

After Arriving at the Deal: Best Practice Processes and IT Tools to Facilitate the Implementation of Multi-Jurisdictional Carve-Out and Post-Merger Integration Projects

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Introduction



How to Best Structure a Deal



Use of IT Tools



Deep Dives



Final Considerations

1. Introduction

CV's

Miral Hamani

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Short CV

Miral Hamani-Samaan is Director and Associate General Counsel, responsible for M&A, Corporate, Bankruptcy and Insolvency at Hewlett Packard Enterprise. She joined HP in 2008

Experience summary

Miral has tremendous experience in managing complex, multi-jurisdictional M&A transactions and reorganization projects, including the worldwide split of Hewlett Packard Enterprise and HP Inc. in 2015.

Prior to joining HP, Miral worked as an attorney in the Paris office of Freshfields Bruckhaus Deringer.

Dr. Simon Dürr

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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

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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 & 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>

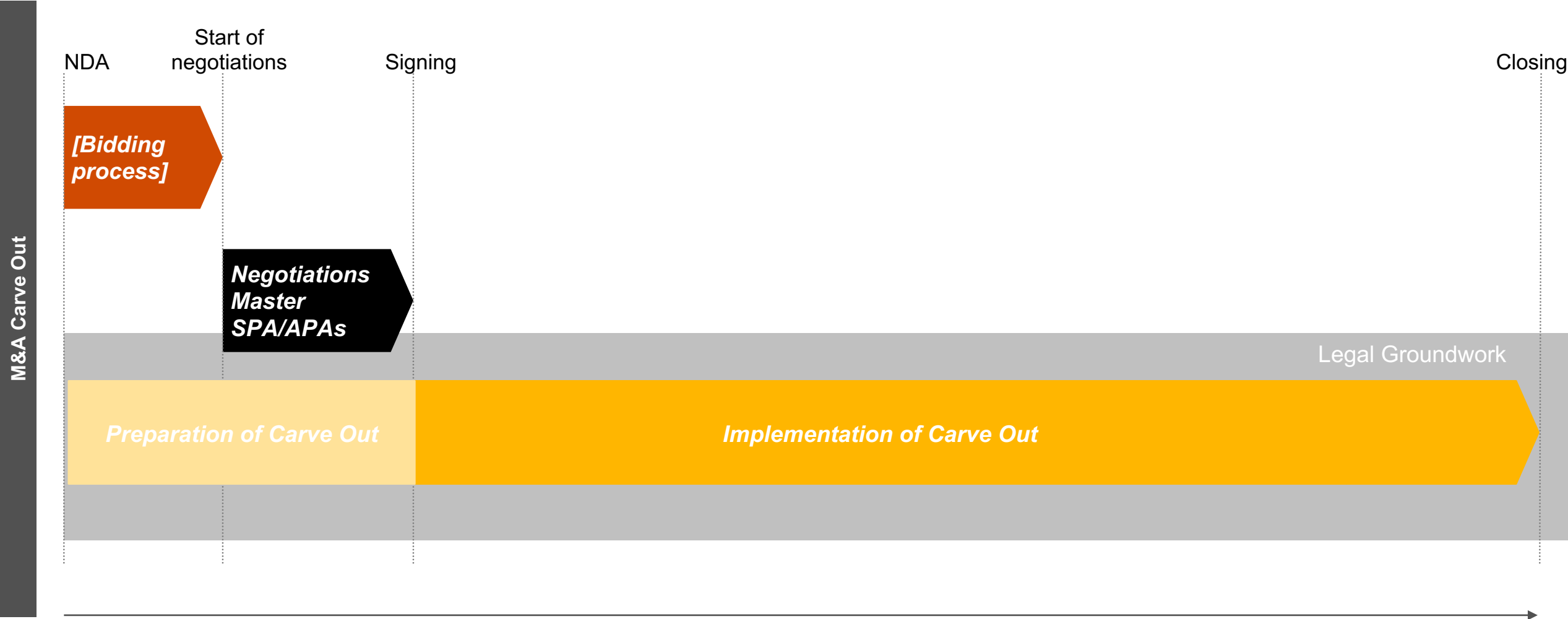
Client Feedback

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

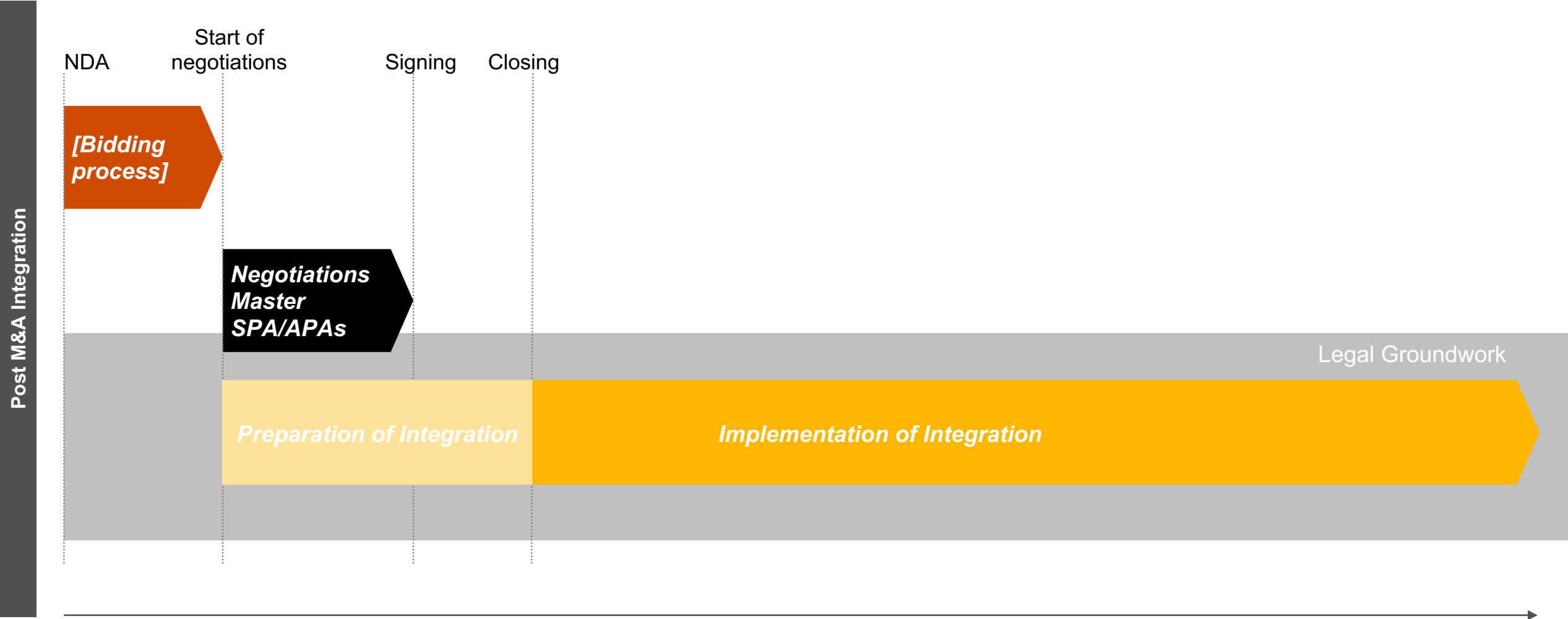
<p>“</p> <p><i>Unrivalled Services Level</i></p>	<p>“</p> <p><i>Pricing is “best in town” in terms of transparency</i></p>	<p>“</p> <p><i>AH Carve-out was the „Mother of all Carve-Outs“</i></p>	<p>“</p> <p><i>Transaction of this size and complexity probably unprecedented</i></p>	<p>“</p> <p><i>Most innovative 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&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. ■ How to Best Structure a Deal

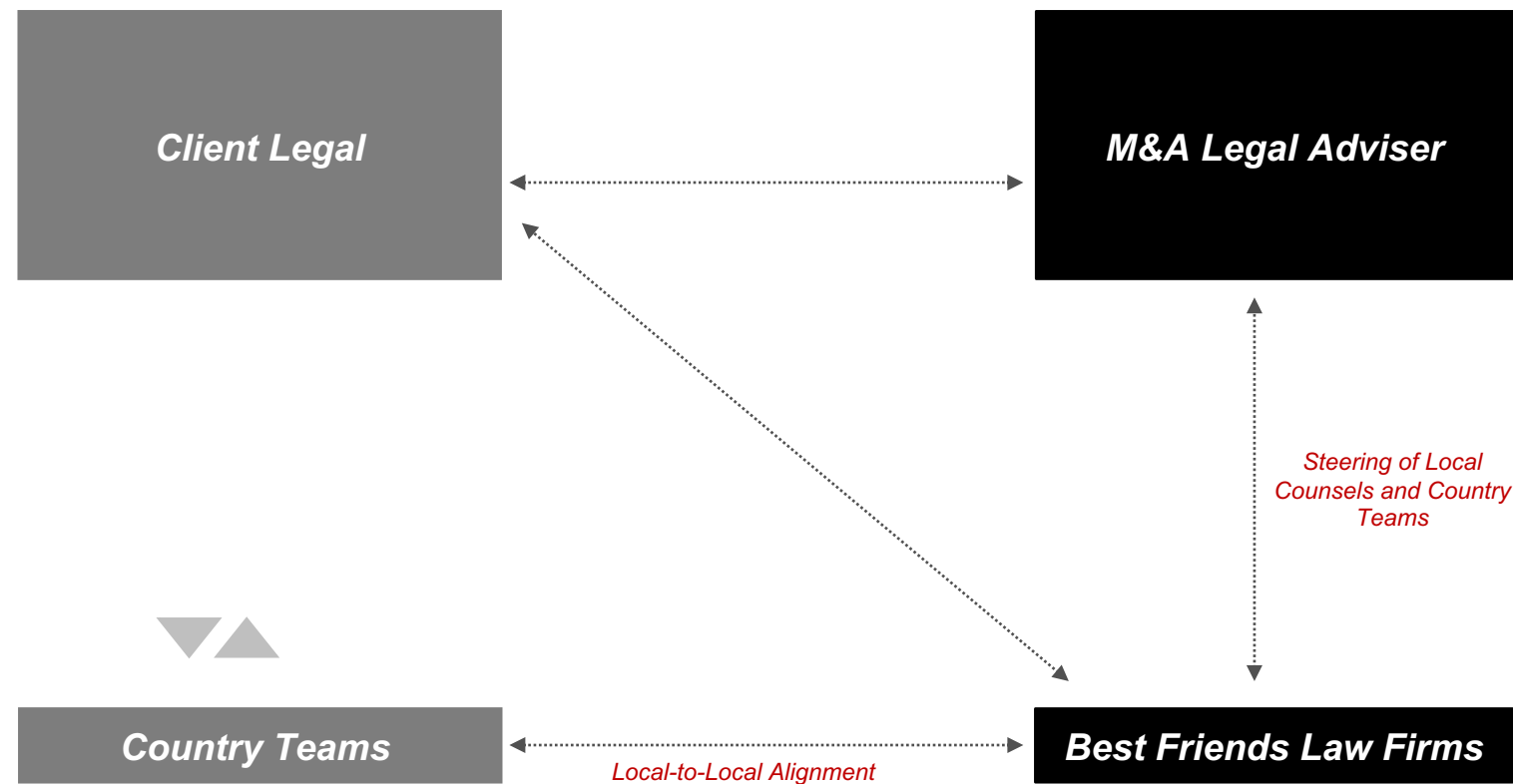
Introduction into Carve-Out Projects: Timing & Activities



Introduction into Post Merger Integrations: Timing & Activities

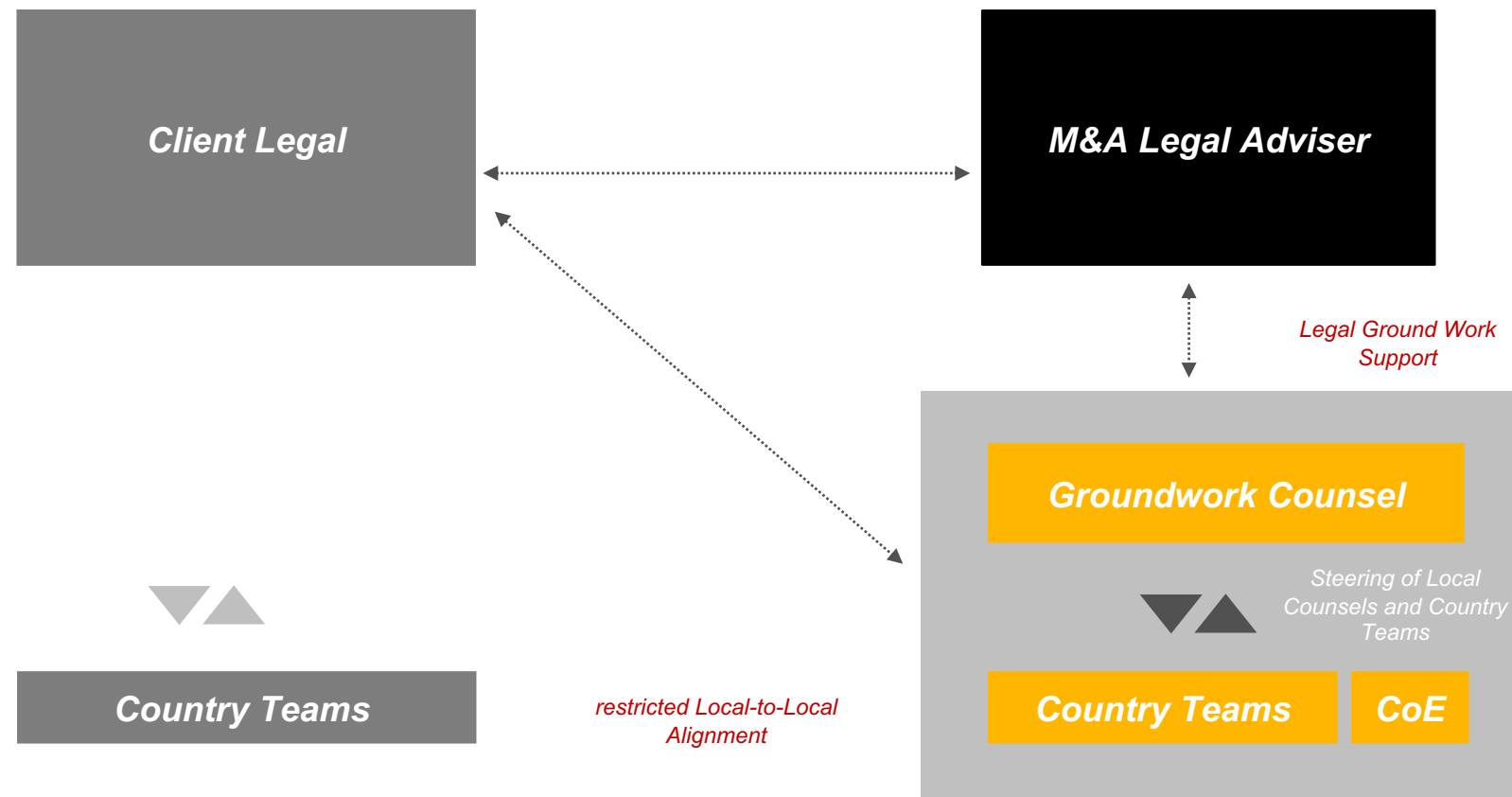


Carve Outs and Post-Merger Integrations – “Traditional” Project Set-Up



- 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*)

Carve Outs and Post-Merger Integrations – More Efficient 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

3. ■ Use of IT Tools for Carve-Outs and Integrations

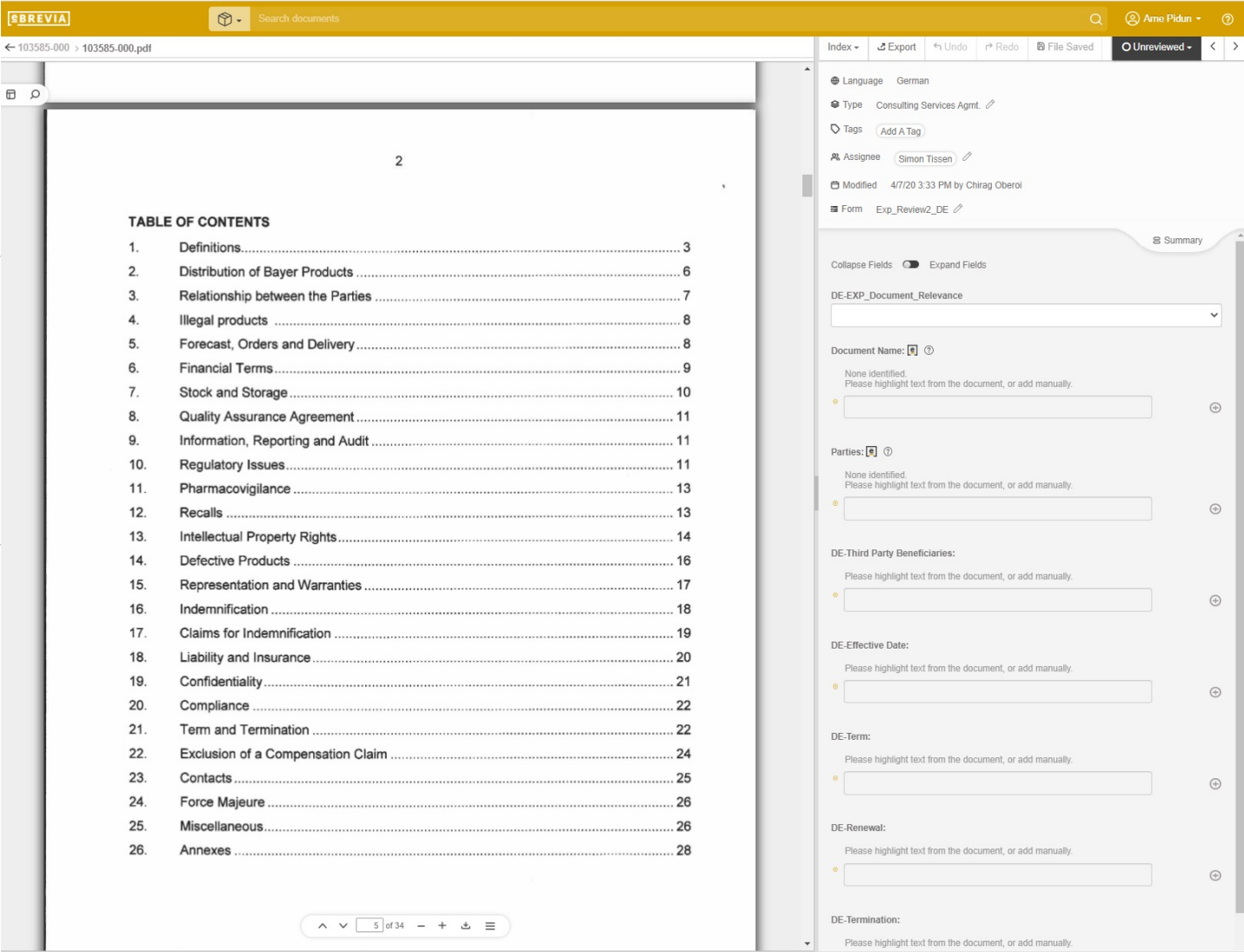
AI Tools for Due Diligence

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



Online Collaboration Platform specifically developed for multi-jurisdictional Carve-Out and PMI Projects

Dashboard

EC Documents

Contacts

Reports

Engagements Admin

Obligation Overview

Legal Due Date

Legal Due Date Health

Requests & Queries

Engagement Highlights

Countries: 10

Entities: 11

Obligations: 19

On-Time: 12

Impending: 2

Overdue: 3

Complete: 2

PLANNING

Argentina Grey Gallery Corp Test Deliverable JB Legal Due Date: 31 Oct 2020

Argentina Grey Gallery Corp Impending

DATA COLLECTION

Bulgaria Green Grass Landscaping Local File/Local Documentation Report Legal Due Date: 15 Jan 2021

PREPARATION

Argentina Admin Local File/Local Documentation Report Legal Due Date: 30 Sep 2020

FINALISATION

Brazil Cream Concrete Company Local File/Local Documentation Report Legal Due Date: 24 Oct 2020

COMPLETE

Austria Pink Pencils Inc Local File/Local Documentation Report Legal Due Date: 01 Jan 2021

Globe UAT

GCS CIT 2019 Australia

Deliverable

+ ADD DELIVERABLE

Data Collection Test 15 08 2020 Recipient: PwC Final Due Date: 21 Aug 2020 Adrian Negulescu 1 Task

Planning GCS CIT Test Recipient: Client Final Due Date: 28 Aug 2020 Legal Due Date: 31 Aug 2020 Bonnie Harp 4 Tasks

PLANNING 23 Jul 2020

DATA COLLECTION 30 Jul 2020

PREPARATION 06 Aug 2020

FINALIZATION 13 Aug 2020

Completed

TASK

Task 1

Completed

TASK

Task 2

Subtask 1

Completed

TASK

Task 3

Completed

TASK

NO DATA HERE

Board

FILTERS

GROUP BY

+ ADD TASK

Finalization Tax Consulting Me... Recipient: PwC Final Due Date: 04 Jul 2020 Legal Due Date: 17 Jun 2020 SGG

TO DO

Subtask D.1 edit 23 Jun 2020 DP Dorina Prokai Preparation

DOING

Laura Subtask 1 26 Jun 2020 JF L SS Finalization

DONE

subtask a L KC Planning

Reports

MANAGE REPORTS

UPLOAD REPORTS

Engagement Status Engagement Reports

Compliance Deliverables Focus on the deliverables to be prepared for your compliance engagement VIEW REPORT

Contacts View the list of team members added to the 'Contacts' app VIEW REPORT

Deliverables Focus on the deliverables to be prepared for your compliance engagement VIEW REPORT

Documents View a list of documents uploaded to Engagement Center VIEW REPORT

Engagement Collection View the list of engagements that are part of Engagement Collections VIEW REPORT

Uploaded By PwC Custom Uploaded Reports

Contacts Clone Test clone report VIEW REPORT

Eng Setup Validation Review 2020-12-17 VIEW REPORT

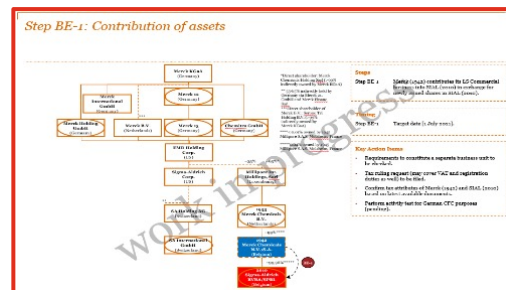
Sample Deliverables

Sample Workstream Deliverables (Best Practice) Phases 1 through 3

Phase 1

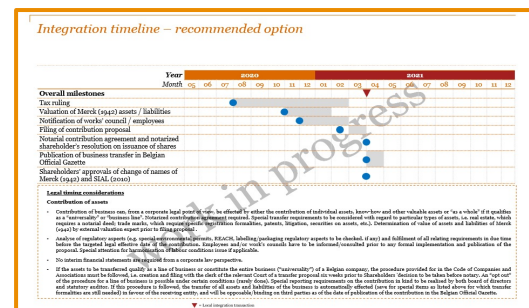
- **Feasibility Paper**

*applies for Phase 3
correspondingly*



Phase 2








- **Timeline**



Phase 3

- **Legal Micro Plan**

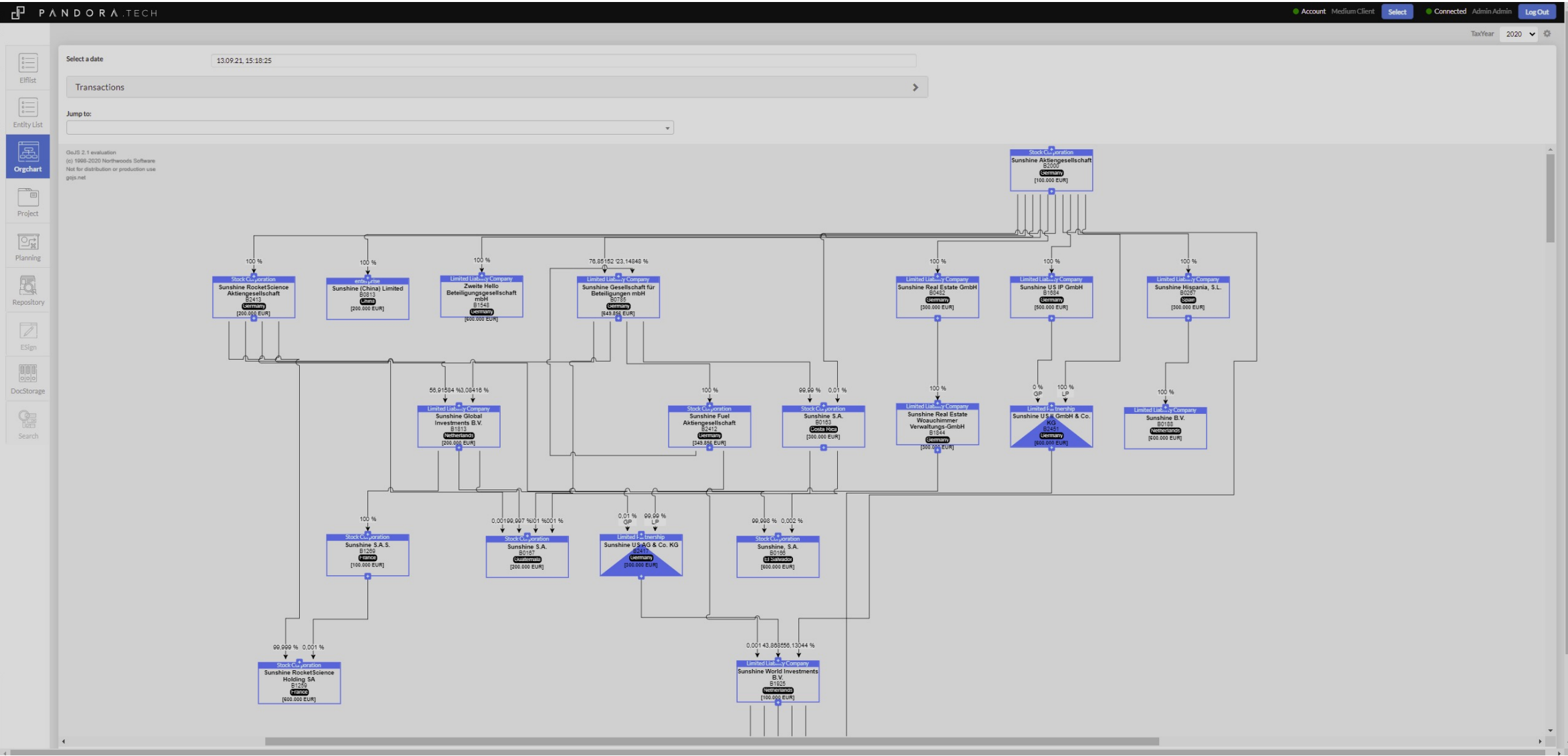
Legal Step Plan

 **Must happen**
regardless of phase
  **Can occur**
 **Not available**
 **Prohibit**
 **Action item for client**
 **Test later**
 **N/A**

Pre-Step	Step	Task	#	Owner	Required Documents	Effective Date	Execution Date	Signatures / Owners	Signng Instructions	Status
		Confirmation on EIR readiness and implementation		Melrick	<p>Melrick to confirm we have data on instructions to pay legal process on hold (point of return)</p> <p><i>Notes: Please discuss with Sam the date of expiration of the original deed (2021) + p. 126 - 128, 205 - 210 if/ should be considered as point of no return, if/ the transaction is executed at that point in time, it would be appropriate to underline the warning terms that with the Dutch Chamber of Commerce (which is done by the Dutch notary by adding a red wafel and to inform the courts concerned accordingly)</i></p>	<p>Deed period (2017-2021)</p> <p>[at the latest by 26.06.2021]</p> <p>04.07.2021</p>		N/A		
None	None	Incompleteness of Deeds	NO-1	Melrick	<p>Completion of Incorporation of new laws ("Life Insurance VV") share capital amount and direction of newCo</p> <p><i>Notes: Please legal not. will provide an incorporation</i></p>	<p>01.06.2021</p> <p>Point of incorporation (2021) is the date at which the national deed of incorporation</p>	<p>Aug before 2021</p>	N/A		

PANDORA

Process and Document Automation Tool to plan Transactions and Automate



E-Signature

Digital Tool for automated signature collection

Date		Search For		Status			
28/08/2018		TransactionDate		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 ▼	

4. ■ Deep Dive into 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">In a recent 129 countries' carve out, the consent drafting and execution process was automated to a great extent	<ul style="list-style-type: none">Parties agree on "best efforts" to obtain express consentsUntil/to the extent express consents cannot be obtained, parties agree to treat each other as if the contract had transferred	<ul style="list-style-type: none">Conversion Rate committed under SPATacit Consent does not help in case of "shared agreements"Concept of Tacit Consent not known in some countriesIncreasing 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"	<ul style="list-style-type: none">Increasingly more clients have Contract Lifecycle Databases from which contracts can be more easily pulled and analyzedIn the majority of the jurisdictions a simple electronic signature would comply with applicable requirementsAutomated drafting of consents and automation of the signature process can significantly reduce the burden

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

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

5. ■ Final Considerations

Final Considerations

How and when to consider engaging a Groundwork Counsel?	How and what to organize before engaging a Groundwork Counsel?	Who in your organization needs to be involved?	Timing of the project	Tasks for Legal Department vs Groundwork Counsel
<ul style="list-style-type: none">• In deals with significant size and complexity (more than 5 countries, exotic jurisdictions)• Where deal counsel is not able to cover all countries concerned• Where deal counsel is not able to provide fixed fees / fee certainty	<ul style="list-style-type: none">• Ensure suitable Groundwork Counsel is on your panel• Distinguish between tasks suitable for Groundwork Counsel vs Deal Counsel	<ul style="list-style-type: none">• Procurement / Legal Procurement• Legal Department	<ul style="list-style-type: none">• Carve-Out: At the very beginning of project, in particular before setting up Data Room until after closing.• Integration: Prior to closing until last country is integrated, can take several years.	<ul style="list-style-type: none">• Inhouse will provide information, support with signature process, align with Groundwork Counsel on a regular reporting calls.• Groundwork Counsel in charge of implementing Carve-out / PMI measures

Thank You

Looking forward to working with you

