

# Global Groundwork Counsel - Best practices and tools for multi-jurisdictional projects

Dr. Simon Dürr, Partner, PwC Legal Germany

Dr. Frederic Mirza Khanian, Partner, PwC Legal Germany

Marie-Helene Hauwel, Assistant General Counsel at SAP

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Introduction



Legal Ground Work



RfP and Counsel Selection



Deep Dives

# 1. Introduction

## Marie-Helene Hauwel

Assistant General Counsel | SAP



35 Rue d'Alsace,  
92300 Levallois-Perret, France

**Phone:** +33 1 4617-8688

**Mobile:** +33 6 9810-7629

marie-helene.hauwel@sap.com

### Short CV

Marie-Helene Hauwel is Assistant General Counsel of the SAP Group and Corporate Legal Expert leading Global Legal projects. She joined SAP in 2008.

### Experience summary

Marie-Helene is recognized as leading expert in Corporate Law and in Global Project Management such as global reorganizations, post deal integrations, carve-outs, financing, corporate legal compliance and global equity compensation plans.

## Dr. Simon Dürr

Partner | PwC Legal | Global Transformations



Friedrich-Ebert-Anlage 35-37  
60327 Frankfurt

**Phone:** +49 69 9585 5943

**Mobile:** +49 151 14551386

simon.duerr@pwc.com

### Short CV

Simon Dürr is partner of PwC and heading the legal practice for the Global Transformations Group in Germany. He joined PwC in 2011.

### Experience summary

Simon is recognized as leading expert in Global Transformation Projects such as global reorganizations, post deal integrations and carve-outs.

Simon was ranked amongst the top 100 lawyers and as N# 2 in M&A by Kanzleimonitor 2020/2021

## Frederic Mirza Khanian

Partner | PwC Legal | Global Transformations



Moskauer Straße 19  
40227 Düsseldorf

**Phone:** +49 211 981 2785

**Mobil:** +49 172 2427132

frederic.mirza.khanian@pwc.com

### Short CV

Frederic is partner of PwC and heading the legal practice for the Global Transformations Group in Dusseldorf. He joined PwC in 2018.

### Experience summary

Frederic is recognized as a leading expert in Global Transformation Projects such as global reorganizations, post deal integrations and carve-outs. Frederic was ranked amongst the top 100 lawyers and as N# 4 in M&A by Kanzleimonitor 2020/2021

# PwC Legal – Global Service Provider in 98 countries

>4.000 legal professionals in  
>98 countries

## North America

Canada, USA (foreign law practice)

## Caribbean

Barbados, Curacao, Dominican Republic, Trinidad & Tobago

## Mexico & InterAmericas

Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama

## Central and South America

Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, Venezuela

## Africa

Algeria, Angola, Cameroon, Chad, Congo, Egypt, Equatorial Guinea, Gabon, Ghana\*, Ivory Coast, Kenya, Madagascar, Mauritius, Morocco, Mozambique, Nigeria, Senegal, South Africa, Tunisia

## Western Europe

Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Gibraltar, Greece, Iceland, Italy, Luxembourg, Malta, Netherlands, Norway, Ireland, Portugal, Spain, Sweden, Switzerland, Turkey, UK

## CEE/CIS

Albania, Azerbaijan, Belarus, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Latvia, Lithuania, Macedonia, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Ukraine

















## Asia Pac

Australia, China, Hong Kong, Indonesia, India, Japan, Lao PDR, Malaysia, Mongolia, New Zealand, Philippines, Singapore, Taiwan, Thailand, Vietnam

## Middle East

UAE








# Relevant Credentials

<div>28 countries</div> <div>Global Carve Out</div> <div>of Reebok</div> <div></div> <div>2020 - 2022</div>	<div>28 countries</div> <div>Global Carve Out</div> <div>of Environmental Science</div> <div></div> <div>2020 - 2022</div>	<div>40 countries</div> <div>Global Integration</div> <div>of Varian</div> <div></div> <div>2020 - 2022</div>	<div>14 countries</div> <div>Global Integration</div> <div>of Silverpeak</div> <div></div> <div>2020</div>	<div>20 countries</div> <div>Global Integration</div> <div>of Cray Computing</div> <div></div> <div>2019</div>	<div>129 countries</div> <div>Global Carve Out</div> <div>of Animal Health Business</div> <div></div> <div>2018 - 2020</div>	<div>72 countries</div> <div>Global Integration</div> <div>of Monsanto</div> <div></div> <div>2018 - ongoing</div>	<div>33 countries</div> <div>Integration</div> <div>of Merial</div> <div></div> <div>2017 - 2019</div>
<div>32 countries</div> <div>Global Carve Out</div> <div>of Castolin Business</div> <div></div> <div>2019 - 2020</div>	<div>28 countries</div> <div>Global Carve-Out</div> <div>of BU Performance Products</div> <div></div> <div>2015 - 2016</div>	<div>14 countries</div> <div>Global Integration</div> <div>of Callidus</div> <div></div> <div>2018 - ongoing</div>	<div>49 countries</div> <div>Global Integration</div> <div>of Ariba, hybris &amp; SF</div> <div></div> <div>2014 - 2016</div>	<div>11 countries</div> <div>Global Integration</div> <div>of Signavio</div> <div></div> <div>2021 - ongoing</div>	<div>55 countries</div> <div>Global Integration</div> <div>of Sigma-Aldrich</div> <div></div> <div>2016 - ongoing</div>	<div>17 countries</div> <div>Global Integration</div> <div>of AZ</div> <div></div> <div>2014 - 2015</div>	<div>14 countries</div> <div>Global Integration</div> <div>of Millipore</div> <div></div> <div>2013-2014</div>



# Client Feedback

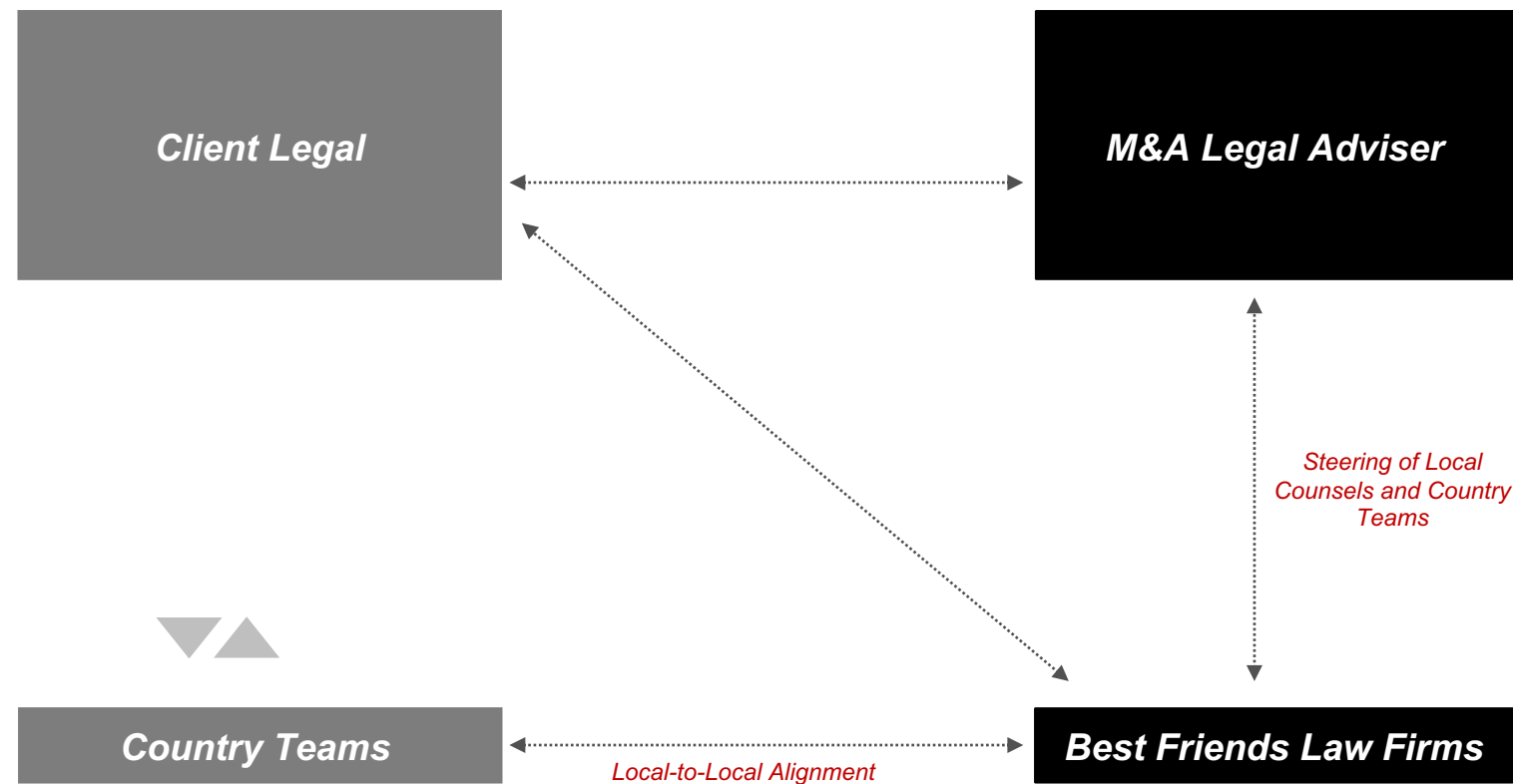
All of the below quotes were given on global transformation projects centrally coordinated by Simon & Frederic

<p>“</p> <p><i>Unrivalled Services Level</i></p>	<p>“</p> <p><i>Pricing is “best in town” in terms of transparency</i></p>	<p>“</p> <p><i>AH Carve-out was the „Mother of all Carve-Outs“</i></p>	<p>“</p> <p><i>Transaction of this size and complexity probably unprecedented</i></p>	<p>“</p> <p><i>Most innovative team I have worked with</i></p>	<p>“</p> <p><i>Impressively seamless</i></p>	<p>“</p> <p><i>Added Value reducing the workload at the interfaces between inhouse functions</i></p>
<p>Claudia Birkental HoT</p> <p>Friederike Rotsch GC</p>	<p>Luca Mucic CFO</p>	<p>Christian Bank Head of M&amp;A Legal</p>	<p>Tobias Kuck Project Lead</p>	<p>Miral Hamani Associate GC</p>	<p>Frank Steimel Head of Group Tax</p>	<p>Dr. Martin Schwarz GC</p> <p>Malte Fidler Head of Tax</p>
<p></p>	<p></p>	<p></p>	<p></p>	<p></p>	<p></p>	<p></p>

# 2. Legal Groundwork

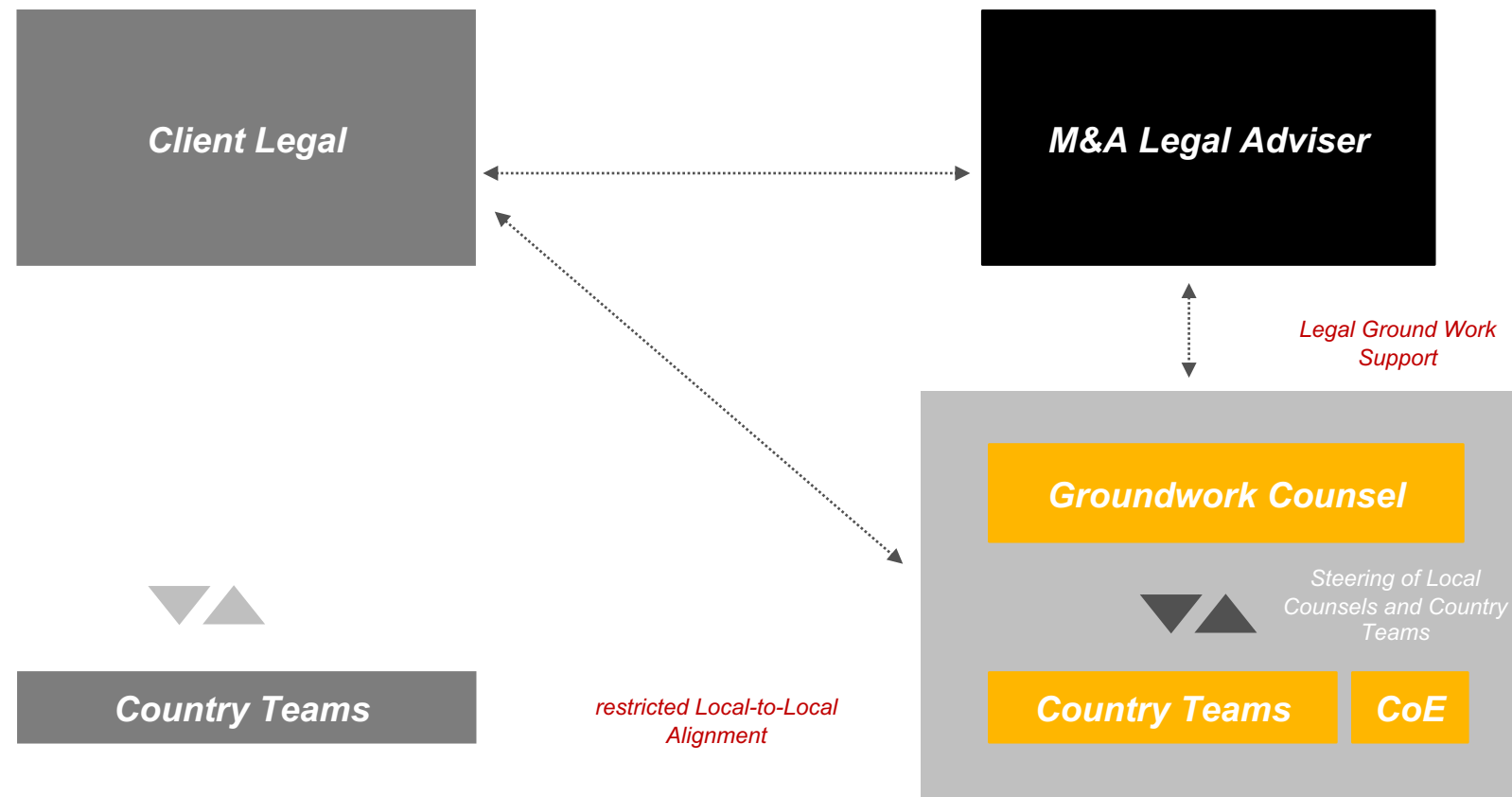


# Introduction into “Legal Ground Work” for Carve Outs and Post-Merger Integrations – Project Set-Up



- M&A Deal Adviser used to be responsible for the entire carve-out or integration process, from NDA through Closing and beyond
- In a global transaction with more than a handful jurisdictions, this means:
  - M&A Adviser would usually reach out to “best friends Network”
  - Client would directly contract with each “best friend firm”, ending up with dozens of contracts and invoicing
  - M&A adviser would typically not assume liability for the work of best friend firms
  - If at all, fixed budgets would be committed on a case by case basis but not for all jurisdictions
  - Items that can be centralized would stay with M&A Deal Adviser
  - M&A Deal Adviser has little control over work of best friends firms
  - Best friends have strong incentive to incur high fees (*collective market failure phenomenon*)

# Introduction into “Legal Ground Work” for Carve Outs and Post-Merger Integrations – Project Set-Up

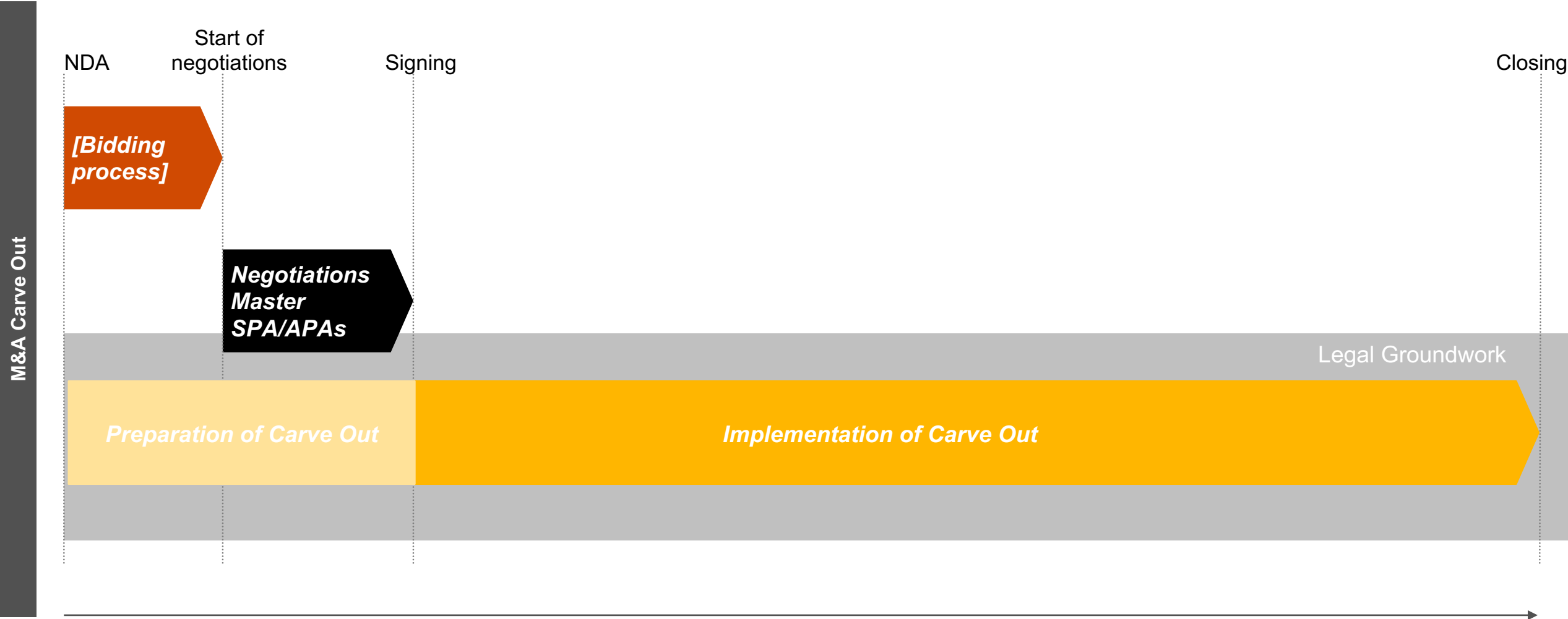


In an optimized approach, M&A Adviser would be responsible for the **Documentation and Negotiation of the Deal as such, strictly limited to M&A related tasks.**

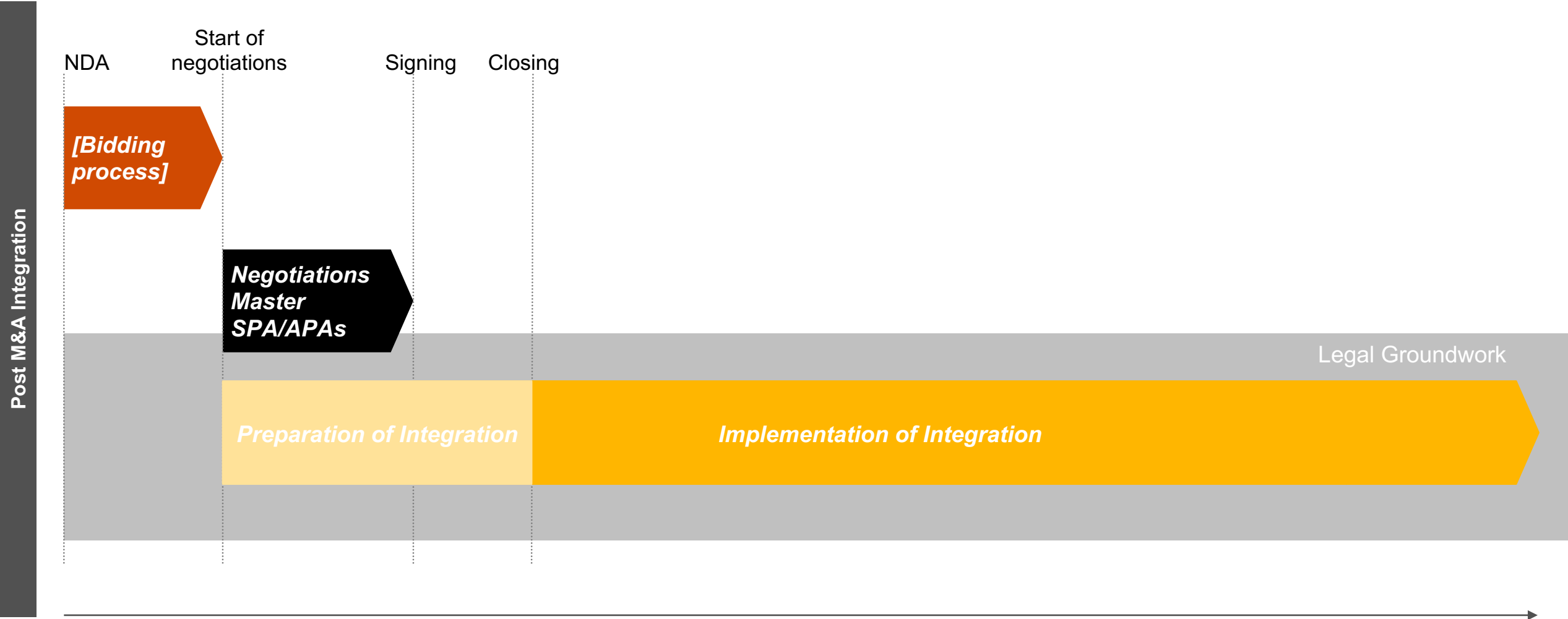
A Global Legal Groundwork Counsel with sufficiently large coverage would support the M&A Deal Counsel with the **Preparation and Implementation of the Deal (in particular in case of carve-out)**, resulting in:

- All countries and all legal disciplines covered by one firm
- One additional contract partner for Client
- Strong incentive for consistent quality and invoicing
- Commoditization of legal groundwork tasks increasing accuracy and pace and decreasing external spent
- Fixed budgets for almost all scope items

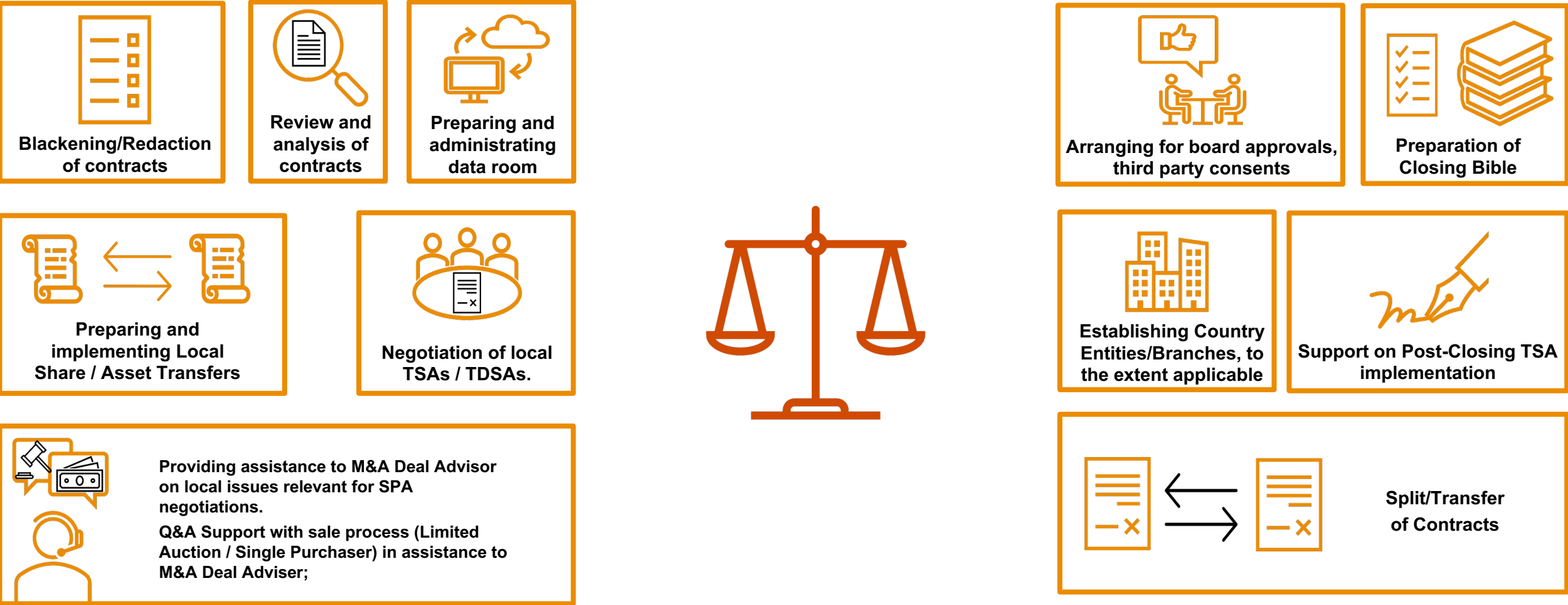
# Introduction into “Legal Ground Work” for Carve Outs and Post-Merger Integrations– Timing & Activities



# Introduction into “Legal Ground Work” for Carve Outs and Post-Merger Integrations– Timing & Activities



# Scope Items for Legal Ground Work – Corporate and Commercial Law



## Scope Items for Legal Ground Work – Scope Real Estate Law



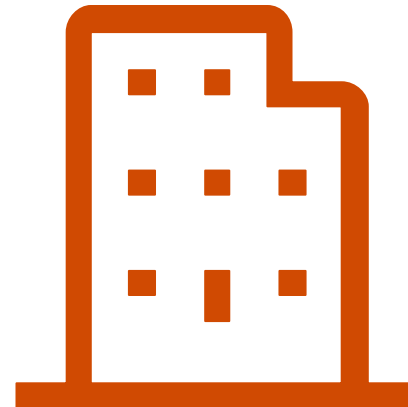
**Identification of properties affected and of overlapping use of properties between target and retained groups**



**Payment of real estate transfer taxes**



**Registrations of transfers and leases as required**



**Preparation for shared use of properties**



**Obtain landlord/third party consents required**



**Due diligence in respect of properties, in particular determination of transferability restrictions such as landlord / third party consents, and intra-group parent guarantees that need to be released/implemented etc**

# Scope Items for Legal Ground Work – Scope Employment Law



Employment due diligence  
(including pensions)




Interest solutions and redundancy  
plans that may need to be  
negotiated



Transfer of employees in all  
jurisdictions concerned in  
line with local requirements






Consider applicable laws  
to transfer of undertakings



Allocate liabilities under  
applicable laws on  
transfer of undertakings



Prepare information  
and consultation  
process with employee  
representation bodies



# 3. Preparation of RfP and Selection of Groundwork Counsel

## Preparation of RfP and Selection of Groundwork Counsel

Decide whether deal is suitable for split between Deal Counsel and Legal Groundwork Counsel

- Deal Value
- Complexity – Carve-Out from Zebra Entities or mere Share Deal?
- N# of countries involved / and covered by Deal Counsel?

Chose available Legal Groundwork Counsel

- Panel Law Firms suitable in terms of coverage?
- Map country coverage and deal experience to check whether One Stop Shop is available

Prepare RfP

- Describe Legal Groundwork as precise as possible: Country Coverage, Disciplines (Corporate, Commercial, Real Estate, Labour, IP/IT, Antitrust etc.)
- Try to detail out work in Phases and Deliverables
- Anticipate alignment effort between Deal and Groundwork Counsels
- One Contract
- Fixed fees and Discounts

Chose Groundwork Counsel

- Chose Groundwork Counsel on basis of reference and experience
- Ideally Deal and Groundwork Counsel have worked together on previous Deals
- Pricing (compare to Deal Counsel offering and among RfP recipients)

# 4. ■ Deep Dive - Use of Legal Tech for Carve-Outs and Integrations

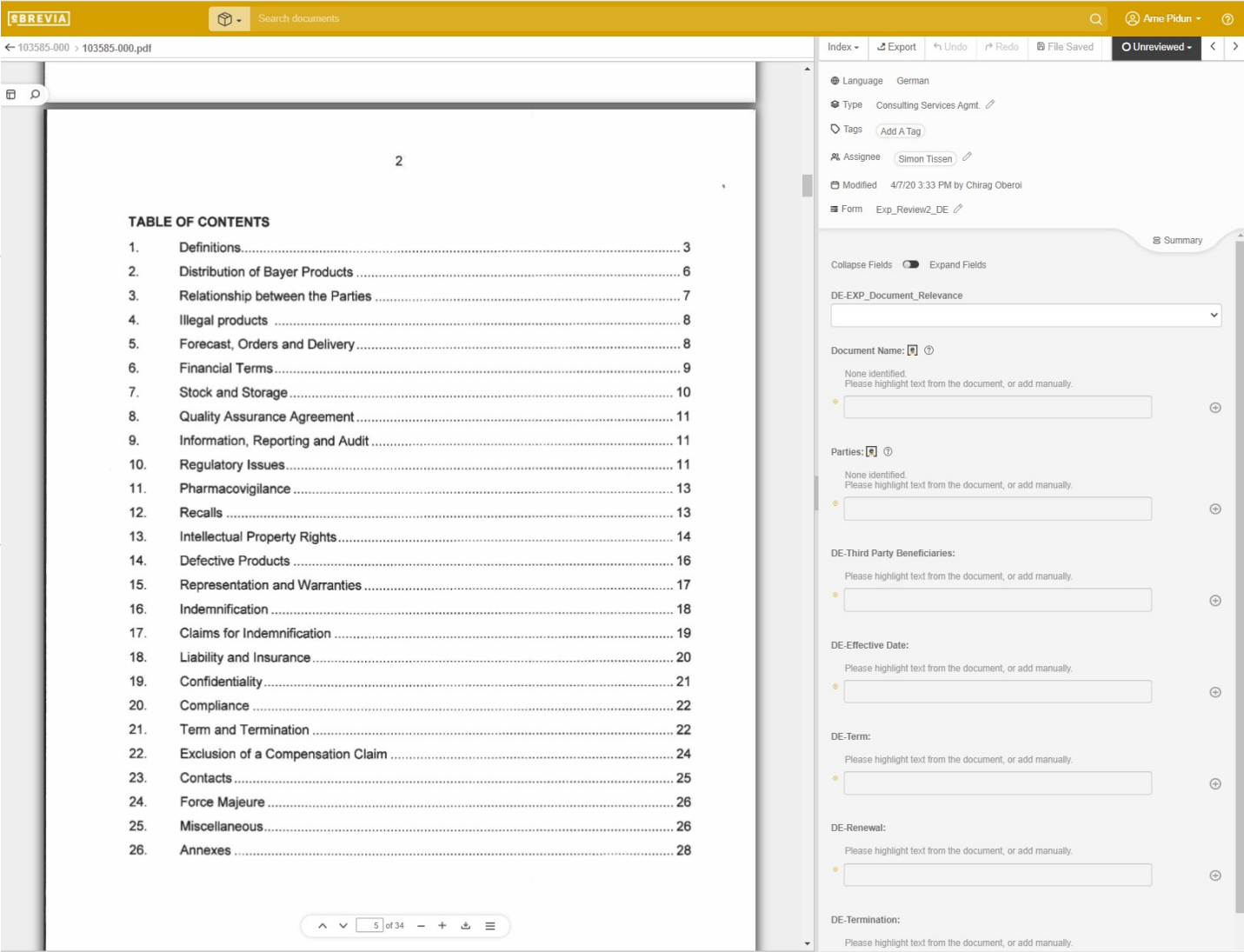
# AI Tools for Due Diligence

## Document Blackening

- Automated Scan and Recognition of sensitive data before uploading to data room (Parties, Pricing, Intellectual Property etc.)

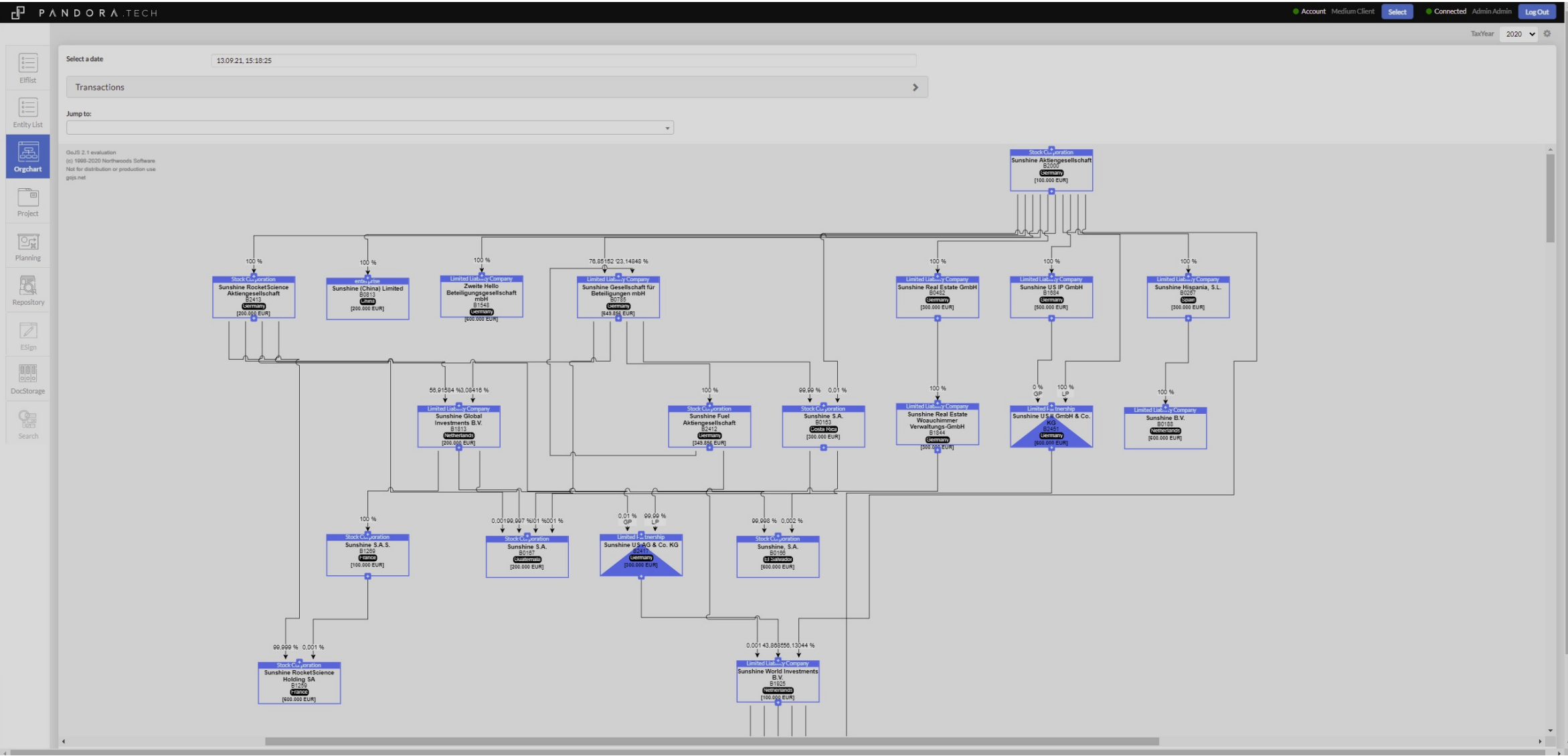
## Vendor Due Diligence

- Automated recognition of “Change of Control” clauses, assignment limitations etc. with help of machine learning



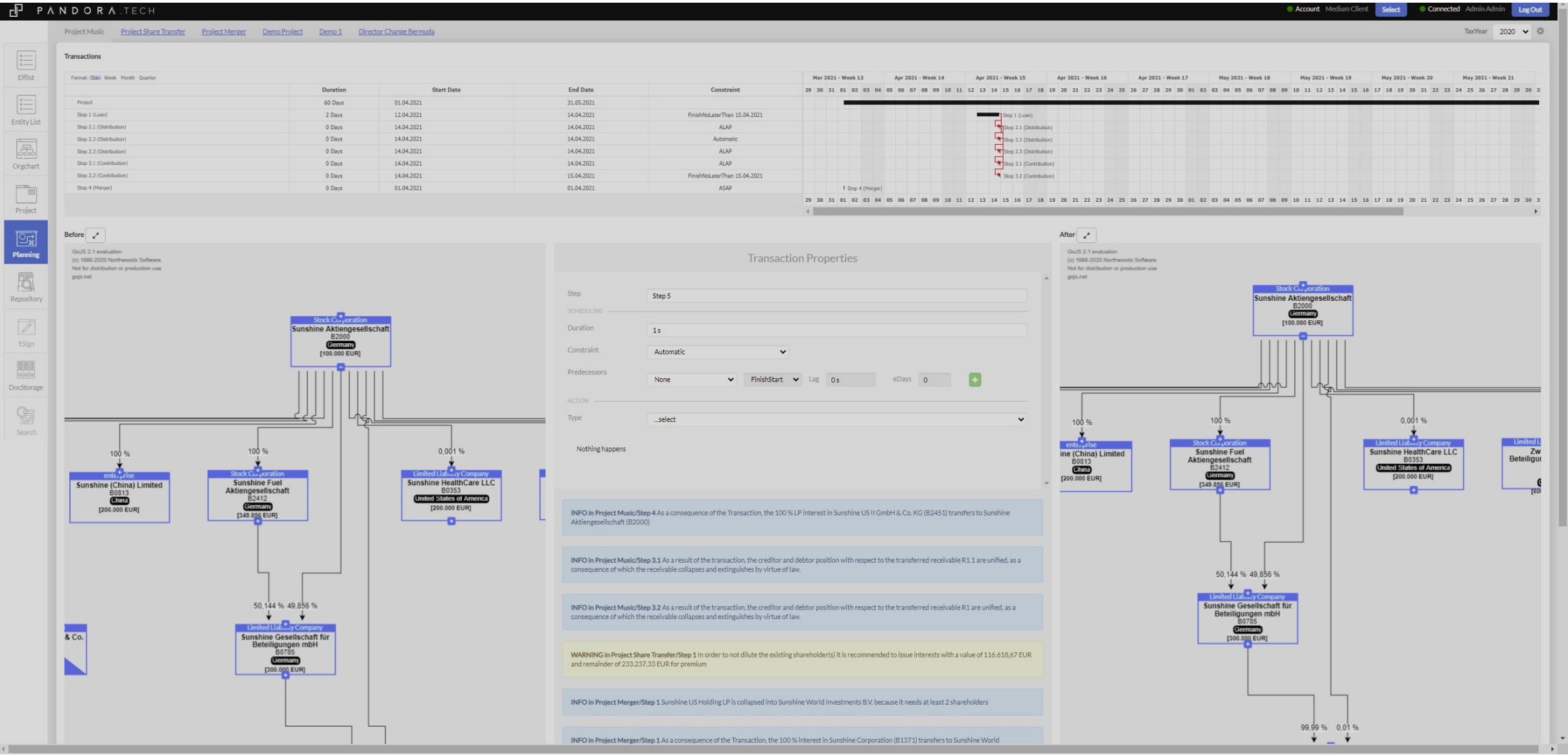
# Example: PANDORA

## Process and Document Automation Tool to plan Transactions and Automate



# Example: PANDORA

## Process and Document Automation Tool for Monitoring Dependencies



# Example: PANDORA

## Process and Document Automation Tool for Monitoring Dependencies

PANDORA.TECH

AccountMedium ClientSelectConnectedAdmin AdminLog Out

TaxYear2020

RepositoryTest-Upload

Templates

Show150entries

Search:

Transaction Type	Document Type	Filename	Restricted by	Country	Elf Code	Revision	Uploaded at	Uploaded by	Actions
All	ShareholderResolution	Shareholder Resolution.docx	Transferee			1	14.04.2021 14:06	Admin Admin	<a href="#">download</a> <a href="#">delete</a>
All	ShareholderResolution	Shareholder Resolution.docx	Transferor			1	14.04.2021 14:05	Admin Admin	<a href="#">download</a> <a href="#">delete</a>
Loan	TransactionalDocument	Loan Agreement.docx	NotRestricted			1	14.04.2021 14:01	Admin Admin	<a href="#">download</a> <a href="#">delete</a>
Contribution	TransactionalDocument	Contribution Agreement.docx	NotRestricted			1	14.04.2021 14:02	Admin Admin	<a href="#">download</a> <a href="#">delete</a>
All	BoardResolution	Board Resolution.docx	Transferor			1	14.04.2021 14:05	Admin Admin	<a href="#">download</a> <a href="#">delete</a>
Distribution	TransactionalDocument	Distribution Agreement.docx	NotRestricted			1	14.04.2021 14:02	Admin Admin	<a href="#">download</a> <a href="#">delete</a>
All	ShareholderResolution	Shareholder Resolution.docx	NotRestricted			1	14.04.2021 14:03	Admin Admin	<a href="#">download</a> <a href="#">delete</a>
All	BoardResolution	Board Resolution.docx	NotRestricted			1	14.04.2021 14:05	Admin Admin	<a href="#">download</a> <a href="#">delete</a>

Showing 1 to 8 of 8 entries

Transaction TypeAllDocument TypeBoardResolutionFilenameuse uploaded filenameRevision1Restricted toNotRestrictedChooseupload

Previous1Next



# Example E-Signature

## Digital Tool for automated signature collection

Date

28/08/2018

Search For

TransactionDate

Status

Completed

Find documents

Sent

Delivered

Completed

Deleted

Voided

All

Export to Excel

Document Name	Sent Date	Status Changed Date	Transaction Date	Status	Signatories	Result Files	Status
Moon - Ca.12.2"-3.1	21.08.2018 19:09	23.08.2018 17:30	28.08.2018 19:09	completed	●▲** *■□ ➔*□□●**▼**	Document	
Moon - Ca.12.2"-3.2	21.08.2018 19:10	22.08.2018 10:50	28.08.2018 19:10	completed	Ifonso aura -oix (completed), \iccardo astorelli (completed)	Document	
Moon - Ca.12.2'-3.5	21.08.2018 19:10	21.08.2018 19:28	28.08.2018 19:10	completed	- ario - . - oseph (completed)	Document	
Moon - Ca.12.2'-3.7	21.08.2018 19:09	22.08.2018 10:51	28.08.2018 19:09	completed	Ifonso aura -oix (completed), \iccardo astorelli (completed)	Document	
Moon - Ca.12.2-2.4	21.08.2018 19:10	22.08.2018 10:53	28.08.2018 19:10	completed	Ifonso aura -oix (completed), - aniel - ella (completed), - ames - . - artin (completed), \iccardo astorelli (completed)	Document	
Moon - Ca.12.2-3.1	21.08.2018 19:09	22.08.2018 10:53	28.08.2018 19:09	completed	Ifonso aura -oix (completed), - atalia oruz (completed), \iccardo astorelli (completed)	Document	

# 5. ■ Deep Dive – Case Studies

## Obtaining Third Party Consents (increasing pressure for express consents)

Task	Traditional Approach	Issues with Traditional Approach	Mitigation
<ul style="list-style-type: none"><li>In a recent 129 countries' carve out, the consent drafting and execution process was automated to a great extent</li></ul>	<ul style="list-style-type: none"><li>Parties agree on "best efforts" to obtain express consents</li><li>Until/to the extent express consents cannot be obtained, parties agree to treat each other as if the contract had transferred</li></ul>	<ul style="list-style-type: none"><li>Conversion Rate committed under SPA</li><li>Tacit Consent does not help in case of "shared agreements"</li><li>Concept of Tacit Consent not known in some countries</li><li>Increasing Data Protection Regulation and powerful authorities (cf. e.g. EUR 350m Amazon fine) require at least an "opt out" but in many cases an explicit "opt in"</li></ul>	<ul style="list-style-type: none"><li>Increasingly more clients have Contract Lifecycle Databases from which contracts can be more easily pulled and analyzed</li><li>In the majority of the jurisdictions a simple electronic signature would comply with applicable requirements</li><li>Automated drafting of consents and automation of the signature process can significantly reduce the burden</li></ul>

## Analysis of Contracts (e.g., option to sub-lease)

Task	Traditional Approach	Issues with Traditional Approach	Mitigation
<ul style="list-style-type: none"><li>• Sub-leases permissible in 59 countries?</li></ul>	<ul style="list-style-type: none"><li>• Send contracts to 59 country counsels</li><li>• Agree on budget</li><li>• Have counsels review</li><li>• Collect and structure responses</li></ul>	<ul style="list-style-type: none"><li>• Response time depends on time zone and customs</li><li>• Counsels have incentive to incur high fees, delivery depends on time zone</li><li>• Due to the incentive, the responses will rather be lengthy and will have to be analysed by client and structured</li></ul>	<ul style="list-style-type: none"><li>• Have central team check contracts</li><li>• Translation of contracts with professional translation software, identification of clauses in CoE</li><li>• Only silent agreements would be sent to country for further country analysis</li></ul>

# Thank You

Looking forward to working with you

