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# Business Carve-Outs: Best Practices

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March 7, 2017 | **CORPORATE**

**SPECIAL CONSIDERATIONS FOR CARVE-OUTS**

A carve-out transaction is a type of divestiture in which a business unit or division is sold. Carve-outs can be structured as the sale of interests in an entity or as an asset sale. Carve-outs tend to be more complex transactions that involve greater levels of planning to disentangle the assets or entities to be sold from the retained business. Below, we list some of the key considerations in making a carve-out divestiture:

**Preparation & Messaging**

- Structuring - identify potential issues, evaluate tax implications to help determine structure and engage advisors early to help in the process.
- Control messaging - establish a clear and consistent message to communicate the proposed transaction to existing stakeholders (business partners, employees, management and the broader public). This minimizes both external and internal stressors and unease.

**OPERATIONAL ISSUES**

- Clarify operational issues and entanglements – lay out what will be retained and what will be sold, including a detailed inventory of the operations and assets to be divested.
- Prepare a post-transaction representation of how both businesses will look after giving effect to the divestiture (to evaluate post-transaction operations, cash flows, cost structures and tax effects).
- Together, these steps will highlight the major decisions to be made and risks to be managed.

**Transition services: ensure that critical functions remain in place during the transition of ownership**

- Identify which areas the buyer will need transition services on day 1 post-acquisition
- Key negotiating points of a transition services agreement include the term of the agreement, the scope of services and the price to be charged for such services
- The seller will want to limit the time and scope of the transition as it can be costly and distracting from the seller's ongoing business concerns

**OVERVIEW OF CARVE-OUT TRANSACTION PHASES**

**Phase 1 - Preparation**

- Define key selling points and, if necessary, prepare marketing materials (ie. the management presentation and information memorandum)
- Prepare confidentiality agreement
- If applicable, market the transaction and finalize buyer list
- Preliminary legal work gathering seller-side diligence and addressing any carve-out specific issues (ie. shared contracts, segregating assets, etc.)
- Prepare data room due diligence materials for proposed buyer(s) to review

### Phase 2 - Initial Negotiations

- Arrange diligence visits and materials
- Coordinate responses to buyer questions
- Negotiate letter(s) of intent with finalist(s) and pick a buyer

### Phase 2 - Negotiating the Deal

- Negotiate asset purchase and sale agreement and ancillary agreements
- Coordinate additional due diligence
- Execute definitive agreements
- Receive requisite approvals for the transaction
- Prepare for closing

### Phase 4 - Closing

- Closing
- Perform post-closing obligations and covenants (ie. obligations under a transition services agreement)