

Daten in der Unternehmenstransaktion - Was bei Carve-Outs zu beachten ist

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Vorstellung & Gliederung

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Gliederung

1. Transformation Situation
2. Case Study
3. Model Study
4. Analysis of Data Sources and Locations
5. Legal Categories
6. Deal Structure Decision
7. Project Stages
8. Identify and Select Carve-Out Methods and Options
9. Q&A



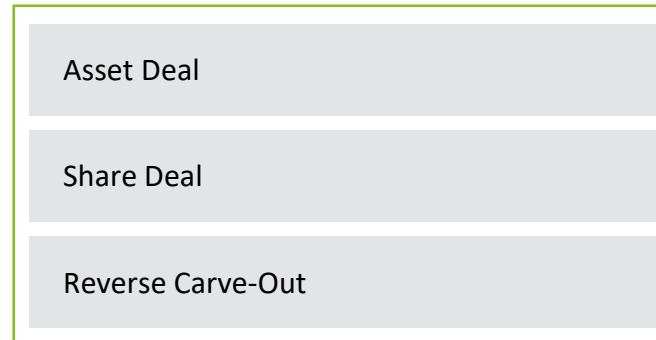
Data in Corporate Transactions – Transformation Situation

Awareness of key challenges is essential

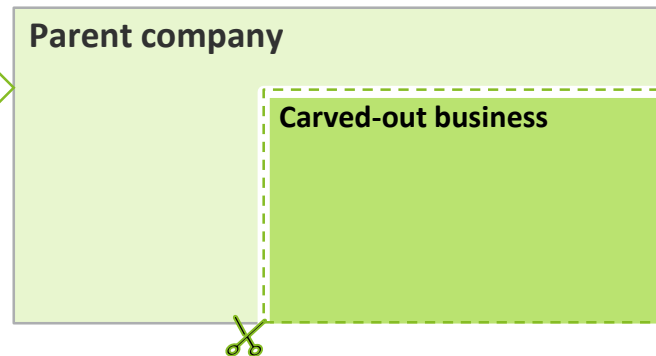
Divestiture Situation...



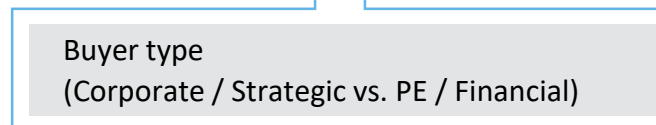
Deal structure ...



Key Challenges...



**Legal Regulations & Compliance
resulting from buyer type...**



Case Study – Carve Out of Chemical Production Facility

Entanglements of contract and data structures

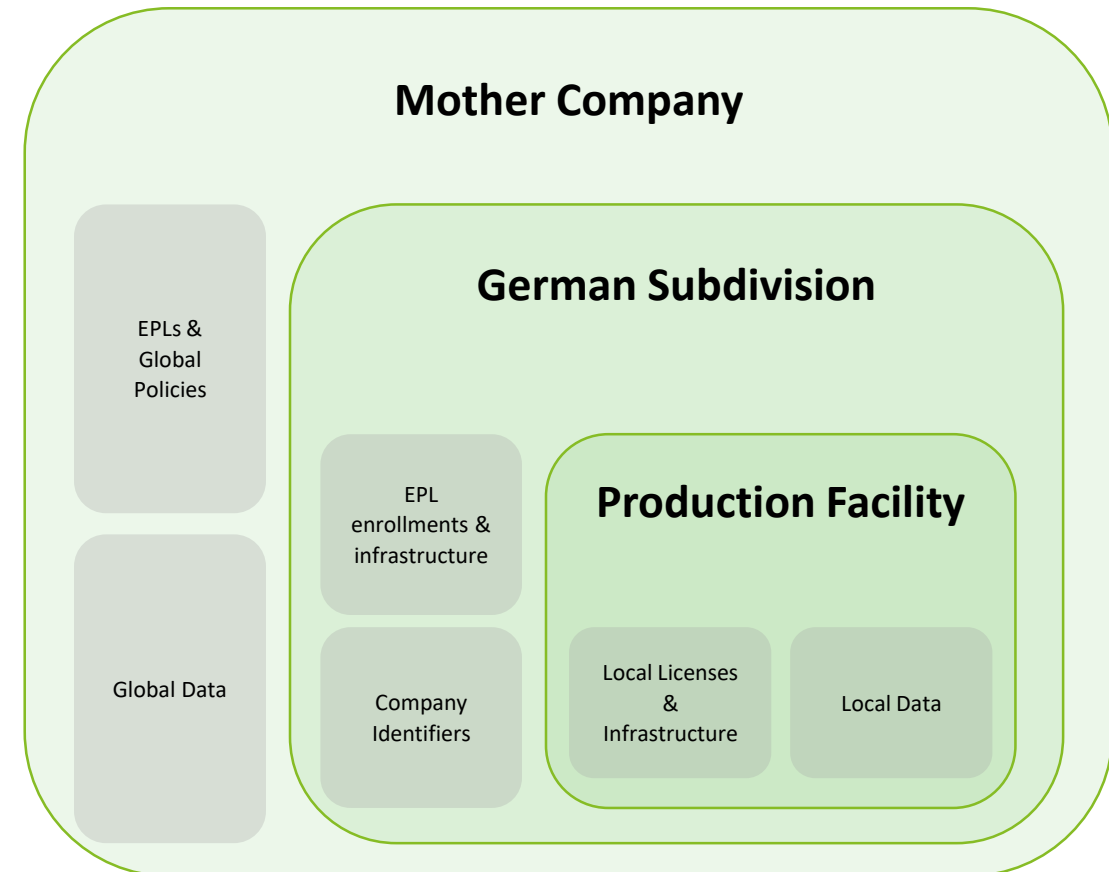
Local vs. Central

Local Infrastructure vs. Central Provisioning

- Approx. 300 relevant IT Services relating to applications and infrastructure
 - 60 could be terminated before closing
 - 30 proprietary to Production Facility
 - 210 partially required – continuation decided during transition
- IT Landscape including
 - 2 Shared Data Centres operated by Mother
 - Local Devices and Production IT
 - Local End-User Workplace - approx. 1200 Office Clients, 1000 Factory Clients
 - Own and central assets, e.g. Network access switches, Wired phones, DECT, iPhones, Data Center Server Rooms

Local Data vs. Central Data Storage

Separation of Chemical Production Facility



Case Study – Outcome

Planning deficiencies will lead to costs



SPA conclusion first

- No Carve-Out Due Diligence
- No Legal Due Diligence



Standard procedure?

- Assurance that IT, Data and IP exist unencumbered
- Seller obligation to ensure business continuity on Day 1
- No due diligence on IT and data



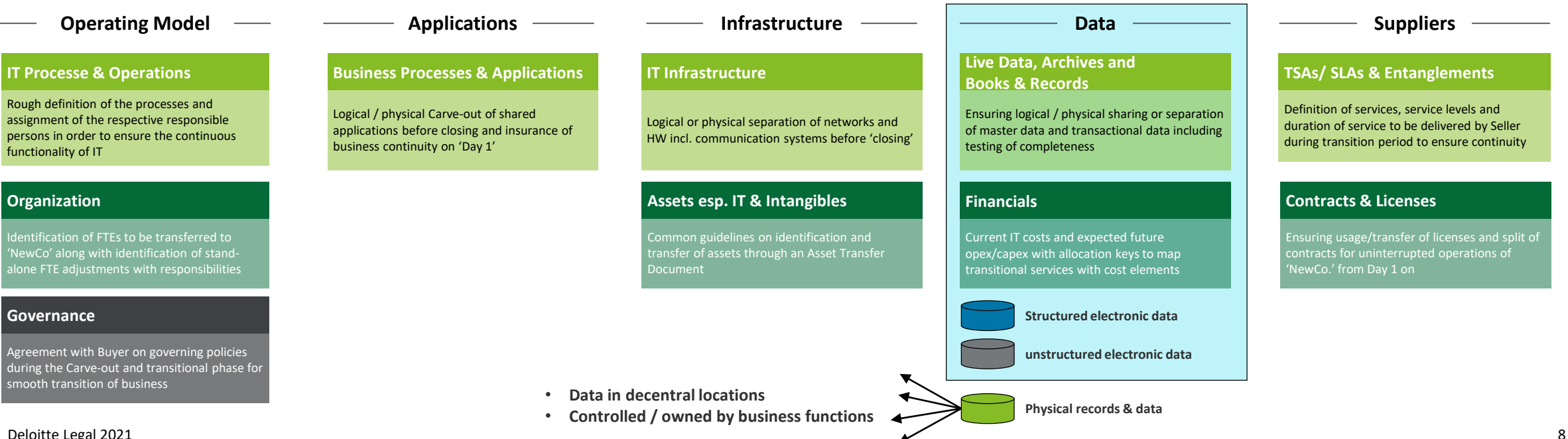
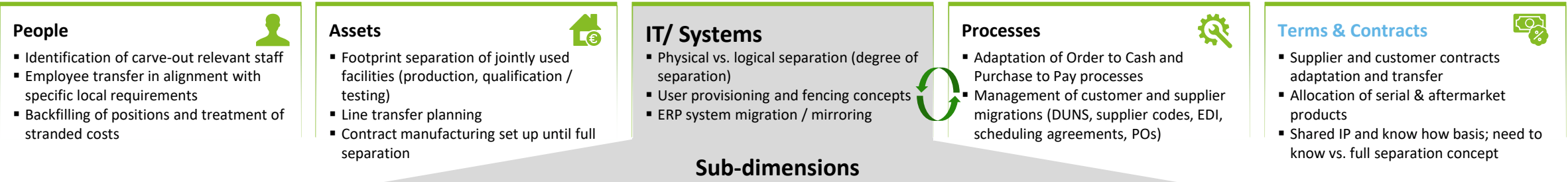
Consequences of planning deficiencies

- Enormous time delay
- Unexpected additional costs in the 8-digit range
- Transition at cost, effort and risk of the seller

Data in Corporate Transactions – Multiple Dimensions

Data and IT are most complex!

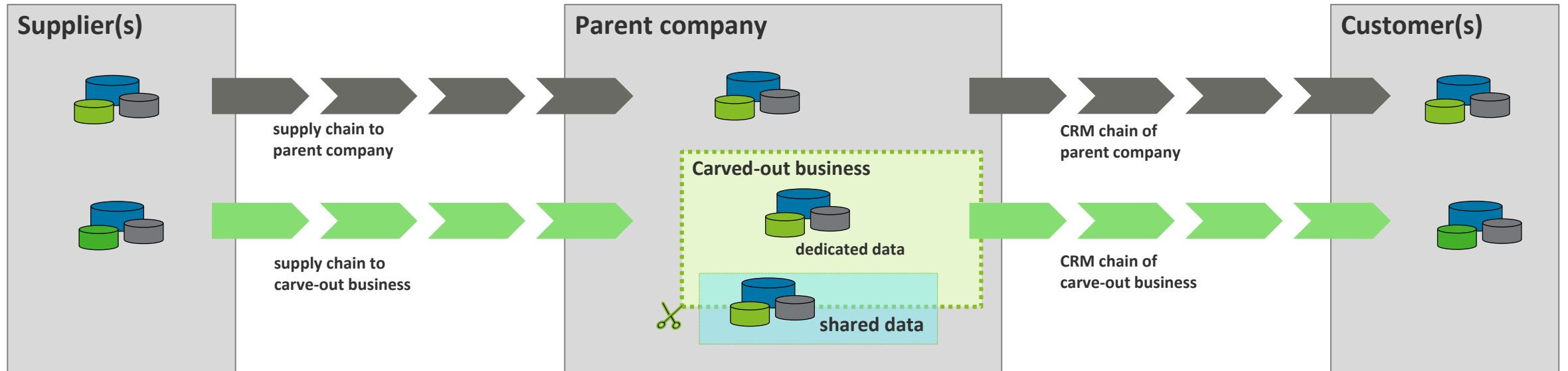
— Carve-out dimensions = Post-merger integration dimensions



Data in Corporate Transactions –Data are a Business Topic and not a pure Tech/IT Topic

Perspectives of Buyer and Seller

Perspective of the carve-out business in the perspective in the connect of value chains



Perspective of Buyer and Seller

Sell-Side Perspektive

- Identify shared and dedicated functions, IT and data
- Plan and execute carve-out, incl. TSA
- Provide day-1 ready carve-out target
- Data separation: challenge is to make sure to only provide data relevant for the carve-out business
- Cut-over for day-1

Buy-Side Perspektive

- Analyze and verify if carve-out target is day-1 ready
- Close alignment with seller for day-1 target operating model and TSAs
- Comprehensive check of carve-out readiness and business continuity
- Day-1 TOM (target operating model incl. data)
- Carve-out readiness check for business continuity



Data in Corporate Transactions – Model Study

Multidisciplinary guidance at every stage of the transaction

Pre-Transaction Due Diligence

Capturing the carve-out relevant data sets...

With regard to "location" and manner of storage (structured, unstructured, physical)

With regard to the categories of data insofar as they are the subject to special rules

With regard to relevant contracts (from customer contracts to license agreements and consent forms)

Determining the separation options - cut-off or transfer

In case of cut-off:

- Examination of the technical and logical separation
- Examination of legal options (termination and consequences of termination)
- Evaluation of cost consequences

In case of transfer:

- Conditions of the transfer to the buyer: commercial/legal/technical.
- Regulation in the TSA: Subject of the transition, service provision during transition, costs
- Obtaining the consent of third parties

Drafting of SPA & TSA

SPA: Provide for guiding principles

TSA: Arrange transfer of data and different categories of non tangible assets depending on deal structure

Post Closing

Follow through determined process
Resolve remaining open issues but on basis of clear delivery and cost scheme

Data in Corporate Transactions – Analysis of Sources and Locations

Data disposition is a M&A value creation service to scope, identify and transfer an appropriate set of data asset as part of mergers, acquisitions and divestitures

Structured Electronic

Structured data is data that has been organized into a formatted repository, typically a database, so that its elements can be made addressable for more effective processing and analysis.



Business applications with resident data

Data stored in a database

Unstructured Electronic

Unstructured data is any “loose” data that is not stored in a structured manner in an application or in a database.



Email (O365, Lotus Notes, etc.)

Data on workstations (laptop, PC, USB drive, CD, etc.)

Data on shared drives (O365 OneDrive, SharePoint Sites, file share, etc.)

Data in collaboration tools (Sharepoints, digital tools, often “shadow IT”, MS Teams etc.)

Physical Records

Physical on site and off site records are those records, such as paper and other non paper physical data, that can be touched and which take up physical space



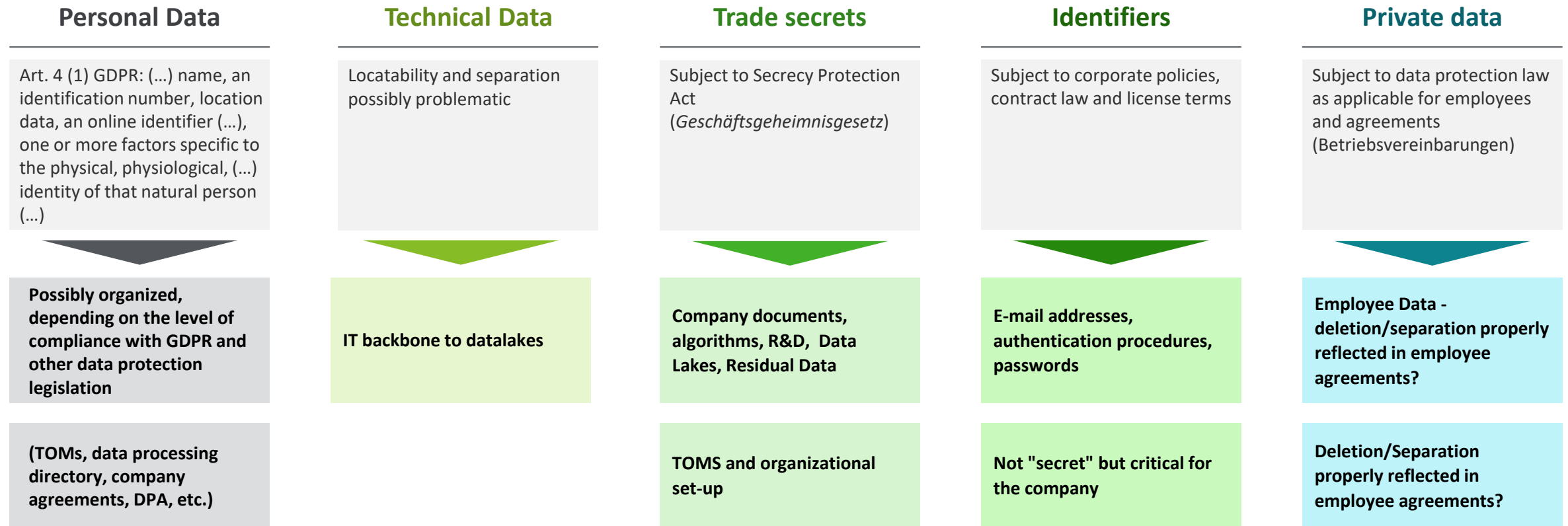
Paper Employee Files

External Storages

Microfiche / microform

Data in Corporate Transactions – Legal Categories

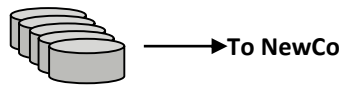
Applicability of different legal frameworks



Data in Corporate Transactions – Identify and select Carve-out Methods and Options

An in-depth analysis of the data separation requirements (incl. data governance and security) is crucial for a robust transition to the target landscape

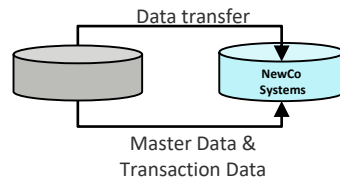
1 Give & go



Give & Go *(Archive, Delete, Vitate as required)*

Migrate systems required to run the Target business to carve-out business environment as part of the transaction

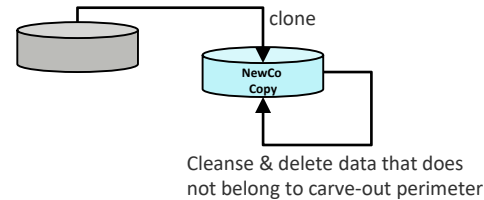
2 Extract & go



Extract & Go

Extract and transfer required Target master and open transactional data to carve-out business for loading, by carve-out business, onto carve-out business system

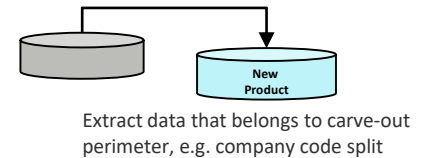
3 Clone, cleanse & go



Clone & Vitate *(Archive, Delete, Vitate as required)*

Copy Seller systems onto a separate instance, then delete or vitate / cleanse sensitive non-Target master and transactional data

4 New build



New Build

A new application is developed for the Target. Focus on “vanilla” functionality. Extract and load required data for Target

Data in Corporate Transactions – Deal Structure Decision based on Data Evaluation

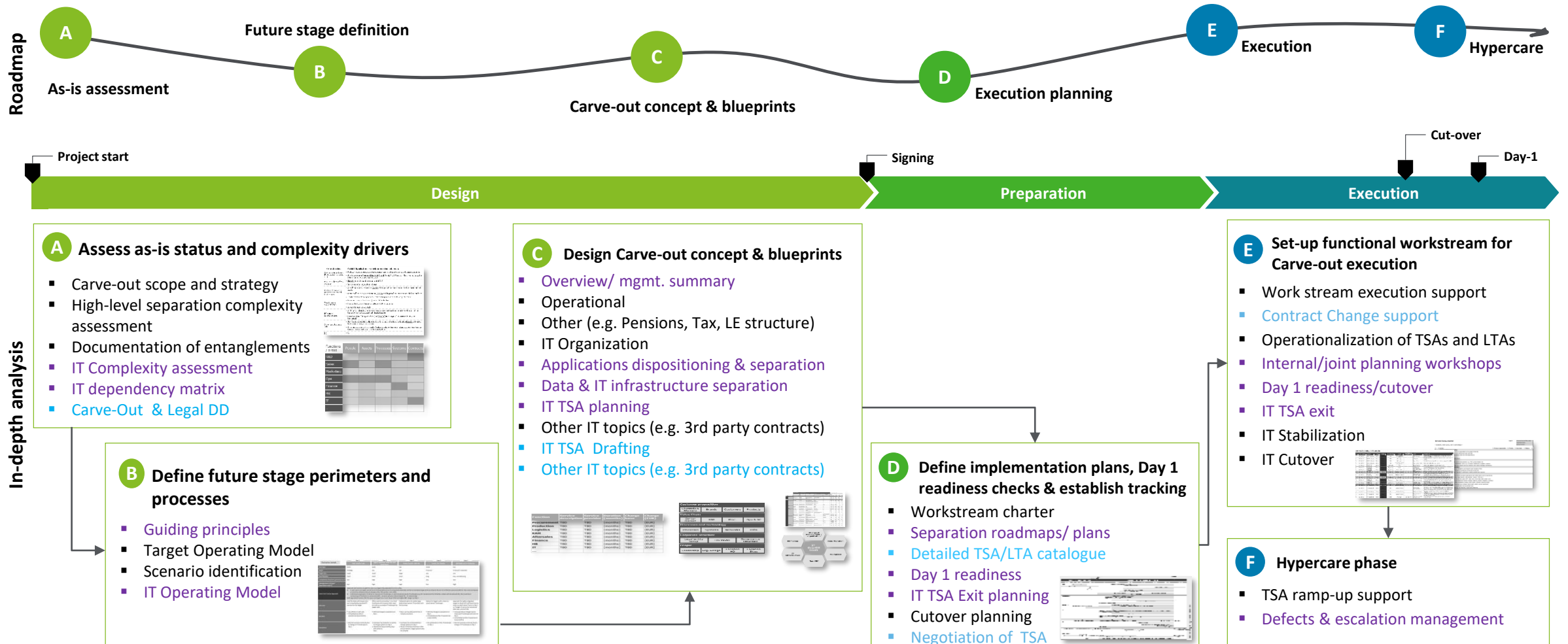
Transfer of different categories of data and non tangible assets depending on deal structure

Scenario	Asset Deal (e.g. carve-out of a part of a company)	Share Deal (e.g. sale of all shares in the company)	Project (e.g. joint ventures, R&D, cloud migration)
Typically transmitted data	Transfer of: <ul style="list-style-type: none">• Licences (software, images, etc.)• IP rights (rights to use copyrights, trademarks etc.)• Trade secrets & know-how• Databases and different categories of data	<ul style="list-style-type: none">• Typically no separate transfer of assets and data• Exception: change-of-control clauses in contracts• Enterprise License Agreements and other parent company owned IT contracts	Project-related – licensing of: <ul style="list-style-type: none">• Project related:• Licensing of• IP (software, patents etc.)• Databases• Trade secrets & know-how• Transfer of different categories of data
Typical time of transmission according to timeline	Usually transfer with or after signing/closing (settlement)	Usually "transfer" at the cut-off date/closing (no settlement required)	Usually over the entire project cycle

Data in Corporate Transactions – Project Stages

Flawless separation management is an essential part for business continuity on Day 1

The separation plan, phasing and related separation activities are based on an in-depth analysis of processes, applications and their interfaces



Data in Corporate Transactions – Success Factors for Data Separation

Carving-out systems and data can be a complex and costly endeavor for organizations operating in multiple regions with a large footprint of varied boundary applications.

1

Speed horsepower on the road

TSA's or the like are costly and have a direct impact on the financial return outlined by financial models. This negative impact, results in additional pressure to expedite the carve out process.

2

Costs rather an investment

Costs to hire application specific SME's and carving out integrated (global) systems can be quite high and distracting from core Business As Usual activities.

3

Resources commitment is key

While carving out a business unit or division in an adjacent sales category, improperly protected data can result in loss of competitive advantage.

4

Complexity defined precisely

Today's applications are integrated at the core (SAP or like ERP system), global in reach and customized in nature. This reach and customization mean that interfaced boundary applications are impacted and complex to carve out.



A clearly articulated set of guiding principles coupled with flawless tactical execution are essential to the timely and cost effective carve out of boundary applications and data.

Q&A

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Vielen Dank für Ihre Aufmerksamkeit!

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COVID 19-Task Force**

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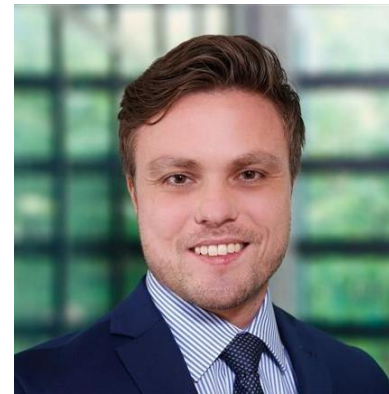
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Technologie-basiert für eine bessere Zusammenarbeit und mehr Transparenz



Maßgeschneidert auf die Unternehmensform und den lokalen Markt

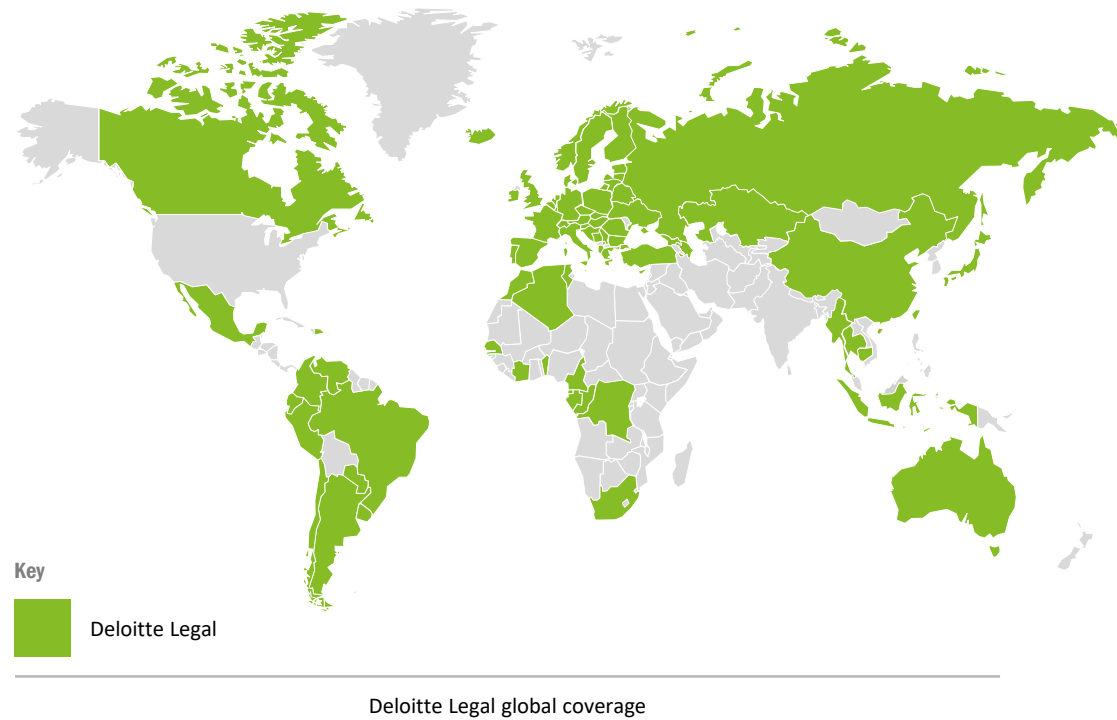


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Wir erbringen Rechtsberatungsleistungen in **80+** Ländern und können dank unserer Beziehungen zu hochqualifizierten Anwaltskanzleien Mandanten in knapp **150** Ländern der Welt beraten.



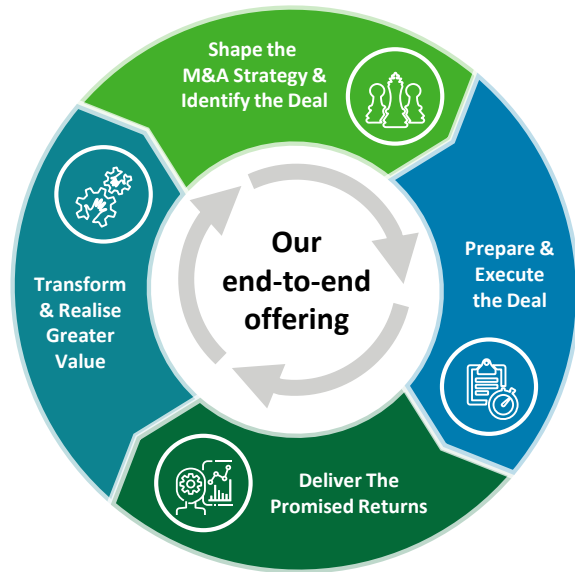
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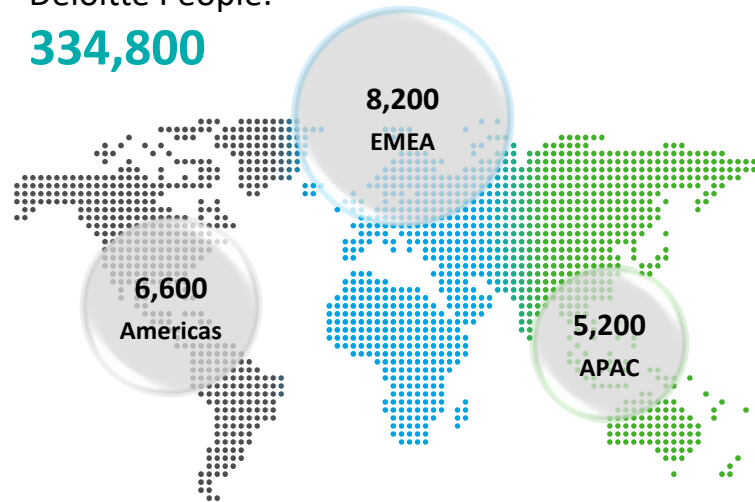
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- #1** Global M&A Advisor on Cross Border Deals for 2020 ²
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- Sell-side Advisor on 769 deals 2018 – 2020 ²
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2019: Deals \$1B to \$10B | 2020: Deals \$10B to \$50B



In the aftermath of COVID-19, we know the world will look very different. Lessons learned will result in new ways of working and living. Business will have to adapt to markets that have changed and are changing, technologies that are rapidly evolving, and new societal attitudes and values. And Deloitte will be there to help every step of the way.

Punit Renjen, Deloitte Global CEO

(1) Source: Mergermarket, an Acuris company, Global & Regional M&A Report 2020; (2) Source: Mergermarket database as at 01/03/21; (3) Source: Gartner Magic Quadrant for Data and Analytics Service Providers 2021; (4) Source: ALM Intelligence, Transactions – Acquisitions Consulting 2017; ALM Intelligence estimates © 2017 ALM Media Properties, LLC. Reproduced under license; (5) Source: IDC MarketScape: Worldwide Business Analytics Consulting & Systems Integration Services Vendor Assessment 2020; (6) Source: The M&A Advisor, 18th Annual M&A Awards / 19th Annual M&A Awards.

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Strategy Review

Can we use inorganic strategies to accelerate implementation or realization of our growth ambitions?

Opportunity Assessment

How should I evaluate and capture the growth opportunities i.e. buy / invest / collaborate?

Portfolio Rebalance

What is the optimal portfolio structure? Which assets to divest and which ones to acquire?

Growth Capital

How do I deploy growth capital strategically by investing in emerging trends and opportunities?

Preparation & Negotiation

How do I best prepare for the transaction?

Due Diligence

Do I have a comprehensive diligence process that identifies financial, commercial, cyber, ESG, tax and legal risks?

Deal Structuring

Are we paying / receiving the right multiples and structuring the deal in a tax efficient manner?

Completion

How do I address transaction closing risks?

Set for Success

Do I have a clear view on what is required to deliver on Day 1, Day 30 and Day 100?

Skills & Resources

Do I have the right people, skills and tools to deliver optimal deal returns?

Synergies

How do I identify, track & report synergies?

Carve-out

How do I protect the retained business from the carve-out?

Value Creation

How do I evolve my business to realise greater value?

Disruptive Innovation & Transformation

Am I prepared for disruptive innovation & digital transformation?

Be your own Activist

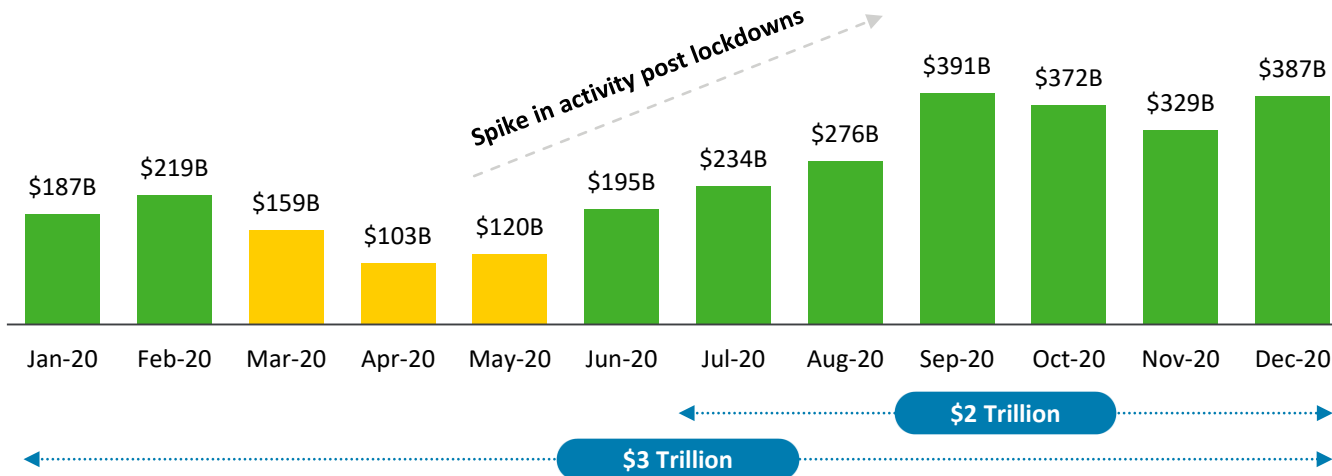
How do I conduct a rigorous company examination to pre-empt investor activists?

Business Continuity

Is my company protected against disruption eg supply chain alternatives?

Global M&A Emerges From Quarantine

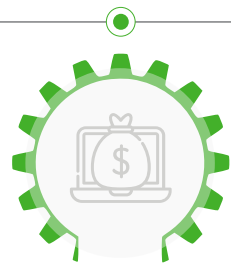
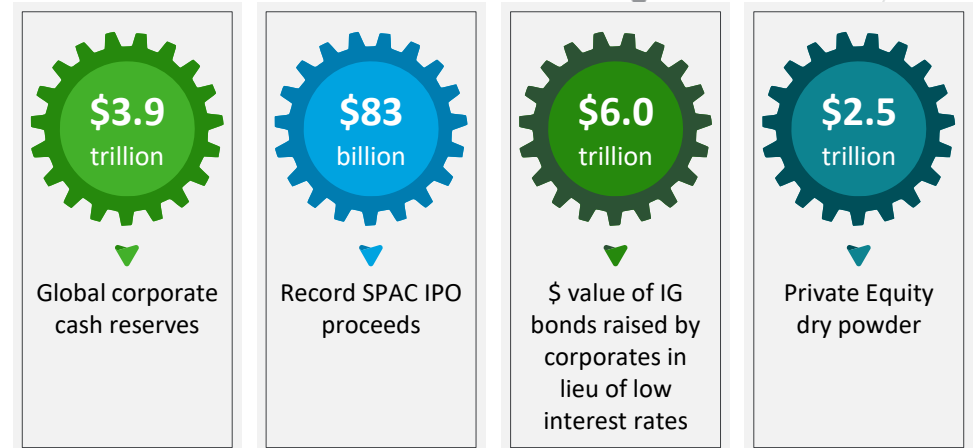
Global M&A activity - 2020



Deloitte
Insights

M&A emerges from quarantine

M&A strategies to thrive in the post-pandemic environment



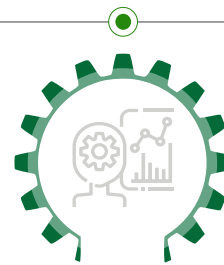
\$2TN

worth of deals were announced in H2 2020 making it the second highest H2 on record



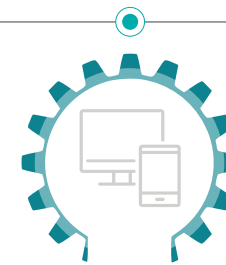
\$622B

value of deals announced by private equity sector, the highest since 2007 vintage year



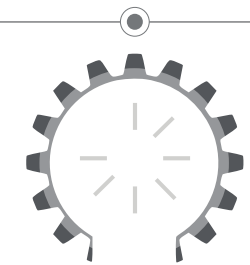
\$63B

value of deals announced during week of COVID-19 vaccine announcement



\$846B

value of deals announced in TMT sector, a 52% y-o-y increase in activity



83

Mega deals (>5B) announced, accounted for 32% of the total value

Source: Deloitte M&A Insight



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