The Divestiture Playbook

The Portfolio Partnership

Summer 2023

Contents

Introduction – The Portfolio Partnership (TPP)

1.Strategy - Why divest?

2.Choice - What type of divestiture is appropriate?
- a.Sale
- b.Spinoff
- c.Equity carveout
- d.Conclusion

3.Grooming - What actions are required to maximize value?
- a.Stage 1 Operational actions
- b.Stage 2 Specific divestiture actions

4.Process – The covert controlled auction
- a.Summary
- b.Details
  - i.Preparation
  - ii.Finding buyers
  - iii.Buyer contact
  - iv.Offer
  - v.Negotiation
  - vi.Due Diligence
  - vii.Contracts
  - viii.Legal Completion

5.Post divesture – Transition Services Agreements (TSAs)
- a.Types of TSAs
- b.Issues to consider
- c.Benefits of TSAs
- d.Challenges & remedies
- e.Ongoing monitoring

6.Communication strategy

Appendices
- A.Information Memo checklist
- B.Pre-close checklist

The Portfolio Partnership – All Rights Reserved

Introduction

The Portfolio Partnership (TPP)

The Portfolio Partnership provides a range of acquisition support services tailored to your business needs and team size. As an operational consultancy, we assist clients in both organic and acquisition-based growth. We are either building a programmatic acquisition program into our client's business or we are working on operationalizing the business to accelerate growth organically. Either way, we are passionate about building shareholder value. It is fractional corporate development management through the lens of an operator. We seamlessly become an extension of your team and integrate at all levels to fulfill the potential of the business. We create a strategic plan together with our clients and design a set of actions aligned to that plan. We then assist in the execution of those actions to add significant experience and bandwidth to the team. Our work leads to a successful M&A whether buying or selling.

Ian Smith, BA, CA

Ian has spent decades transforming businesses in the US and Europe. He has built and sold over 40 companies from the early years at Thomson Publishing as a young CFO, building one of the first corporate finance boutiques in Europe, turning around an IBM software business partner, and scaling the US operations of over a dozen New England businesses. Smith's mantra: Your business is either remarkable or invisible. He has held CFO, COO, CEO, and VP of Corporate Development roles. A natural educator, he has published seven books covering entrepreneurship, MBOs, and private company acquisitions. He remains dedicated to his little hobby of track & field and has been a world-ranked Masters athlete at 400m and 800m for nearly 20 years. Educated in Scotland, he holds a BA in economics from the University of Strathclyde and is a Chartered Accountant of Scotland. He has lived in Boston for over 20 years and is married with two daughters.

Kevin Young, BA, MBA

Kevin is an accomplished global senior executive with a track record of successfully managing P&Ls for multinational Fortune 500 companies such as Mondi, Avery Dennison, Sony, and Gillette. With over 40 years of experience, he has worked across a diverse range of industries including industrial manufacturing, specialty chemicals, medical products, materials, and consumer packaging. As a skilled operator, Kevin has held various leadership positions including President, COO, Senior Vice President, Vice President & General Manager, and Vice President of Corporate Development. His experience spans organizations with sales exceeding $500 million, over one thousand employees, and multiple global manufacturing locations. Kevin has a wealth of international experience, having lived in Europe for four years and managing businesses on four continents. Kevin's educational background includes an MBA from Babson College and a BA in Economics from Boston College. He is also a certified Green Belt in Design for Six Sigma, demonstrating his commitment to quality and process improvement. He is an avid cyclist, married, and father of four daughters.

The Portfolio Partnership – All Rights Reserved

1

Strategy – Why divest?

1. Strategy: Why divest?

We recommend as part of your annual strategic review process (not the annual budget cycle) that divestitures should be on the agenda. It's healthy to consider if all of your businesses, whether homegrown or brought in by acquisition, are still relevant to your strategy. Can you be remarkable in all of these businesses? Can you invest the time and energy required to scale them all and maintain a leading position in the marketplace? Develop a rationale for why the company is divesting of particular business unit or asset(s), what the company hopes to achieve from the divestiture, and how the divestiture fits into the company's broader strategic plan. Below we list a set of questions that might lead you to decide that a divestiture strategy makes sense.

Checklist of questions to help shape your strategy:

1. Do you own prior acquisitions that do not meet the deal objectives?
2. Are you in sectors that have become commoditized?
3. Do you lack the size to compete on a global scale?
4. Strategically as you consider your current positioning and look across your landscape of activities, does everything fit? Your focus changes over time, technology undermines your position in the market, analysts do not understand your story, and employees wonder why you acquired x-company. These are all indications that a subsidiary may have become non-core. Assess whether divesting would help sharpen the strategic focus and allow the company to allocate resources more effectively.
5. Do you have assets or business units that are no longer aligned with your core competencies or long-term strategic direction? Will shedding non-core assets allow more focus on your primary operations and allocate resources more efficiently?
6. If you are a serial acquirer (even a few deals per year) it may be inevitable that part of your acquisition was non-core from the start. Is it time to tidy up that non-core activity as part of the post-acquisition integration strategy? This strategic focus can enhance performance and competitiveness.
7. Of course, with the current US administration's aggressive stance on antitrust behavior, you may be forced to consider divestiture. Should you be working on a divestiture strategy for parts of acquisition targets that are already in play?
8. Has legislation or regulations on sustainability, trade compliance, or quality standards transformed the competitiveness of certain divisions?
9. Management is about the allocation of capital. Could a divestiture free up resources to invest in the areas that are most critical to their business and growth strategies? Determine whether the divestment could improve the company's overall financial health and performance.
10. Are one or more average performers suppressing your margins? Divestitures can improve profitability by eliminating underperforming or non-strategic assets. This can reduce costs and improve operating margins, which can help businesses meet their financial targets.
11. Is your balance sheet stressed? Divestitures can also help businesses strengthen their balance sheet by reducing debt or improving their cash position. This can improve their credit rating and lower their cost of capital, which can help them invest in future growth.
12. Is it time to consider our global regional strategy? Does it still make sense to pursue geographic expansion? Divestitures can help businesses focus on specific geographies or markets where they have a competitive advantage. By shedding non-core or underperforming assets in other regions or markets, enterprises can allocate resources to the areas where they can generate the most value.

The Portfolio Partnership – All Rights Reserved

13. Is divestment required to comply with antitrust or regulatory requirements? For example, if a merger or acquisition creates a dominant market position, regulators may mandate the divestment of certain assets or businesses to maintain a competitive marketplace.
14. Are there alternative strategies or contingencies that need to be considered? Consider joint ventures, partnerships, or restructuring. Evaluate the potential benefits and drawbacks of these alternatives and determine if they would achieve the desired outcomes more effectively. Develop contingency plans to address potential risks or challenges that may arise from the divestment.

Resistance to change

A common theme management teams encounter as they consider a divestiture is a resistance to change. All of the questions above may point to the need for a divestiture strategy. However, do not underestimate the resistance to selling off problem children. In her excellent book, Divestitures, Emilie Feldman showcases many failed acquisitions that required a divestiture strategy, however, in reality, it took about 10 years before action was taken post-acquisition. Why so long? As the book points out, some reasons for a company's hesitation to divest problem subsidiaries include the perception that it is uneconomical to divest, behavioral biases by executives, and historical connections to the past.

Additionally, as we have witnessed, management teams may have emotional attachments to subsidiaries that have been part of the company for a long time or have sentimental value. They may have a personal or historical connection to the subsidiary, making it difficult to objectively evaluate its performance and potential for improvement.

Uneconomical reasons cited in Emilie's book include years of advice to hang onto cash cows, economies of scale will be ruined, empty space in a large facility will be created with no potential to sublease, crystalizing tax liabilities, and major transaction fees.

Several behavioral biases can impact decision-making when it comes to divestitures. Some believe that divestitures are unable to create value, while others avoid them because they feel it will make them appear as failures. Additionally, some may avoid divestitures due to the perceived belief that the workload and complexity involved are too demanding. Historical connections to the past of course will often relate to the original core business of the founder. Case studies from Emilie's book include American Can, IC industries, CPC International and GE. These often involve a divestiture where the seller's name is associated with the divested business.

Also, divesting a subsidiary that has been integrated into the company's operations can be complex and challenging. There may be shared systems, processes, or customer relationships that need to be untangled, which can create logistical and operational difficulties. Management teams may be hesitant to deal with the complexities and potential disruptions caused by the divestment process. Additionally, management teams may worry about the potential negative impact on the company's reputation if it becomes known that they are divesting underperforming or problematic assets. They may fear that it could erode stakeholder confidence or damage the company's brand image.

Research suggests that family businesses are 16% to 18% less likely to divest than their non-family equivalent. Family owners may be hesitant to let go of an underperforming subsidiary or business unit due to sentimental reasons or a sense of loyalty to the family's heritage. Additionally, family businesses are typically characterized by concentrated ownership and decision-making authority held within the family. This concentration of power can result in more conservative decision-making processes and a slower response to divestment opportunities, as decisions may require consensus among family members.

To push past these objections requires a management team to be courageous and to coldly evaluate the strategic options to scale the business and build shareholder value. The question worth examining is based on Michael Porter's classic narrative in the HBR, effectively the Better Off Test. When all factors are

The Portfolio Partnership – All Rights Reserved

considered are you better off divesting or staying in the game by continuing to invest in the business? We think of it as a form of scenario planning. Given the next 5 years in that sector is it in the shareholders' interests to fold or hold?

Assuming the analysis points to a divestiture strategy, the next major issue is to decide which type of divestiture makes sense.

The Portfolio Partnership – All Rights Reserved

2
Choice – What type of divestiture is appropriate?

2. Choice - What type of divestiture is appropriate?

Each choice has key characteristics. This section outlines your options, but a decision must be made on a case-by-case basis involving your tax and legal teams.

The alternatives invariably involve a spectrum of choices involving cash now or later. Here is a summary of the types and characteristics.

Sale

In this type of divestiture, a company sells individual assets, a group of assets, or a division/subsidiary to another entity. These assets can include physical properties, intellectual property rights, equipment, inventory, or any other tangible or intangible assets. Asset sales can be a targeted approach to shed specific divisions/subsidiaries of the business while retaining other operations. In most cases, the divesting company conducts a sale to an external buyer potentially involving a covert controlled auction.

Characteristics and factors to consider:

1. Value is realized by finding a new parent for the non-core assets or a division/subsidiary that sees greater value than you do.
2. Immediate cash generation on closing the transaction.
3. Potentially crystalizes a tax loss to be used elsewhere in the group.
4. Potentially creates a tax gain but net of tax is still an attractive ROI.
5. The buyer could be a competitor to other businesses in your portfolio and therefore managing the transaction and the flow of information needs to be executed with caution.

Spinoff

A spin-off involves creating a separate, independent company by separating a division, subsidiary, or business unit from the parent company. The newly formed company called a spin-off or a standalone entity, operates independently and has its own management, shareholders, and financials. This type of divestiture allows the parent company to focus on its core operations and unlock value by allowing the spun-off entity to pursue its own strategic direction. Most often, the divesting company distributes shares in the subsidiary being divested. The divested company then starts trading as a separate public company.

Characteristics and factors to consider:

1. If structured correctly the spinoff can be tax-free to the divestor. One of the main conditions to meet is that the divesting company must distribute control of the spinoff defined as 80% of the total voting power and 80% of the non-voting shares.
2. By separating the divested business, it is possible to place separate valuations on each entity. One of the best examples was EMC's spinoff of VMWare which unlocked a premium valuation of the VMWare business. As noted in the press at the time, VMWare's revenue growth topped 90% per quarter compared with 20% for EMC.
3. These transactions allow the divested entity to revisit its operational efficiency. What is the most appropriate footprint, resources, R&D budget, and department structure? Anyone who has run a division is aware of the notorious group recharges that the division has no control over. Spinoffs are an opportunity to perform a zero-based budget.
4. As a separate entity in the public domain, the spinoff has the flexibility to craft a more targeted strategy, which includes a dedicated acquisition program.

5. Conflicts can occur between the objectives of the divestor and the new spinoff entity. There are historical examples of the divestor setting up the spinoff for failure in the longer term by unfairly apportioning debt and liabilities (despite fraudulent conveyance laws designed to prevent such behavior). If not handled fairly this can lead to litigation between the parties post-closing.

Equity Carveout

In an equity carveout, the parent company retains a majority ownership stake in the subsidiary or business unit while selling a minority portion to outside investors. This allows the parent company to unlock value and raise capital while still maintaining control and benefiting from the subsidiary's future performance. In practice, this is often the first step of a two-step process. The first step involves the parent company selling less than 20% of the non-core subsidiary's shares (potentially through an IPO). This is taxable (although this tax event can be avoided if the non-core subsidiary sells 20% of its own shares). The second step follows the spinoff of the remaining 80% to shareholders.

Characteristics and factors to consider:

1. Generates cash from the equity carveout but still protects the second step of a tax-free spinoff.
2. Allows the divesting company to retain control and reflect ownership of the revalued subsidiary.
3. Potential for conflicts between the divestor and the new separately valued subsidiary until the complete spinoff occurs.

There are a few other potential structures that might be relevant to your situation including a joint venture, Reverse Morris Trust, and Tracking Stock. These are beyond the scope of this short playbook. Of course, in cases where a company decides to wind down or dissolve an entire business or subsidiary, liquidation may be pursued. Liquidation involves selling off all the company's assets, settling liabilities, and distributing the remaining proceeds to shareholders. This type of divestiture is typically undertaken when there are no viable options for selling the business as a going concern.

These are some of the primary types of divestitures, but it's important to note that companies can also pursue hybrid or customized divestiture strategies that combine elements from different types, depending on their specific circumstances and strategic goals. Companies considering divestiture should consult with legal and tax advisors to ensure compliance with applicable regulations and to assess the suitability and benefits of their divestiture strategy for their specific situation.

Conclusion

As can be seen from the above analysis there are many choices to be made and it is possible that divestitures can happen as part of a larger acquisition strategy. By merging an underperforming asset with a competitor or by acquiring a divested company from a competitor it is possible to make use of both techniques to create value. Again, returning to Emilie's book, divestitures can create enormous value. "Investors respond much more favorably when companies divest than when they acquire. The excess shareholder returns to divestiture announcements surpass those of acquisition announcements, and the performance differential persists for up to 36 months after the completion of these transactions".

Assuming you are clear that a divestiture makes sense, the next stage is to review how to prepare the business for exit. The next chapter assumes that you have at least a six-month to twelve-month runway to address operational issues before launching an exit process.

The Portfolio Partnership – All Rights Reserved

3

Grooming –actions that transform value

3. Grooming - What actions are required to maximize value?

Many businesses are put up for sale before they are fully prepared, which can negatively impact their value. Once the decision to divest has been made we would recommend splitting the preparation into two stages. Stage 1 defines the operational actions that could be completed in the next six to 12 months that could materially enhance the value of the business. Stage 2 involves key housekeeping actions specific to a divestiture before starting the formal process which we outline in Chapter 4.

Stage 1 - Operational Improvements

Assuming you have at least a six-month runaway before contacting buyers to assess the business, we would recommend building a punch list of actions that could help optimize value. Some things are just not possible to change in a short timeframe e.g., the business relies on three key customers, or 70% of the profit derives from three legacy products, or the business is dependent on the CEO but some actions can make a difference. We believe this improvement list can significantly increase the certainty of a deal at an attractive price.

Repositioning:

1. Revisit the fundamental business you are in. Reevaluate your target audience. Rewrite your positioning statement to reflect a refreshed look at the market. Ensure the new positioning statement reflects your unique capabilities and reflects the skills that customers need today. Examples could include your AI capabilities, new automated workflow features, enhanced service skills, IT infrastructure, etc.
2. Refresh your competitive value proposition including up-to-date figures on your competitors with new ROI models. Highlight the strategic fit, growth potential, potential synergies to be realized, or unique capabilities of the business or assets.
3. Identify potential buyers who not only have an interest in acquiring the divested assets or business unit but also possess the strategic alignment and financial capability to pay a fair price. By understanding their motivations and priorities, you can tailor your approach and positioning to maximize the attractiveness of the divestiture.
4. Consider regulatory issues and the impact of the divestiture on their relationships with customers, suppliers, and other stakeholders. Considering this immediately will be critical in many of the points below.

Marketing:

1. Ensure that your current internal and external marketing communications align with your positioning. Define the voice of your company – the unique narrative that will be remembered by prospects and motivate them to act.
2. Identify the pain points that your prospects are feeling.
3. Craft a compelling story that explains how your service addresses those pain points.

Sales:

1. Ensure your sales process aligns your messaging with sales scripts.
2. Stress test your sales professionals to confirm they are adopting a business-like tone, quantifying the costs associated with problems, and identifying signs of live issues with serious consequences.
3. Ensure Engagement Strategies (specific tactics for each customer) to establish stronger connections between your offering and your customer's improved performance.
4. Agonize over how you phrase questions to engage prospects and avoid sounding too salesy.

The Portfolio Partnership – All Rights Reserved

"What are the ripple effects of 'a specific' challenge to your business?" is far more powerful than "How does that impact you?"

Products:

1. Ensure that your product portfolio brochures align with your positioning.
2. Formalize your product roadmap process and ensure that you have a vision that addresses market needs in the medium term.

Talent:

1. Revisit gaps in the team and prioritize urgent needs to be able to present a full team to potential buyers later.
2. Examine all HR-related issues to ensure files and appraisals are up to date.

Metrics:

1. Ensure all KPI reporting is up to date and corrective actions taken have been documented. This demonstrates to buyers that you have a strong handle on the business and the local management team has their eyes on the details.

Operations:

When divesting a business, potential buyers will consider a variety of factors related to the company's operations.

1. **Safety:** Buyers will want to know that your business is operating in a safe environment for both employees and customers. You should have safety protocols in place and provide documentation of safety inspections and training. Ensure all OSHA metrics are up-to-date and historical data is available.
2. **Environment:** Environmental concerns are becoming increasingly important to consumers and investors. You should have policies and practices in place that minimize the environmental impact of your operations, such as waste reduction and energy efficiency measures.
3. **Sustainability:** Buyers will want to see that your business is sustainable in the long term. This includes measures to reduce costs, increase efficiency, and minimize waste. You should be able to demonstrate that you have a plan for continued growth and development.
4. **Health:** Health concerns have been brought to the forefront due to the COVID-19 pandemic. Buyers will want to see that your business has policies and practices in place to ensure the health and safety of employees and customers.
5. **Manufacturing or Service Operations:** Buyers will want to understand the manufacturing or service operations of your business. This includes factors such as supply chain management, inventory control, and quality control. You should be able to demonstrate that you have a well-defined process for delivering your products or services to customers. It is important to be transparent about your operational practices and provide documentation to back up your claims.
6. **Compliance:** Buyers will want assurance that you are compliant with all regulatory requirements, particularly if the divested business or assets are subject to specific regulations. This may require ongoing monitoring and reporting to ensure that the business remains in compliance.

The Portfolio Partnership – All Rights Reserved

By demonstrating that your business is operating efficiently, sustainably, and safely, you can increase its value and make it more attractive to potential buyers.

Risk:

1. Conduct a risk assessment to ensure you are agile enough to handle changes.
2. Review the material risks within your business using SWOT analysis and scenario planning.
3. Develop a strategy to mitigate risks, whether they relate to financial matters, succession issues, contract exposures, customer dependencies, internal control gaps, accounting treatment, or forecasting ability.
4. Establish simple processes to ensure compliance, regulatory, and control issues are addressed in day-to-day business operations. Remember, any potential risks or contingencies associated with the business or assets being divested must be disclosed.

Financials:

1. Provide a clear and accurate picture of the financial performance of the business or assets being divested. This includes historical financial statements, projections, and other relevant financial metrics.
2. Ensure your month-end closing protocols are tight. Ideally, the full monthly financial pack will be generated within 3 days of the month end.
3. A short report should be available explaining material variances to plan and corrective actions taken.

Reviewing these basic operational protocols of the business and correcting relevant gaps will allow the divesting team to produce a compelling story in the Information Memo that will be released later to potential buyers.

Stage 2 – Specific divestiture actions

In a divestiture, there are specific factors required to be addressed before engaging with buyers. These are our top eight.

1. Decide who is part of the divesting team and put in place NDAs.
2. Bring into the team the leader of the assets or division/subsidiary being divested. Explain the strategic thinking and put in place a retention bonus assuming a successful sale.
3. Decide which employees will transfer with the business (this may change later in the process as you engage with buyers). This should also include identifying employee benefits and addressing any legal and regulatory issues related to employee transitions.
4. Assess whether the divestiture will cause “stranded costs.” These are defined as costs that are left with the seller and which represent surplus resources not required. Examples could include a finance team, a procurement department, a marketing team, or physical assets like a plant or physical space. How will you redeploy these people and assets? Can you sub-lease the space?
5. Prepare proforma financials that explain the performance of the division.
6. Revisit the forecast for the current financial year and stress test to ensure reasonableness. Remember this is likely to come under scrutiny by buyers as the process proceeds. Unreliable forecasts (and we know it’s tough) can undermine negotiations and give buyers ammunition to lower their value.
7. Develop a comprehensive separation plan that outlines the key activities required to separate the business or assets from the seller’s existing operations. This plan should address all

The Portfolio Partnership – All Rights Reserved

functional areas, including finance, human resources, IT, and operations, and should include timelines and resource requirements for each activity.

8. Develop a plan for transitioning customers and vendors to the buyer. This may include identifying key customers and vendors and ensuring that the buyer has the necessary relationships in place to maintain these relationships.

There are many activities worth pursuing before the formal divestment process but hopefully, the above lists will encourage you to prioritize actions that will maximize the value of the business. When you have taken the above actions, you are ready to set a valuation on the divestiture. This should include a discussion of the various approaches to valuation, such as discounted cash flow analysis, market multiples, and precedent transactions. You may also consider obtaining a fairness opinion from a third-party valuation expert to provide an independent assessment of the value of the business or assets being divested. However ultimately value is in the eye of the buyer. The key is to maximize the odds of obtaining the best price by conducting a covert controlled auction.

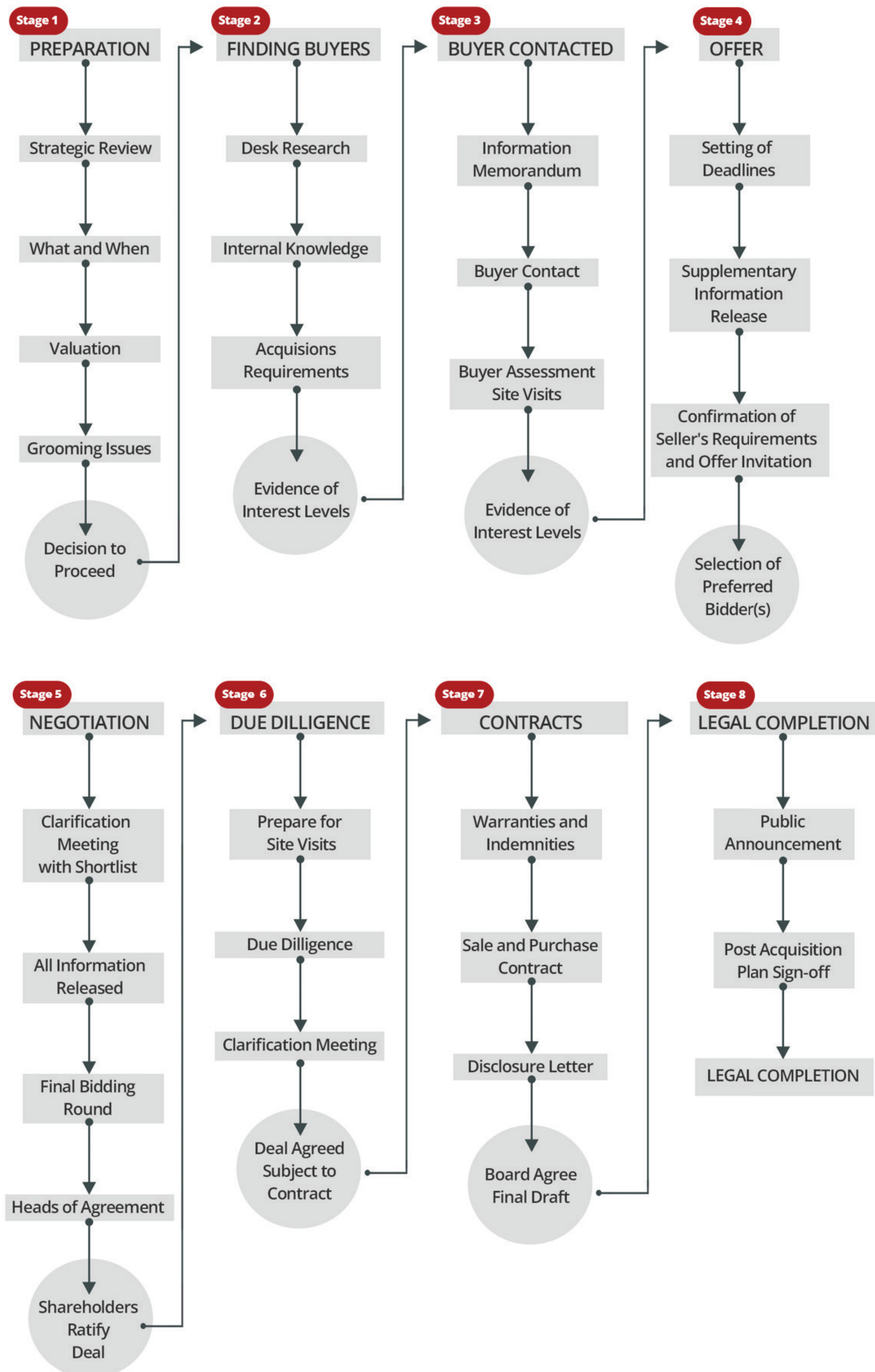
In the next chapter, we discuss the formal auction process and the actions required to ensure a smooth exit of the business at the optimal value.

The Portfolio Partnership – All Rights Reserved

4

Process - Covert controlled auction

THE COVERT CONTROLLED AUCTION MODEL



The Portfolio Partnership – All Rights Reserved

4. Process – The covert controlled auction

Summary

The illustration above outlines the process flow to execute the sale of a company. Once the preparation is done, a divestiture follows a similar process to the sale of a private company. Our process map assumes before researching buyers you will have a clear understanding of what you are selling, an approximate value you are hoping to achieve, and the major grooming issues detailed in Chapter 3 will have been completed.

The process then recommends comprehensive research of potential acquirers leading to an exchange of information with interested parties. If the evidence is strong, we encourage setting an offer deadline to enable the selection of shortlisted parties. The selected parties are then invited to meet with the divesting team to answer questions and confirm their final positions. A final round of bidding takes place culminating in a preferred bidder being chosen to negotiate a Letter of Intent (LOI) or Heads of Agreement.

The divesting team project manages the due diligence process ensuring that the acquirer has access to the data room and is allowed to meet key staff. Legal contracts and public announcements are then agreed to prior to closing. That is the big picture, but the devil is in the detail.

Details

Below we list some practical checklists to ensure you complete each stage successfully and optimize the deal value and structure to maximize shareholder value.

Preparation

1. Secure alignment from the Board that a divestiture makes sense. Ensure the Board is clear on the strategic rationale for the divestiture and the impact on the long-term strategic objectives of the company.
2. Finalize the type of divestiture based on the strategic needs of the business (Chapter 2).
3. Asset identification: Agree on what you are selling - identify the assets that will be sold, including tangible assets such as real estate, equipment, inventory, and employees, as well as intangible assets such as intellectual property, customer lists, and brand names. Consider the following key aspects:
    - Valuing the assets: The seller must determine the fair market value of the assets being sold. This involves conducting a thorough appraisal or valuation of each asset, considering factors such as age, condition, location, and market demand.
    - Preparing an inventory: The seller must prepare a detailed inventory of all the assets being sold, including a description of each asset, its condition, and its location. This inventory should be organized in a logical and easy-to-understand manner, making it easy for potential buyers to review and analyze.
    - Identifying any encumbrances: The seller must identify any encumbrances or liens that may affect the sale of the assets. This may include mortgages, loans, leases, or other legal or contractual obligations that may impact the value or transferability of the assets.
    - Prioritize the grooming issues we discussed in Chapter 2, Stage 2.
    - If everything is in order, confirm the decision to proceed but do not push on with the process unless you are ready.

The Portfolio Partnership – All Rights Reserved

Finding Buyers

1. If a management buy-out (MBO) is a possibility, we recommend you think carefully about your tactics. You could tell the MBO team that they have 6 weeks to put a fully funded offer on the table subject to contract at your reserve price.
    - By doing this you are ensuring that if the management team succeeds, you have a high degree of certainty of the transaction closing.
    - You avoid disrupting the business with competitors investigating the business.
    - If the MBO team fails to produce an offer, at least you have given them the chance and therefore you can demand their loyalty to support the sale to a third party.
2. Assuming an MBO is not feasible, consider worldwide buyers with the most to gain from the acquisition. A great example was the recent experience of one of our partners who was handling the divestment of AEi – a manufacturer of camera assembly & test equipment for the automotive industry. Over the years, the owners of AEi, Mycronic, a Swedish public company had prioritized non-automotive markets. However, the eventual acquirer ASMPT had a huge presence in automotive and presented as a much better parent for AEi.
3. Strategic buyers that operate in the same or related industry and have a strategic interest in acquiring the divested assets or business unit. Strategic buyers may seek to expand their market presence, gain access to new technologies or products, achieve synergies, or diversify their operations. They can be competitors, suppliers, customers, or companies looking to enter a new market.
4. Financial buyers include private equity (PE) firms, venture capital firms, and other investment entities that focus on acquiring businesses for investment purposes. They typically seek to generate returns by improving the operational and financial performance of the acquired company and eventually selling it at a higher valuation.
5. Industry peers operating in the same industry but not direct competitors may be interested in acquiring the divested assets or business unit to expand their capabilities, product offerings, or customer base. These companies may see the divestiture as an opportunity to strengthen their market position or gain a competitive advantage.
6. Sources for quality buyers include:
    - Portfolio companies of PE houses
    - PE houses acquiring the divestment as the start of a platform play.
    - Larger competitor groups
    - Larger groups serving the same sectors as the divested business.
    - Trade show participants who attend and support the same trade shows as the company to be divested.
    - Large relevant groups who are weak in the geographic location where the divestment is strong.
    - Acquirers who believe the divested business would be a great adjacent business for their group.
    - Investment banks, CPAs, M&A attorneys, and other advisers who will be aware of their client’s acquisition criteria.

The Portfolio Partnership – All Rights Reserved

Buyer Contact
Note we have set out in Appendix I some important homework and actions to complete before producing an Information Memorandum (IM). Overall, the following tips should ensure you enjoy successful meetings with buyers.

1) Prepare a powerful compelling story on the business. Build a comprehensive IM. Chapter headings to include but not limited to:
    a) Executive Summary (including headline fit with each buyer)
    b) Business Overview of the divested business unit or assets
    c) Markets & Applications
    d) Product Overview
    e) Competitors and Competitive value proposition
    f) Customers and sales process
    g) Growth Opportunities
    h) Marketing
    i) Production and Services
    j) Management and Organization
    k) Financial Overview
    l) Legal and Regulatory Considerations
2) Prepare a one-page teaser sheet that captures the essence of the opportunity.
3) Reach out to your curated list of acquirers after obtaining a signed NDA and using the one-pager to gauge interest.
4) Release the IM to select parties.
5) Project manage follow-up meetings and answer all questions.
6) Assess the level of interest and decide whether it is worth proceeding.

Data Room

Whilst not called out separately in our process map, it is worth sharing some thoughts on the management of your data room.

Preparation: Data room preparation is a crucial part of the divestiture process, as it involves providing potential buyers with access to key information about the business or assets being divested. When preparing a data room, sellers must consider the following key aspects:

1. Organizing documents: Sellers must organize documents in a logical and easy-to-understand manner, making it easy for potential buyers to navigate and find the information they need. This includes creating a clear index or table of contents and labeling documents consistently and descriptively.
2. Ensuring accuracy and completeness: Sellers must ensure that all documents provided in the data room are accurate and complete. This includes financial statements, contracts, legal documents, and other key information that potential buyers may need to assess the value and risks associated with the business or assets being divested.
3. Protecting confidentiality: Sellers must take steps to protect the confidentiality of sensitive

The Portfolio Partnership – All Rights Reserved

information provided in the data room. This may include using passwords or other access controls and restricting access to certain documents to key people. Since documents will be copied, downloaded, printed, and saved electronically, the use of a watermark stating "Confidential Property of Selling Company" is strongly recommended.

4. Highlighting key value drivers: As highlighted in the Information Memorandum, sellers should provide evidence highlighting key value drivers of the business or assets being divested in the data room, such as growth prospects, intellectual property, or a strong management team.
5. Addressing potential risks: Sellers should list potential risks associated with the business or assets being divested, such as legal or regulatory issues, environmental concerns, or potential liabilities. This can help potential buyers understand the risks associated with the acquisition and make informed decisions about the value of the business or assets. Some of this might form part of the disclosure documents released at the contract stage.
6. Providing access to experts: Sellers should be prepared to provide potential buyers with access to experts who can answer questions and provide additional information about the business or assets being divested. This can include legal counsel, financial advisors, or other experts who can provide insights into the value and risks associated with the acquisition.

Offer

1. At this stage several questions require additional answers. To a select party release the additional supplementary pack.
2. Issue guidance instructions on the bid process covering what you require in the bid which should include:
   - Deadline for bids
   - Financial offer
   - Method of financing with reference letters from financial backers (less likely with a cash rich large public company).
   - Details of key warranties and representations expected from the seller
   - Strategy for employees
   - Post-acquisition plan
   - Headline due diligence requirements
   - Timetable to completion
   - Regulatory requirements e.g., is a Committee on Foreign Investment in the United States (CFIUS) referral required? **Note:** It's important to note that the CFIUS referral process is a complex and rigorous review, involving the submission of detailed information about the transaction, the parties involved, and any potential national security implications. The CFIUS review may result in mitigation measures, such as the imposition of security agreements, and conditions, or even blocking the transaction if deemed necessary to protect national security interests.

3. Select your preferred bidder(s) based on your key criteria which might include:
   - Certainty of closing the deal (financial strength of the acquirer)
   - Time to close the transaction
   - Maximizing the value of the transaction
   - Overall price offered
   - Complexity of post-divestiture arrangements

The Portfolio Partnership – All Rights Reserved

- Confidentiality and discretion
- Employee strategy
- Post-transaction plans

Negotiation

1. We would recommend taking at least two parties into advanced discussions.
2. Dig deep into their offers to clarify your understanding.
3. Confirm key issues for you to help them shape their final offer.
4. Publish a final round of bidding instructions and select your preferred bidder.
5. Use the Letter of Intent (LOI) meeting to agree to the basic terms that will drive the Sale & Purchase Contract
6. Ensure you discuss the headline terms of the Transitional Service Agreement (TSA) which governs the actions of both buyer and seller during the period post-closing (often 12 months). We cover TSAs later.

Due Diligence

Managing due diligence from the seller's perspective is a crucial part of the process. The divestor owns the business and sometimes the buyer needs to be reminded of that fact.

1. Organizing documents: Sellers must organize all relevant documents and information in a logical and easy-to-understand manner, making it easy for potential buyers to review and analyze. This includes financial statements, contracts, legal documents, and other key information.
2. Providing access to key personnel: Sellers must provide potential buyers with access to key personnel who can answer questions and provide additional information about the business or assets being divested. This may include senior management, technical experts, or other key employees.
3. Protecting confidential information: It is important to emphasize to buyers that they are operating under a strict NDA. If the preferred bidder is a direct competitor consider substituting customer names with codes to minimize risk.
4. Anticipating potential issues: Sellers must anticipate potential issues that may arise during due diligence, such as legal or regulatory issues, environmental concerns, or potential liabilities. By identifying and addressing these issues early on, sellers can minimize the risk of the transaction falling apart or being delayed.
5. Preparing for negotiations: Sellers must be prepared to negotiate the terms of the transaction based on the information revealed during due diligence. This may involve addressing potential issues, revising the purchase price, or modifying the terms of the transaction to better reflect the interests of both parties.

Contracts

1. We recommend the divesting company own the S&P Agreement and prepare the first draft.
2. The divesting team needs to decide the key warranties and indemnities they are prepared to concede.
3. Another tool for sellers is the Disclosure documents. This helps control the risk attached to warranties. As an example, the vendor assures the balances of Accounts Receivable, except for

The Portfolio Partnership – All Rights Reserved

the designated accounts that fall under the bad debt provision.

4. In divestitures a key section of the contracts will be the Transitional Service Agreement (TSA). We offer some practical tips in Chapter 5 Post-divestiture & TSAs

Legal Completion

1. Regarding press releases ensure you have an agreed story with the buyer. It needs to be a joint press release. There are several audiences for this announcement. Three employee constituents need to understand the deal thesis. The seller's employees who are part of the divestment, the seller's employees transferring to the new buyer, and the employees of the buyer. The basic message must be that the divested business has a much more attractive future with the new parent.
2. Although the final S&P contract has been ratified by both the seller's and buyer's Board there may be conditions that have to be met before closing. These include regulatory clearances, employee negotiations, or sub-lease arrangements with property owners.

The Portfolio Partnership – All Rights Reserved

5

Post divestiture – Transition Services Agreements (TSAs)

5. Post divestiture – Transition Services Agreements (TSAs)

As the divestor of a business an important aspect of the deal is the Transition or Transitional Services Agreement (TSA). A TSA is a contractual agreement that enables the buyer to access specific services or support from the seller for a defined period post the completion of the transaction. These agreements ensure the buyer can operate the divested business as normal from day one post-close. A TSA can take many forms, especially depending on the complexity, scope, and size of the transaction. Below are some of the most commonly used TSAs:

Types of TSAs

1. **Transition Services Agreement (TSA):** This is the most commonly used TSA in M&A deals. It allows the buyer to continue using certain services or support from the seller for a defined period after the transaction is completed. This includes areas such as IT systems, human resources, finance, accounting, facilities management, and other operational functions.
2. **Technology License Agreement:** If the buyer needs access to the seller's proprietary technology, software, or intellectual property, a technology license agreement may be used. It grants the buyer the right to use the specified technology for a specific period or under certain conditions.
3. **Supply and Distribution Agreement:** If the seller is the primary supplier or distributor of goods or services critical to the buyer's operations, a supply and distribution agreement may be established. This agreement ensures that the buyer can continue to access necessary products or services during the transition period.
4. **Intellectual Property License Agreement:** In deals that involve the transfer of intellectual property (IP) rights, an IP license agreement may be utilized. It allows the buyer to continue using the seller's IP assets, such as patents, trademarks, copyrights, or trade secrets, for a specific period or under certain conditions.
5. **Employee Services Agreement:** In deals where the buyer acquires a workforce from the seller, an employee services agreement may be used. This agreement outlines the terms and conditions under which the seller's employees will be retained, including compensation, benefits, and transfer of employment liabilities.
6. **Marketing and Branding Agreement:** If the buyer requires temporary assistance in marketing, advertising, or branding activities, a marketing and branding agreement can be established. This agreement allows the buyer to access the seller's marketing resources or expertise for a specific period.
7. **Consulting Agreement:** In some cases, the seller's key personnel or subject matter experts may be required to provide consulting or advisory services to the buyer post-transaction. A consulting agreement specifies the terms, duration, and compensation for such services.

Please keep in mind that the types of Transition Services Agreements (TSAs) used in divestitures vary depending on the specific circumstances and requirements of the transaction. It is crucial to customize these agreements to meet the needs of both the buyer and the seller. Sometimes, it may be advantageous to have a Master Service Agreement (MSA) in place to provide an overall structure of the numerous TSAs involved in the transaction. The MSA outlines the general terms and conditions that apply to all services provided under the agreement, ensuring consistency, efficiency, and clarity in the contractual arrangements between the parties involved.

When embarking upon a Transition Services Agreement (TSA), it is crucial to consider various important factors. One of the primary factors to consider is the amount of time required to draft a TSA, which can vary based on the complexity of the M&A deal, the scope of services to be covered, and the parties

involved. Additionally, drafting a TSA involves careful negotiations between the buyer and seller, as well as legal reviews from both companies. While it is difficult to determine an exact average timeframe, the process typically takes several weeks to a few months. Here are some crucial aspects to bear in mind:

Issues To Consider

1. **Deal Complexity:** The complexity of the M&A transaction itself can impact the time required to draft a TSA. Deals involving multiple entities, cross-border transactions, or intricate business structures may require more time for due diligence, negotiations, and drafting.
2. **Scope of Services:** Clearly define the scope of services to be provided by the seller post-transaction. Determine which services are critical for the buyer's business continuity or transitional support.
3. **Duration and Termination:** Specify the duration of the TSA, including any transitional or wind-down periods. Define termination clauses, such as events triggering early termination or extension options if needed.
4. **Service Levels and Performance Metrics:** Establish measurable service levels and performance metrics to ensure the buyer's expectations are met and are reasonable. This helps maintain accountability and prevents any misunderstanding of the performance levels required.
5. **Pricing and Payment Terms:** Determine the pricing structure for the services provided, considering factors such as cost allocation, resource utilization, and market rates. Establish clear payment terms, including the frequency and method of payment.
6. **Governance and Management:** Define the governance structure and responsibilities for managing the TSA. Determine how decisions will be made, dispute resolution mechanisms, and communication protocols between the buyer and the seller.
7. **Confidentiality and Data Security:** Address confidentiality and data security requirements, particularly when sensitive information is shared between the buyer and seller. Establish protocols to protect intellectual property, customer data, and other confidential information.
8. **Transition and Knowledge Transfer:** Outline the process for transitioning the services from the seller to the buyer or an alternate service provider. Include provisions for knowledge transfer, documentation, training, and ongoing support during the transition period.
9. **Indemnification and Liability:** Clearly define the indemnification and liability provisions, specifying which party bears responsibility for any breaches, damages, or legal issues arising from the services provided during the TSA period.
10. **Business Continuity and Risk Management:** Consider potential risks and develop contingency plans to ensure business continuity in case of disruptions or unforeseen events. Address issues such as disaster recovery, insurance coverage, and mitigating operational risks.
11. **Negotiations and Legal Review:** Negotiations between the buyer and the seller to agree on the terms, pricing, service levels, and other provisions can extend the drafting process. Additionally, legal review and input from attorneys representing both parties are crucial to ensure compliance with applicable laws and protect the interests of the parties involved.
12. **Resource Availability:** The availability and responsiveness of the key stakeholders involved in the drafting process, including legal teams, subject matter experts, and representatives from the buyer and the seller, can impact the timeline. Coordinating schedules, addressing feedback, and obtaining necessary approvals can add to the overall timeframe.
13. **Compliance and Regulatory Requirements:** Ensure that the services provided under the TSA adhere to relevant laws, regulations, and industry standards. Specify the responsibilities of

The Portfolio Partnership – All Rights Reserved

each party in complying with legal and regulatory obligations.

Given these factors, it is advisable to allocate sufficient time for the drafting and negotiation of a TSA to ensure a thorough and well-crafted agreement. The TSA is one of many documents that will be required to be signed by both parties by closing. As the seller, give yourself sufficient time to negotiate an appropriate and practical agreement.

However, well-crafted TSAs can provide valuable benefits in divestitures, aiding in a smooth transition and guaranteeing business continuity for the buyer. They are often instrumental in expediting the closing process and reducing interruptions in the divested business's operations. Here are some key advantages of employing a TSA:

Benefits of TSAs

1. **Business Continuity:** A TSA allows the buyer to maintain critical services and operations that were previously provided by the seller. This ensures continuity and minimizes disruptions during the transition period, allowing the buyer to focus on integrating the acquired business without immediate operational interruptions.
2. **Time to Implement Transition:** TSAs provide the buyer with additional time to implement a comprehensive transition plan. This extra time allows the buyer to accurately assess the acquired business, develop integration strategies, and gradually assume responsibility for the transferred functions. Specifically transitioning from the seller's ERP system to the buyer's ERP system can be a complicated and lengthy process.
3. **Knowledge Transfer:** During the TSA period, the seller can provide valuable knowledge and expertise to the buyer. This knowledge transfer helps the buyer understand the intricacies of the acquired business, processes, and systems, enabling a smoother transition and reducing the learning curve.
4. **Access to Specialized Resources:** In cases where the buyer lacks certain resources or capabilities required for the acquired business, a TSA allows access to the seller's specialized resources, facilities, or technologies. This access can provide immediate support and expertise to the buyer during the transition, ensuring operational efficiency.
5. **Cost Savings:** TSAs can lead to cost savings for the buyer. Instead of immediately investing in establishing or duplicating services, the buyer can leverage the seller's existing infrastructure, systems, and personnel. This can result in short-term cost savings, as the buyer avoids significant upfront investments.
6. **Flexibility and Scalability:** TSAs provide flexibility and scalability to the buyer. They can choose the specific services they require, tailor the duration of the agreement, and adjust the services as needed during the transition. This flexibility allows the buyer to align services with their evolving needs and adapt to any unforeseen challenges.
7. **Mitigation of Transition Risks:** TSAs help mitigate risks associated with transitioning the acquired business. By ensuring the continuation of critical services, the buyer can address potential operational gaps or uncertainties that may arise during the integration process. It provides a controlled and managed transition environment, reducing the risk of disruptions.

Transition Services Agreements play a vital role in simplifying the integration process during an acquisition. They help in reducing risks, ensuring the continuity of business operations, and increasing the probability of a successful post-acquisition integration. Nevertheless, it's worth noting that even though their primary objective is to guarantee a smooth transition, there may be instances where challenges arise, or they don't serve their intended purpose. Here are some scenarios to ponder:

Challenges & Remedies

1. **Service Quality Decline:** Post-completion inevitably each party has its own priorities. Sometimes as the divestor, your resources get stretched and you are unable to meet the demands of the TSA. TSAs should contain language that allows correction of a defective service or notice in writing that a specific service cannot be performed due to changing priorities.
2. **Disputes over Costs and Pricing:** Disagreements may occur regarding the costs associated with the services provided under the TSA. The buyer and seller might have different interpretations of the pricing structure or dispute cost allocation methodologies. This can lead to conflicts and delays in payment, straining the relationship between the parties. It is essential to include clauses in the TSA that address pricing disputes and change orders, outlining the terms for agreeing on changes in scope and/or price.
3. **Inadequate Knowledge Transfer:** If there is a lack of effective knowledge transfer from the seller to the buyer during the transitional period, it can hamper the buyer's ability to assume full control and manage the transferred functions independently. Insufficient documentation, incomplete training, or resistance from the seller's employees can hinder a smooth transition and negatively impact operations. Build conditions into the TSA that accommodate new factors not foreseen at the date of closing. These conditions stipulate that both parties are obligated to make their best efforts to put in place a solution that allows the buyer to continue operating the business.
4. **Insufficient Scalability or Flexibility:** The TSA may not account for the buyer's evolving needs or growth plans, resulting in limited scalability or flexibility of the services provided. If the buyer's requirements change or expand, the TSA may become inadequate, requiring additional negotiations or adjustments to meet the new demands.
5. **Lack of Integration Planning:** TSAs often focus on short-term transitional support rather than long-term integration planning. This can lead to challenges when integrating systems, processes, and teams after the TSA period ends. Divestors must remind buyers that it is their responsibility to drive the post-acquisition strategy.
6. **Data Security and Confidentiality Breaches:** Inadequate provisions or lapses in data security protocols can lead to breaches of sensitive information shared between the buyer and the seller. This can result in reputational damage, legal consequences, and potential financial losses. Failure to address confidentiality requirements can undermine trust and create disputes between the parties.
7. **Lack of Exit Strategy:** TSAs should include provisions for a smooth transition or exit strategy once the agreed-upon period ends. However, if the TSA does not adequately address the termination process, including knowledge handover, asset transfer, and transition to alternative service providers, it can create uncertainties and disruptions.

To minimize potential risks, it is crucial to create detailed TSAs that include unambiguous terms, measurable performance standards, conflict resolution procedures, and viable exit plans. Conducting thorough research, promoting efficient communication, and maintaining vigilant oversight can all contribute to averting problems related to TSAs and securing a smooth post-merger integration. Establish clear roles and responsibilities for both the buyer and the seller in managing the TSA. This includes identifying key stakeholders, designating points of contact, and defining their specific responsibilities and expectations. We recommend a biweekly steering group meeting involving both parties, dropping to monthly as the transition moves on.

It is important to regularly review and evaluate the effectiveness of the TSA. As the integration advances and the buyer's requirements change, it is recommended to revisit the TSA to fill any gaps, update

The Portfolio Partnership – All Rights Reserved

service requirements, or introduce essential changes. It is crucial to make sure that the TSA aligns with the integration's overall objectives. To promote success, it is important to establish a respectful and cooperative relationship between the buyer and the seller. Emphasize trust-building, open communication, and dealing with any issues or conflicts professionally and promptly. A positive working relationship is key to the overall success of the TSA and the integration process.

Ongoing Monitoring

An effective way to handle TSAs is by implementing a Project Management Office (PMO). This approach offers structure, oversight, and coordination to ensure the successful management of the TSAs. It is crucial to identify executive management from both sides of the deal. Each party should have an overall manager who will oversee the resources and project performance. Additionally, process owners for each business stream covered by a TSA are essential and must possess decision-making authority. These are the individuals responsible for the day-to-day management and ensuring the various timelines are met. Here are some benefits of having a PMO for managing TSAs:

1. **Centralized Coordination:** The PMO serves as a centralized hub for coordinating and overseeing the various activities related to TSAs. It helps streamline communication, monitor progress, and ensure alignment between the buyer, the seller, and other stakeholders involved in the transition.
2. **Governance and Documentation:** The PMO establishes governance frameworks, processes, and templates for managing TSAs. It ensures that all necessary documentation, agreements, and deliverables are in place and compliant with legal requirements. The PMO helps define roles, responsibilities, and reporting structures for effective governance.
3. **Project Planning and Execution:** The PMO assists in developing comprehensive project plans and timelines for managing TSAs. It helps identify key milestones, dependencies, and critical tasks involved in the transition. The PMO tracks progress, identifies bottlenecks, and implements corrective actions to keep the TSA on track.
4. **Risk Management:** The PMO facilitates the identification, assessment, and mitigation of risks associated with TSAs. It helps establish risk management frameworks, conducts risk assessments, and develops contingency plans to address potential issues that may arise during the transition period.
5. **Change Management:** TSAs often involve significant changes in processes, systems, and organizational structures. The PMO helps manage the change process by developing change management strategies, stakeholder engagement plans, and communication plans. It ensures that affected parties are adequately prepared for and supported through the changes.
6. **Resource Management:** The PMO assists in resource allocation and management for TSAs. It helps identify the necessary skills, expertise, and resources required for a successful transition. The PMO coordinates resource allocation, monitors resource utilization, and addresses any resource constraints or conflicts.
7. **Performance Monitoring and Reporting:** The PMO establishes mechanisms for monitoring and reporting the performance of TSAs. It tracks key performance indicators (KPIs) and service level agreements (SLAs) to assess the effectiveness and compliance of the services provided under the TSA. The PMO generates regular reports to provide visibility into the progress and outcomes of the transition.
8. **Knowledge Management:** The PMO facilitates knowledge transfer and knowledge management activities during TSAs. It helps capture, organize, and disseminate critical information, lessons learned, and best practices. The PMO ensures that knowledge is transferred from the seller to the buyer and is effectively utilized for ongoing operations.

The Portfolio Partnership – All Rights Reserved

9. **Post-TSA Integration:** The PMO supports the post-TSA integration process by ensuring a smooth handover from the TSA to the buyer's operations. It helps manage the transition from the temporary TSA arrangements to the long-term operational model. The PMO provides guidance and support during this critical phase to ensure seamless integration.

By leveraging the expertise of a PMO, organizations can effectively manage TSAs in an M&A deal. The PMO helps establish structure, governance, and best practices, enabling successful coordination, execution, and integration of the TSAs.

To sum up, Transition Services Agreements (TSAs) offer significant benefits for both buyers and sellers in M&A deals. For buyers, TSAs provide smooth business continuity, access to specialized resources and knowledge, and minimal operational disruptions during the transition. This allows buyers to implement an integration plan gradually and assume responsibility for transferred functions. For sellers, TSAs facilitate a seamless transition, transfer of critical services to the buyer, and maintain a revenue stream. Sellers can also support the buyer in the integration process, transfer knowledge and expertise, and mitigate risks. Overall, TSAs are essential for divestors to fulfill their obligations under the Sale & Purchase contract. For buyers, TSAs offer a strategic approach to managing post-acquisition integration, reducing risks, ensuring continuity, and increasing the chances of a successful outcome.

Failure to take this approach can lead to disputes post-close. A case in point is the divestiture of Idearc by Verizon, highlighted in the book Divestitures by Emilie Feldman. Following Verizon's spinoff of its print telephone directory business, Verizon was sued with the litigation claiming that firstly the divested business was not viable because the business was in decline caused by the public's use of the internet instead of paper telephone directories. Secondly, Verizon had loaded up Idearc with debt and claimed that debt exceeded assets by $9 billion. After a brief period, Idearc went into bankruptcy. Verizon prevailed in this case as the judge ruled the divested business was viable and worth at least $12 billion at the point of sale. But it is a warning that if a level playing field is not created, sellers can get embroiled in litigation.

So, in practice, this post-divesture period starts with a thorough plan long before closing, just like post-acquisition integration should start long before closing.

The Portfolio Partnership – All Rights Reserved

6
Communication strategy

6. Communication strategy

As we highlighted in Chapter 1, divestitures can face many challenges. Stories promoted within the company could include:

- Hang onto to your cash cows.
- Economies of scale will be ruined.
- Unusable empty space in a large facility will be created with no potential to sub-lease
- We will crystallize tax liabilities.
- We will incur huge transaction fees.
- Divestitures cannot create value.
- Executives feel it makes them look like failures.
- Perceived belief that the workload and complexity are too demanding.
- Historical connections to the past where the seller's name is associated with the divested business.

That is quite a list to counter in a compelling story!

That is why the communication strategy is a critical aspect of the divestiture process. You need to develop a communication strategy for internal and external stakeholders, including employees, customers, vendors, and shareholders. Some of the key aspects of communication strategy include:

a. Stakeholder identification: The seller must identify all key stakeholders, including employees, customers, suppliers, shareholders, regulators, and the broader community. This will enable the seller to develop targeted communication strategies that address the specific concerns and needs of each stakeholder group.

b. Message development: The seller must develop clear and consistent messages that explain the rationale for the divestiture, the impact on stakeholders, and the expected benefits for all parties involved. These messages should be tailored to each stakeholder group and should be communicated in a timely and transparent manner.

c. Communication channels: The seller must identify the most effective communication channels for each stakeholder group. This may include email, letters, phone calls, meetings, social media, and other digital channels. The seller should also ensure that all communication channels are monitored to address any questions or concerns that arise.

d. Timing: The seller must carefully consider the timing of all communication activities to ensure that stakeholders are informed in a timely and appropriate manner. This may include pre-announcement communication to key stakeholders, regular updates throughout the divestiture process, and post-announcement communication to address any remaining concerns or questions.

e. Spokespersons: The seller must identify and train key spokespersons who can effectively communicate the divestiture messages to stakeholders. These spokespersons should be knowledgeable about the divestiture process and should be able to address any questions or concerns that stakeholders may have.

f. Feedback and engagement: The seller must encourage feedback and engagement from stakeholders throughout the divestiture process. This may include conducting surveys, holding town hall meetings, and establishing feedback mechanisms to ensure that all concerns are addressed and that stakeholders are engaged throughout the process.

The Portfolio Partnership – All Rights Reserved

Effective communication strategy is crucial during the divestiture process and demands meticulous planning and execution. For a successful divestiture, sellers should collaborate closely with their advisors to design a comprehensive communication plan that covers all essential aspects of communication. The plan should ensure that all stakeholders are informed and actively involved throughout the divestiture process.

The Portfolio Partnership – All Rights Reserved

APPENDICES

APPENDIX I

APPENDIX I – Assessing the business - checklist prior to preparing the Information Memo

1. Financial performance: The seller must provide a clear and accurate picture of the financial performance of the business or assets being divested. This includes historical financial statements, projections, and other relevant financial metrics.
2. Market analysis: The seller must conduct a thorough analysis of the market conditions and competitive landscape in which the business or assets operate. This can include analysis of customer trends, industry growth rates, and other factors that may impact the value of the business or assets.
3. Intellectual property: The seller must identify and accurately value any intellectual property associated with the business or assets being divested. This can include patents, trademarks, and other proprietary assets.
4. Management team: The seller must consider the quality and experience of the management team associated with the business or assets being divested. This can impact the perceived value of the business or assets, as potential buyers may be more willing to pay a premium for a strong management team.
5. Ongoing Services: The Information Memo should spell out what services will be provided by the seller if required.
6. Synergies and strategic fit: The seller must consider any potential synergies or strategic fit with potential buyers. This can impact the perceived value of the business or assets, as buyers may be willing to pay a premium if the acquisition helps them achieve their strategic objectives.
7. Risks and contingencies: The seller must identify and disclose any potential risks or contingencies associated with the business or assets being divested. This can include legal or regulatory issues, environmental concerns, or other factors that may impact the value of the business or assets.

Overall, the seller must conduct a thorough and objective assessment of the value of the business or assets being divested to ensure they receive a fair price for the transaction.

The Portfolio Partnership – All Rights Reserved

APPENDIX II

APPENDIX II – Pre-close checklist

Here is a pre-close checklist sample for a divestiture. This list includes critical tasks and considerations that are necessary for a smooth and successful transaction.

1. Legal and Regulatory Compliance:
   - Ensure compliance with all legal and regulatory requirements related to the divestiture, including obtaining necessary approvals and clearances.
   - Review and address any contractual obligations, permits, licenses, or regulatory filings associated with the divested assets or business unit.
2. Financial Considerations:
   - Finalize financial statements and ensure accurate financial reporting for the divested entity.
   - Determine the financial impact of the divestiture, including any tax implications or accounting adjustments.
   - Assess and address any outstanding financial obligations, such as debts, warranties, or contingent liabilities.
3. Operational Readiness:
   - Conduct a thorough review of operational processes and ensure all necessary systems and infrastructure are in place for the divestiture.
   - Prepare a transition plan for the transfer of employees, assets, contracts, and customer relationships to the buyer.
   - Identify any operational risks or challenges and develop mitigation strategies.
4. Employee Transition:
   - Develop a plan to communicate the divestiture to employees and address any concerns or questions they may have.
   - Determine the transfer or termination of employment contracts and related benefits for affected employees.
   - Consider the impact on employee morale, engagement, and retention during the transition period.
5. Customer and Supplier Relationships:
   - Communicate the divestiture to customers and suppliers, ensuring a smooth transition of contracts, service levels, and relationships.
   - Address any contractual obligations, change of control provisions, or consent requirements from customers and suppliers.
   - Develop a plan to mitigate any potential disruptions to customer and supplier relationships during the transition.
6. Intellectual Property and Technology:
   - Identify and transfer intellectual property rights, patents, trademarks, or copyrights associated with the divested assets or business unit.

The Portfolio Partnership – All Rights Reserved

- Evaluate technology infrastructure and systems and ensure a smooth transfer or transition of IT assets and operations.
- Assess any licensing agreements, technology transfer arrangements, or data privacy considerations related to the divestiture.

7. Communication and Public Relations:
    - Develop a communication plan to inform stakeholders, such as employees, customers, suppliers, investors, and the public, about the divestiture.
    - Coordinate with legal and public relations teams to ensure accurate and consistent messaging throughout the divestiture process.
    - Address any potential reputational risks and develop strategies to maintain stakeholder confidence.
8. Post-Divestiture Support:
    - Consider the need for a Transition Services Agreement (TSA) to provide support and services to the buyer during the post-divestiture transition period.
    - Establish mechanisms for ongoing communication and collaboration with the buyer to address any post-closing obligations or issues.
9. Finalizing Documentation:
    - Prepare and finalize all necessary legal documents, such as the Sale and Purchase Agreement, transition agreements, and other contractual arrangements.
    - Ensure proper execution and filing of all required documents with relevant authorities and regulatory bodies.
10. Closing and Post-Closing Activities:
    - Coordinate the closing of the divestiture, including the transfer of funds, assets, and legal ownership.
    - Establish a post-closing checklist to address any remaining tasks, such as winding down operations, resolving outstanding matters, or conducting post-closing audits.

This checklist serves as a general guide, and the specific items included may vary depending on the nature and complexity of the divestiture. It is advisable to work closely with legal, financial, and operational experts to tailor the checklist to your specific divestiture requirements.

The Portfolio Partnership – All Rights Reserved

The Portfolio Partnership provides a range of acquisition and divestment support services tailored to your business needs and team size. We seamlessly become an extension of your team and integrate at all levels to fulfill the potential of the business. We create a strategic plan together with our clients and design a set of actions aligned to that plan. It is fractional corporate development management through the lens of an operator.

We are always ready for a conversation.

Contact Details

Ian@TPPBoston.com
Kevin@TPPBoston.com

The Portfolio Partnership – All Rights Reserved