

Corporate reorganizations

The industrials M&A perspective

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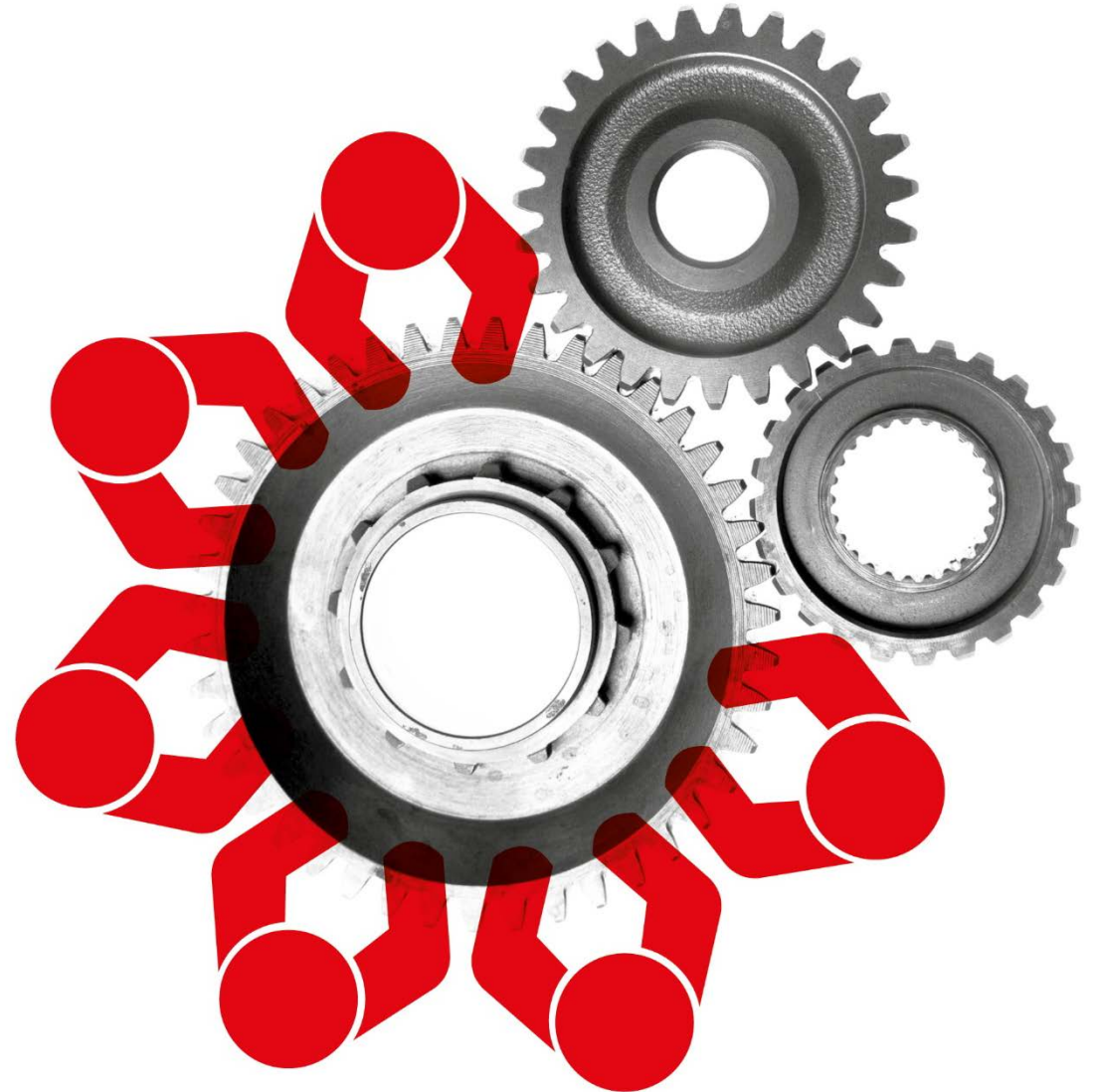
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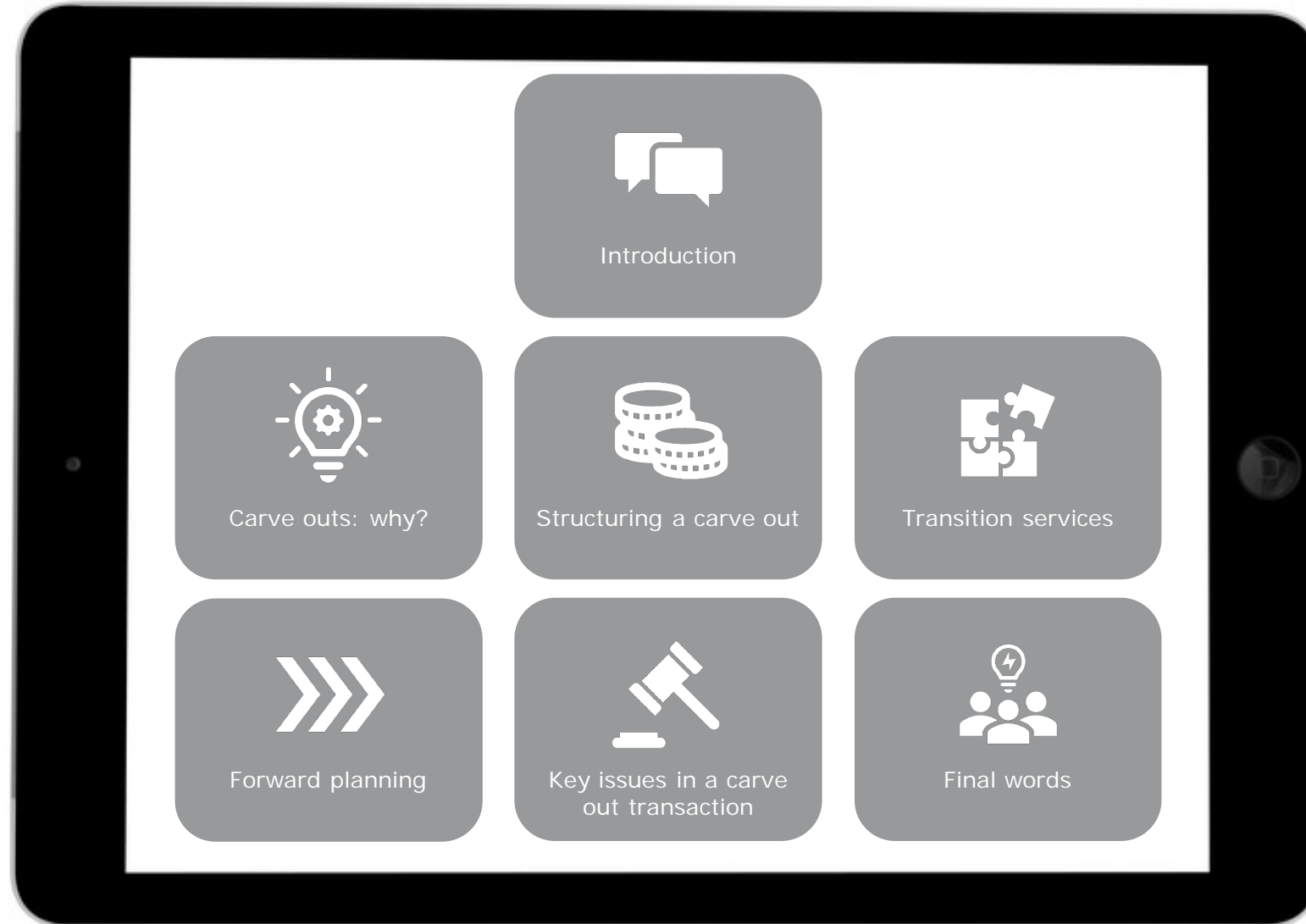


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Session Overview





Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



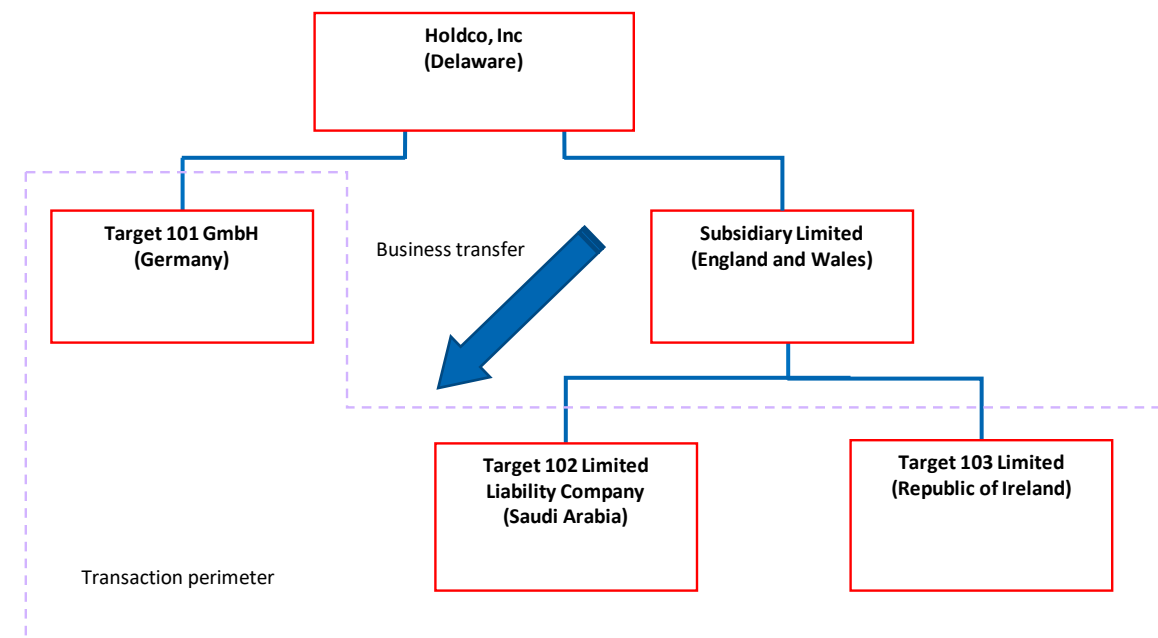
Final words

Introduction

Corporate carve outs

Why carve out?

- Disposition of a subsidiary (or multiple subsidiaries) or portion of a business (business line, division, plant, etc.)
 - Transactions are often to sell an underperforming business line or non-core asset or to list a business division in its own right; could be dual track
- Some of our largest recent transactions were sales of large divisions of clients:
 - G4S' disposal of its conventional cash handling business
 - Rolls Royce plc's sale of its Marine Engine division
 - Capita plc's disposal of Capita Asset Services





Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



Final words

Introduction

Corporate carve outs

Typical reorganization lifecycle

Legal implementation of any reorganization involves a number of workstreams, many of which run simultaneously. The carve out is no different.





Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



Final words

Strategy of corporate carve outs

Recent drivers and trends towards carve out



NON-CORE business activities

- Products/services, plant(s) or cost centers not core to primary business
- Downward pressure on enterprise value
- Could realize full potential under new ownership



shifting **STRATEGIC DIRECTION**

- COVID-19 impact on broader corporate strategy impacting long-term business direction
- Limited expectations for carve out value improvement if transaction shelved for 12-24 months



impending **LIQUIDITY CRUNCH**

- Ties up resources and capital that could be redeployed to primary business
- Generate cash via sale for other uses



other **EXTERNAL FACTORS**

- Write-down impact to overall fiscal year performance now vs future periods
- Shareholder activism
- UK - Brexit



Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



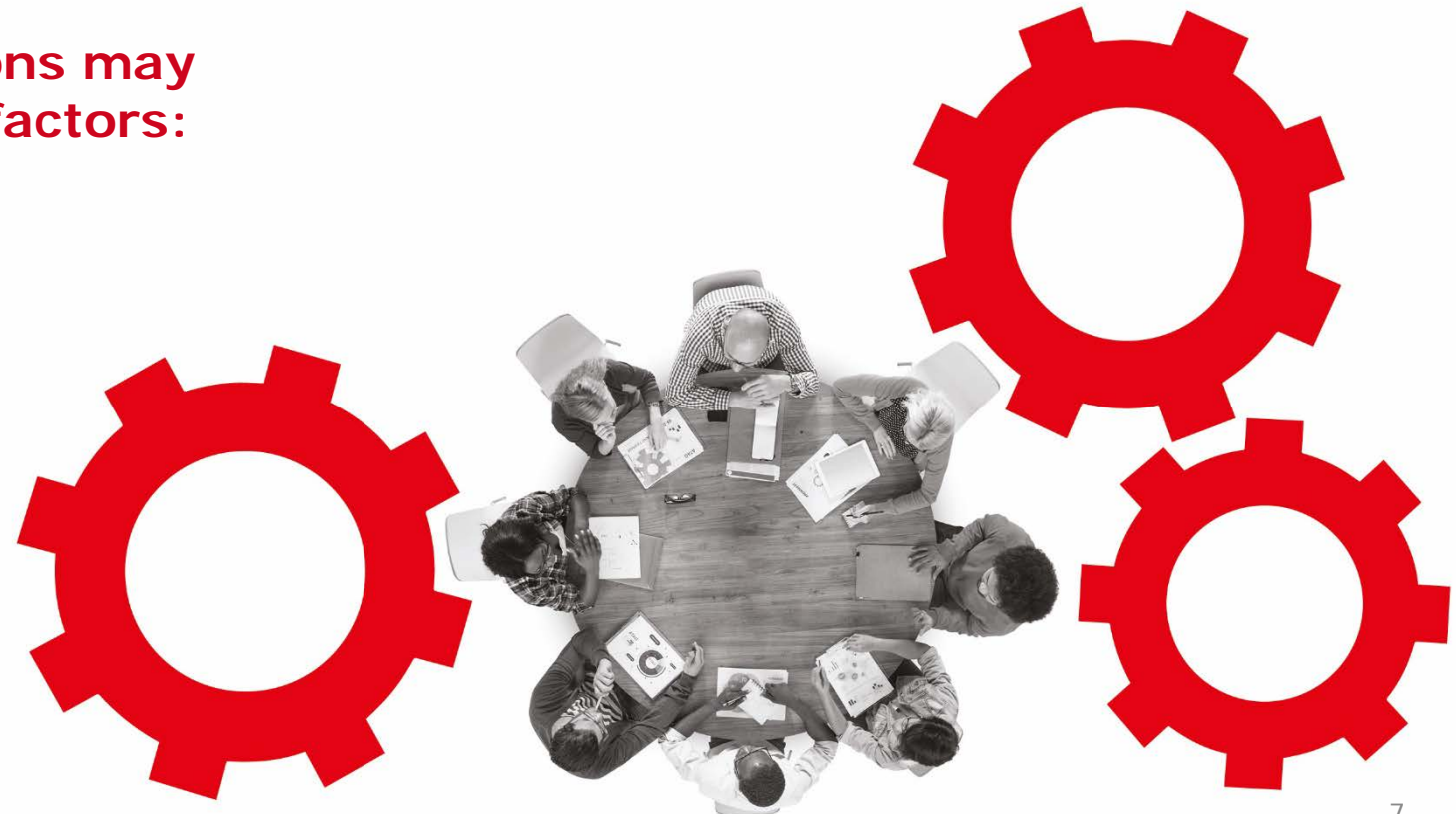
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Structuring carve outs

General

Structures of carve out transactions may differ depending on a number of factors:

- Location of business within corporate structure
- Joint ventures/third party partner considerations
- Tax implications – always key
- Ownership of material assets and liabilities





Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



Final words

Structuring carve outs



Things to consider – top tips

- **Where early consideration can be vital**
 - Third party shareholder/partner structures
 - Clear communications with all stakeholders (eg advisers and counterparties to contracts)
 - Early engagement
- **Strong project management is vital**
 - Set up good systems early!



Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



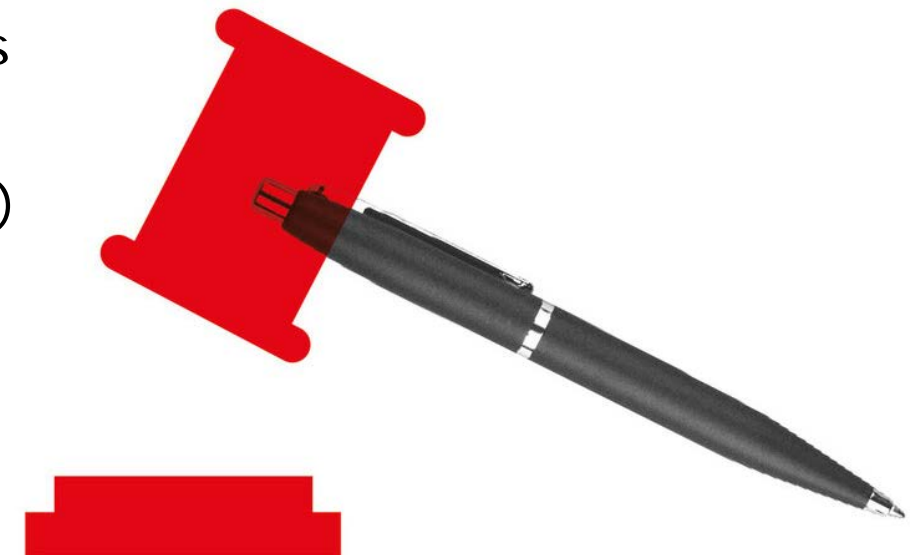
Key issues in a
carve out
transaction



Final words

A note on transitional services

- Consider who your buyer will be and whether or not they can stand up the business on their own
- Be ready to draw boundaries around what services you as seller will be willing to provide
- Consider pricing for services (including employees) sooner rather than later
- Consider right to end transition services
- Consider right to use third-party service providers





Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



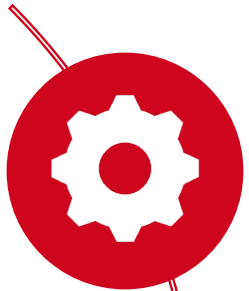
Key issues in a
carve out
transaction



Final words

Forward planning

Project Management: what can go wrong?



Signatories may be missed



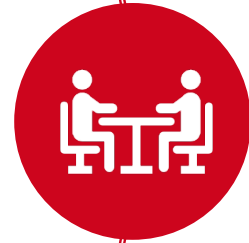
Deliverables may be missed



Deadlines may be missed



Signing and closing may be delayed



Employee consultations or
works council approvals may
be missed



POA may need to be re-executive
if expiry dates are not long
enough or approval authority is
inadequate



Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



Final words

Forward planning

The importance of additional planning during COVID-19

Gathering the underlying information

- Consider 'working from home' implications in the planning process
- Have a clear, uniform request list in to which key stakeholders have input, and which is used globally and is clearly managed by identified points of contact / project managers with clear responsibility
- Have lawyers and accountants work together so as to avoid duplication of requests/multiple pieces of paper
- Consider what internal corporate restructuring is necessary
- Consider need for new corporate entities to house business line or if existing structure suffices





Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



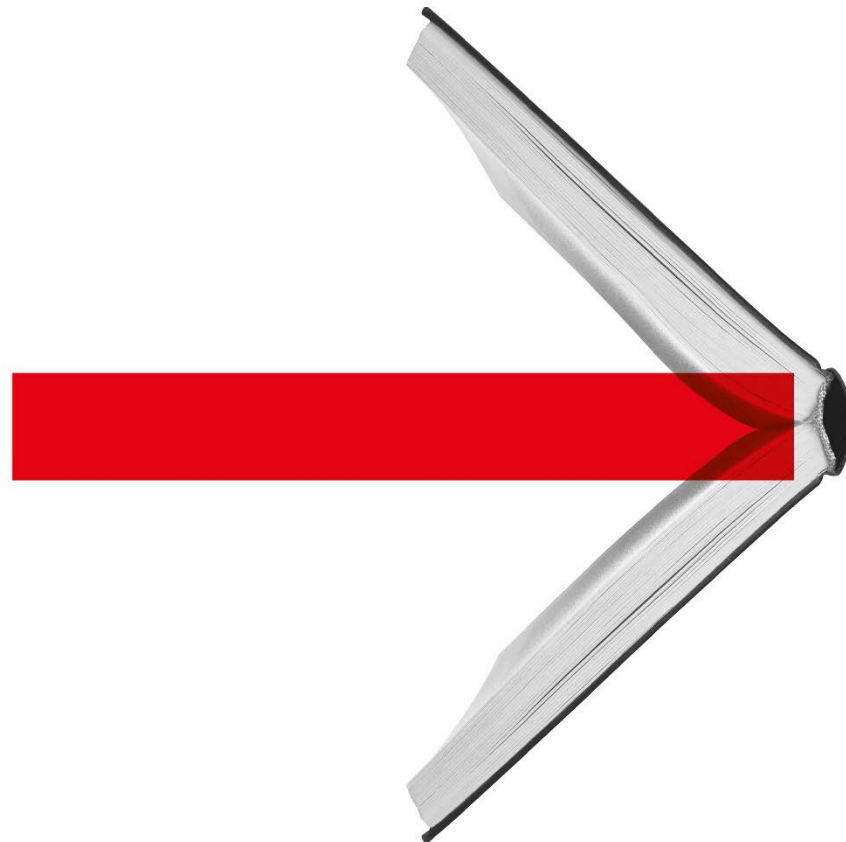
Key issues in a
carve out
transaction



Final words

Forward planning

The importance of additional planning during COVID-19



Traditional challenges become more challenging during COVID-19:

- Delivering
- Project management
- Data volume
- Execution issues
 - Logistics
 - Powers of attorney
 - Notaries/apostille
 - Electronic execution



Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



Final words

Key issues in a carve out transaction

Third-party consents and notices

Business contracts

- Material customers/suppliers
- Change of control; assignment; novation
- Assigning contracts to fit within transaction perimeter?
- Partial assignment of contracts?

Finance

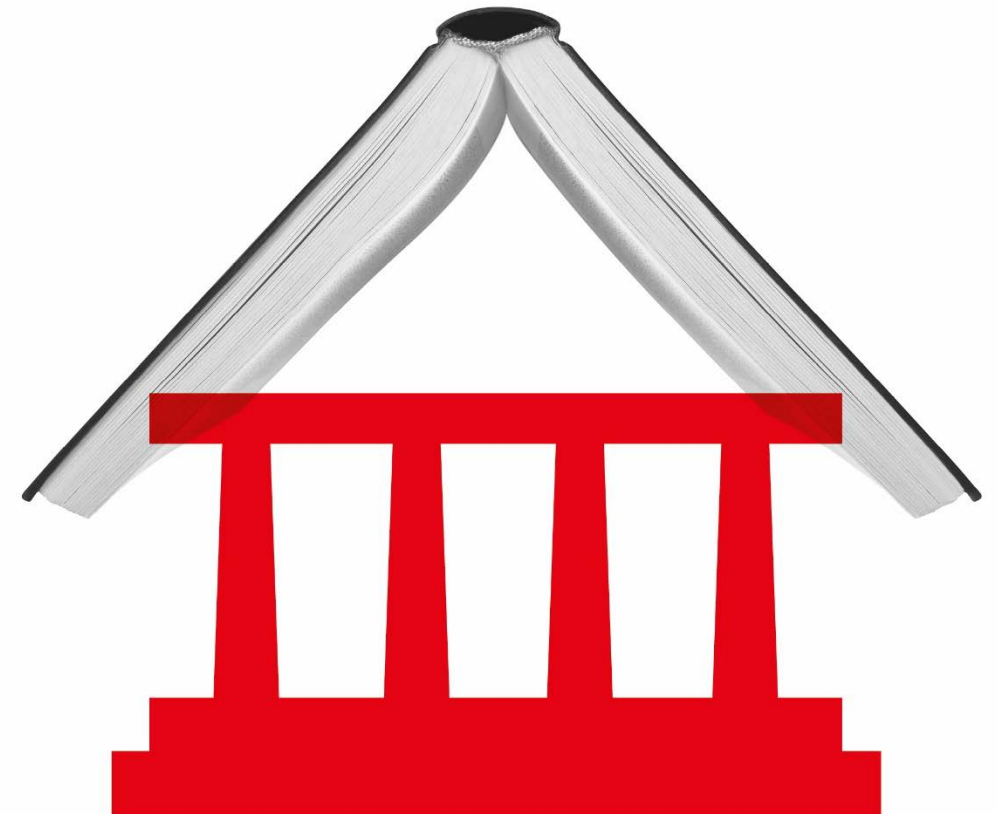
- Lenders

Real property

- Landlords

Regulatory

- Regulatory (eg permits, operating licenses)





Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



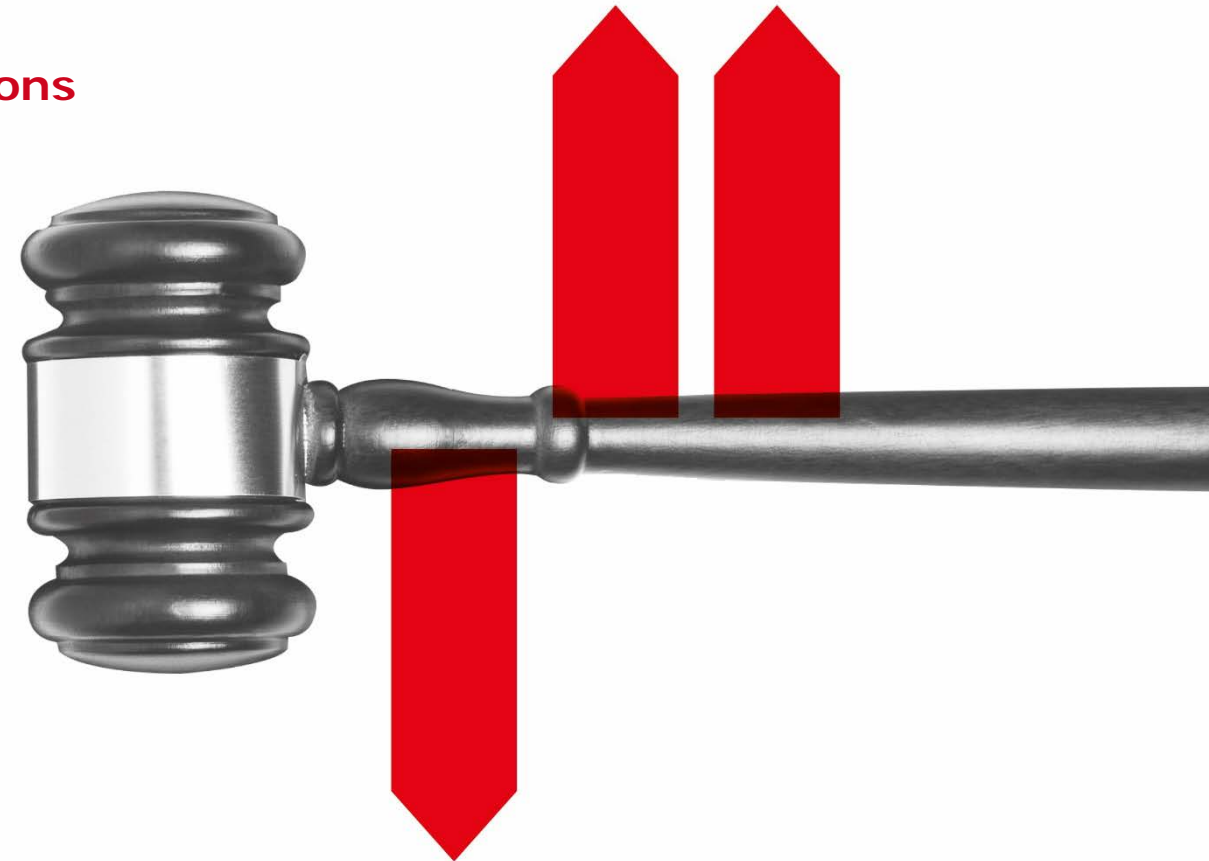
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Key issues in a carve out transaction

Shared assets

Shared agreements and intercompany considerations

- Global and shared agreements
- Intercompany agreements and intercompany debt
- Shared “back-office” support services
- Shared productions/distribution operations
- Shared employees
- Shared real estate
- Insurance policies
- Treasury and finance support





Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



Final words

Key issues in a carve out transaction

Historical liabilities



Ongoing
litigation
support



Retention of
certain
liabilities?



Retention of
liabilities of
shared assets



Consider how
historic
liabilities
impact
financial
statements



Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



Final words

Key issues in a carve out transaction

IP and IT issues

- Who owns the IP? Does it need to be assigned?
- IP licences that need to be terminated?
- Shared IP
- Is new IP required as part of sale? (re-branding?)





Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



Final words

Key issues in a carve out transaction

Indebtedness and encumbrances

- Separation of bank accounts?
- Parties to credit facilities? Capital leases?
- Lien releases
- Intra-group financing
 - Allocation of debt
 - Repayment
 - Waiver (noting potential tax downsides to the same)
 - Assigning/transferring the debt /notes receivable





Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



Final words

Key issues in a carve out transaction

Employees

- Confirming which entity(ies) employs employees of business
- Shared employees
- Employees carved-out of transaction
- Are all benefits centralized? Are there any benefits that are not centralized?
- Are there any outstanding employment claims?
- Timing and messaging (non-US)
 - Re-deployment where no TUPE transfer
 - Works councils/unions
 - Redundancies
 - Pensions/benefits





Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



Final words

Key issues in a carve out transaction

Common issues

Environmental

- EHS permits and approvals can be easily overlooked, but can add significant amounts of time and formality to your transfer process
- Be aware of historic environmental contamination issues – these issues can impact the group regardless of your documentation!





Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



Final words

Final words

Conclusion

- Do not underestimate the time that a transaction can take. The more time you can give yourself (and advisors) the better
- Prior planning and establishment of systems can be the differentiator between a well-managed process and timetable extensions, particularly where transitional services are required
- Validate and interrogate the steps plan from every angle
- Collate information in a uniform, coordinated manner
- Be alive to employee consultation and people dynamics
- Curve-balls will arise, but can typically be dealt with provided they are identified with sufficient time



Introduction



Carve outs:
why?



Structuring a
carve out



Transition
services



Forward
planning



Key issues in a
carve out
transaction



Final words

Final words

Q&A



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