated.
- The assessment and preparation of the legal feasibility of the carve-out must be carried out at an early stage in the sale/acquisition process.
- Based on this, a binding legal framework must be developed.

...which leads to unexpected and unnecessary costs or legal risks

- The carve-out cannot be resolved by legal means alone, but has technical and operational dependencies and/or measures that require the consent of third parties and can incur significant costs that are often not as transparent as they may appear at first glance.
- There is a risk of (legal) uncertainty if the issues are not resolved at an early stage.

Ensuring business continuity in the context of an IT carve-out from a legal perspective



3 options for contractually compliant implementation of business continuity

01 (Re)procurement by the target

The necessary operating resources are procured independently by the buyer / personnel are hired

- Seller's obligations to cooperate
- Integration into existing buyer organization (e.g., expansion of licenses, procurement directly from the seller)

02 Transfer from seller

The necessary operating resources/personnel are permanently transferred from the seller to the target.

- Requirements for consent from providers for the transfer/restrictions on rights of use, especially for software, must be observed
- Often, continued use of software is also necessary at the seller's or the seller's group companies → not possible without the provider's cooperation
- Transfer of operating resources/personnel may trigger a transfer of operations
- Separation of data stocks must be carried out

03 Temporary provision by seller

Provision is made for a limited period via a Transitional Service Agreement (TSA).

- Seller **as IT service provider**: clear service description (SaB?), SLAs, liability, pricing, etc.
- Separate data storage and usage and access rights, domains, email addresses, etc.
- Regulatory requirements (NIS2, DORA, etc.)
- Consent requirements of providers/staff (works council?)
- Duration of the transition period and extension, as well as exit support

Procedure



Gathering information and defining the framework conditions for ensuring the target's ongoing IT operations

Procedure

- Evaluation of the IT/IP/data landscape (e.g., contracts, documentation of the target and seller) based on the implementation concept
- Classification into categories of service procurement: own services ⇔ own contract with providers ⇔ procurement from or via sellers and how they are handled
- Classification of affected data (personal data, confidential data, etc.) and how it is to be handled
- Review of specific legal issues in connection with the implementation concept (property rights, contractual basis, transferability, etc.)



Proper documentation of the IT carve-out/postmerger integration in the transaction documents

Approach

- Preparation of contractual documentation, in particular service descriptions, SLAs, pricing, dat protection
- Preparing/beginning to approach providers, personnel, and other third parties
- Coordination with relevant stakeholders and external providers



Ensuring compliance with agreements and progress of the carve-out/post-merger integration

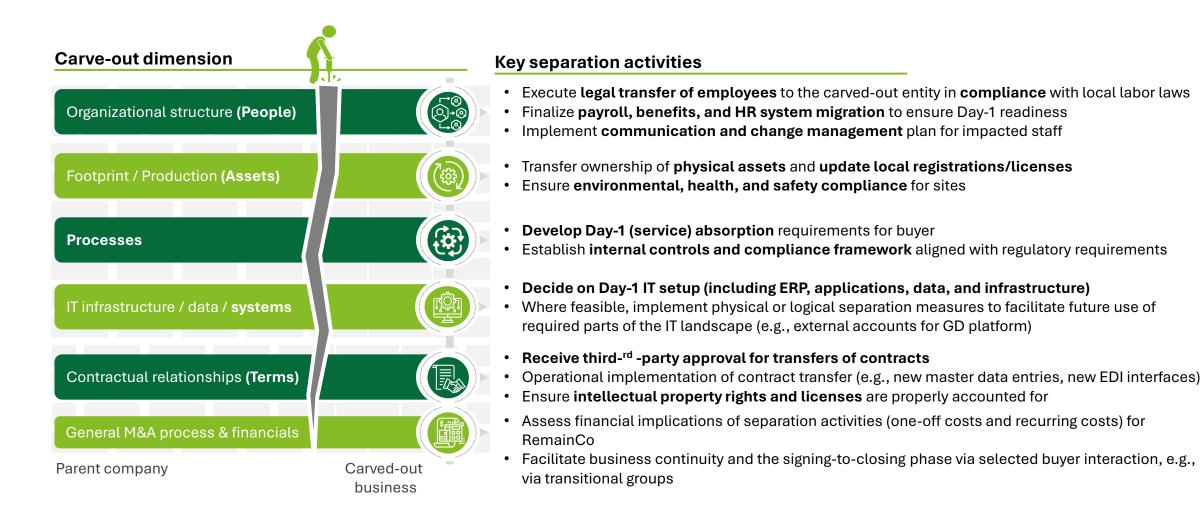
Procedure

- Monitoring the implementation of agreements (e.g., document review, milestone tracking)
- Clarification of claims and escalation in the event of problems
- Project management and coordination of all parties involved

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III. Operational carve-out: Interdependencies between the operational and legal perspectives

Operational carve-out approach (1/2)



Operational carve-out approach (2/2)

Separation best practices

Strong governance with clear responsibilities

Define clear transaction guiding principles

Clearly ring-fenced transaction perimeter

Highlight Day-1 operating model

Communicate proactively

- Establish a Separation Management Office (SMO) as the central coordination hub
- Define clear roles and responsibilities across all workstreams early in the process
- Assign accountability for financial and operational topics to avoid overlaps and gaps
- Agree on non-negotiables and guiding principles for people, assets, processes, systems, and contracts
- Ensure senior management involvement in planning
- Clearly define the scope of the carve-out: objectives, boundaries, timeline, and legal setup
- Define and document the transaction perimeter explicitly for all dimensions
- Assess complexity drivers and allocate adequate resources and budget.
- Deploy issue-based status reporting and maintain a single source of truth for tracking.
- Develop a communication roadmap for all stakeholders (internal, external, investors)
- Use consistent messaging and prepare Day-1 readiness communication

V. Use of Generative AI (GenAI)

VI. Summary

VII. Q&A



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