

Legal before *launch*:

How general counsel and chief legal officers shape
sell-side outcomes before a divestiture reaches market

On the sell side, the legal function does more than just paper a transaction. General counsel (GC) and chief legal officers help clarify the perimeter of a business and how cleanly it can transfer, where the harder entanglements sit, and which issues can impact timing, value, and post-close economics.

Many GCs find themselves invited into the divestiture conversation too late, after a perimeter has been drawn on the basis of financial reporting and potential buyers are already at the table. In practice, however, when appropriately involved, general counsel and chief legal officers can help determine whether the business is ready to bring to market in the first place, whether the deal can sign and close on the expected timeline, and the extent of residual entanglement and complexity after close. Deloitte's 2026 Global Divestiture Survey of 1,500 corporate and private equity executives reinforces this observation. Only about half of sellers responding to the survey met expectations on timing and proceeds, and about one in four reported an abandoned divestiture in the last 12–18 months.

Legal's influence and responsibilities aren't confined to the four corners of the transaction documents. On the sell side, the general counsel and chief legal officer help clarify how cleanly the business can transfer; what will require more work to separate; and what costs, risks, and other issues are likely to remain if

entanglements are not addressed early. That starts with the perimeter, which often initially is derived on the basis of its financial attributes (including balance sheet assets). Beneath the general financial profile of a particular business sits a myriad of rights, obligations, accounting allocations, and interdependencies that can span other segments and divisions. The harder questions therefore become: What are the specific constituent parts of the business that aren't evident from the financial statements, how do they hang together, and where are they? Which contracts sit in which entities? Which rights and assets used in the subject business (including contracts, intellectual property [IP], and personnel) are shared among entities, divisions, or segments? What transfers implicate third-party consent rights? What employee populations can move and under what rules? Legal judgment is central here, but it only shapes outcomes when the business has also identified the contracts, mapped interdependencies, and built a separation plan that can actually carry out the legal recommendation.

Legal helps clarify what parts of the business can transfer cleanly

The first sell-side legal role is to help clarify what can transfer cleanly before the business is marketed. Sellers naturally care about the proceeds from a transaction. Buyers, by contrast, care more about whether they can actually operate what they are buying and the extent of transfer and setup costs. The 2026 Global Divestiture Survey captures that divide clearly. Sellers prioritize highest bid price, speed and certainty to close, and a buyer's ability to execute quickly. Buyers prioritize strategic fit, growth or synergies, and ease of integration or execution feasibility. Legal issues sit directly in the middle of that gap. Contract transferability, IP and data rights, legal entity structure, people transfer rules, and liability allocation all influence whether the buyer sees a business that can move cleanly or one that is still operationally tied to the seller and will require significant time, cost, and complexity to extricate.

This is where entanglements matter most. A contract may sit in one legal entity but support several businesses; a machine may produce for both the divested business and the remaining organization; a lease may need to transfer, split, or be replaced; individual people can support multiple business lines; a workforce may need to move across multiple jurisdictions with consultation, severance, or labor-law implications. Even the legal entity structure itself (in particular what transfers versus what needs to be replicated) can drive audit, maintenance, and

downstream rationalization costs before a purchase agreement is on the table. These are often the practical difference between a perimeter that looks clear on paper and one that transfers cleanly in reality.



Figure 1. Questions Legal should analyze before a divestiture goes to market

Legal questions rarely sit in isolation. The harder challenge is how perimeter, entities, contracts, rights, assets, people, and liabilities hang together, and whether the separation plan is ready to act on the answers.

Topic	What to clarify early	Challenges if not resolved early	Connection between Legal and separation planning
Perimeter and legal entities	Which entities, assets, obligations, and rights are in scope; which remain with the seller; where the business is actually housed today	Buyers see ambiguity, diligence gets slower, entity disentanglement becomes more expensive, and the seller incurs additional cost and carries more complexity after close	Mapping the legal entity structure, identifying in-scope vs. retained items, and aligning legal findings with the actual separation plan
Commingle contracts and consent requirements	Which contracts support multiple businesses, where they sit, whether they can transfer, and what consents are required	Delays after commercial terms are agreed, value erosion from renegotiation, and transition service agreement (TSA) scope that grows because contracts cannot move cleanly	Identifying contract population early, classifying consent requirements, and connecting the remediation plan to signing and Day 1 needs
IP, data, and IT rights	What IP and data rights are shared, what can transfer, what must be retained and licensed, and what is needed for Day 1 operation	Buyers question sufficiency and operability, rights gaps appear late, and TSA dependency extends longer than expected	Clearly identifying exclusive and shared IP and data rights, the preferred manner of conveying such rights and associated technology entanglement to deliver a workable Day 1 operating model at the outset
People transfer and jurisdictional requirements	Which employees move, under what local rules, and with what consultation, severance, or labor-law implications	Employee transfer becomes slower or costlier, liabilities remain with the seller, and Day 1 organization design cannot be executed on schedule	Aligning employee perimeter, country requirements, and transition waves with the broader separation plan
Shared assets and leases	Who owns shared facilities, equipment, and leases today; whether they transfer, split, or remain shared	Landlords and counterparties gain leverage, negotiations stall, and operations remain dependent on the seller after close	Tying asset and lease decisions to future operating model design, TSA scope, and contract remediation
Liabilities, insurance, indemnity, and RWI	Which liabilities are retained, transferred, capped, insured, or subject to indemnity protection	Seller carries more exposure than expected, and post-close economics suffer even after the business is sold	Match liability allocation and insurance design to what the business is retaining, remediating, or supporting after close

The 2026 Global Divestiture Survey confirms this. When sellers received lower-than-expected value, 45% pointed to diligence or tax exposure risks and 36% to an unclear separation plan as high-impact factors. When they received higher-than-expected value, the same factors flipped: 49% cited separation plan clarity, 48% cited deal preparation quality, and 46% cited the absence of diligence surprises. Value does not erode only because the market moves or bidders pull back. It also erodes when buyers cannot get comfortable with what is transferring, what consents are needed, what liabilities remain, and how much of the business is still operationally tied to the seller.

Legal teams influence deal certainty after commercial terms are agreed

The second sell-side legal role is to protect timing and certainty after the headline economics are already on the table. This is where many sellers lose time and leverage. In the survey, 49% of sellers whose divestiture took longer than expected cited regulatory approvals, 44% negotiation of transaction agreements, 44% cited stand-alone readiness of the divested business, 44% cited delays in separation execution, and 42% cited separation complexity. Stand-alone readiness, the operational and legal independence of the carve-out, is a legal issue as much as an operational one: A business cannot be sold cleanly until it can stand on its own legally or operate fully within a buyer's infrastructure. Further, an understanding and analysis of any competitive overlap between potential buyers and the global sales footprint of the business, together with a review of any foreign direct investment (FDI) or similar regulatory filings, is imperative to assessing closing certainty and the regulatory pathway (including filing requirements, potential impediments, and delays as excess cost or complexity). Legal and regulatory issues are among the most common reasons a transaction slows after commercial terms are agreed.

The cost impact is visible as well. Among sellers responding to the 2026 Global Divestiture Survey, 46% said regulatory approvals increased one-time separation costs, and 42% said negotiation of transaction agreements did the same.

Whether a consent strategy is realistic, whether an assumed regulatory pathway and timeline is possible, whether approvals can be obtained on the expected timeline, whether commingled contracts can be disentangled, and whether lease issues or legacy obligations can be addressed all influence the cost and certainty of getting to close. When any one of those issues surfaces late, a foreseeable legal problem becomes an unanticipated execution problem for the entire deal team.



Legal helps protect sell-side economics after close

The third sell-side legal role is the one many sellers underestimate: protecting their own economics once the transaction is complete. Legacy infrastructure rationalization (and related tax implications) and TSAs are good examples of potential post-closing value loss. Where a legacy entity structure is required to facilitate the transfer of the business for a transition period, the costs and complexity for both seller and buyer can compound. A seller may be required to maintain legal entities, government authorizations and contractual obligations for a meaningful period of time (sometimes measured in years) in order to separate and transfer commingled assets. The costs incurred by a seller to maintain that infrastructure and facilitate the transfer can be material, including personnel costs, tax inefficiencies associated with cash, or economic benefit transfers and delays in moving resources to other initiatives. While parties often try to address many of these considerations and associated costs through a TSA, those agreements often are negotiated under tight time constraints and against the pressure of getting to a closing. Very frequently, TSAs do not adequately address scope, duration, exit rights, pricing, contract dependencies, or the practical work required to unwind them.

The survey data is consistent with what sellers often experience after close: 48% of respondents ranked tax and legal entity complexity in their top-five continuing challenges, and 45% ranked TSAs, 30% ranked retained contingencies, and 29% ranked interim operating models as being in their top-five challenges. Only about 11% reported they took advance action to address recurring operating expenses or underutilized resources left behind after the transaction. Deloitte's stranded cost research adds an important nuance: TSAs can offset stranded costs temporarily, but once they end, they often make remediation harder if the seller has not already planned for contract remediation, service wind-down, legal entity simplification, and the operating model of the remaining organization. This is where legal teams often see issues first: continuing contractual obligations (e.g., IT infrastructure), unresolved insurance coverage, cash repatriation or transfer, legacy liabilities, unclear indemnity structures, problem leases, and ownership questions around shared assets.² But again, legal recommendations only protect value if the broader separation plan is ready to execute them.

Figure 2. Survey signals that legal ambiguity affects outcomes

For legal teams, these signals show how ambiguity around approvals, transferability, liabilities, and post-close obligations continues to shape value after price is discussed.

Only about half of sellers

responding to the 2026 Global Divestiture Survey met expectations on timing and proceeds, reinforcing that sell-side outcomes are often shaped by issues that surface after the deal is already in motion.

49%

of sellers whose divestiture took longer than expected said **regulatory approvals** had a high or significant impact.

25%

of sellers reported an **abandoned divestiture** in the last 12–18 months.

Only 11%

said they took action to address recurring operating expenses or underutilized resources (**stranded costs**) left behind after the transaction.

What stronger sell-side legal leadership looks like across the divestiture life cycle

Effective sell-side legal leadership looks less like late-stage document review and more like proactive and sustained involvement: before market, through signing and closing, and into post-close separation. Early in the process, Legal should help analyze the perimeter, legal entity structure, contract transferability, regulatory filings and approval requirements, IP and data rights, employee-transfer issues, shared assets, leases, and the liabilities that may remain behind. Ahead of launch and diligence, Legal should help reduce ambiguity in the fact pattern buyers will see: what is in scope, what depends on third-party consent, what can be separated cleanly, what approvals could delay or frustrate a closing, what may require transition arrangements, and what may still create complexity after close.

During diligence and negotiation, Legal should help translate those facts into structural recommendations, workable agreement terms, realistic closing conditions, and TSA provisions that reflect the actual separation plan rather than an idealized one. From signing to close, the legal work should stay connected to regulatory approvals, consents, TSA service definitions, and the practical steps required to disentangle the business. After close, the role shifts toward managing retained liabilities, contract remediation, entity simplification, TSA exit, and the overall protection of the seller's economics. That is also where the legal-

separation planning intersection is strongest: legal judgment determines what is possible, but separation planning and operational execution determine whether that value is actually realized.



Legal's opportunity to contribute meaningful insights and value and its window to shape proceeds, timing, costs, and post-close performance opens long before a deal reaches market. Sellers who treat Legal as a strategic input from the start—not a reviewer at the end—typically see fewer entanglements at diligence, a more certain regulatory pathway, less buyer uncertainty, and less complexity to carry after close. In a market where divestitures are becoming more strategic and more consequential, the survey points to a clear pattern: The deals that meet expectations on proceeds, timing, and post-close performance are the ones where Legal was in the room from the start.

For general counsel and chief legal officers, the most useful questions may be the simplest ones:

- Are we clear enough on the perimeter (entities, contracts, shared assets, IP, data, people, and liabilities) to know what can transfer cleanly and what cannot?
- Which legal issues could still slow signing or closing even if commercial terms are agreed?
- What are we agreeing to provide, retain, split, or remediate after close that could still hurt sell-side economics?
- Are our TSA terms, consent plans, lease strategies, and retained-risk positions helping us close the deal and protect value after the deal is done?

Endnotes

1. Deloitte, [2026 Global Divestiture Survey](#), January 2026.
2. Jason Caulfield and Lucy Julian, ["Unlocking value: Approaching stranded costs in M&A,"](#) March 21, 2025.

If you are exploring a divestiture, assessing legal readiness, or simply **interested** in comparing how leading legal functions shape outcomes before market and protect sell-side economics after close, we would welcome a conversation.

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