ALLEN & OVERY

Delivering international corporate spin-offs and carve-out sales

2024

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Spin-offs

A spin-off (or demerger) is the creation of a new, independent company usually by way of a tax-efficient distribution to existing shareholders. The newly created company holds one or more business divisions of the parent company undertaking the spin-off and is listed on the same market as the parent.

A spin-off is a type of divestiture which can be used either to **shed a non-core business** (to enable the remaining group to focus on core businesses) or to **unlock value for shareholders** who, post spin, would hold shares in both the parent company and the newly spun-off company.

Spin-offs are sometimes used where a sale of the business to be divested has not proved possible but there is still a desire to divest the business in question.

Carve-out sales

Increasingly groups of businesses are run in a highly integrated way to achieve operating efficiencies, with shared premises, assets, services, systems and people and commingled supplier and customer contracts relating to more than one business. A carve-out sale is the sale of a business which is embedded in a wider group of businesses in this way. It is described as a carve-out as it is necessary to extract or "carve-out" the business to be sold from the rest of the group prior to or as part of the sale process.

The biggest drivers of business/asset sales are responding to shifting strategies and priorities, focusing on core businesses/operations, improving operational efficiencies, paying down debt or generating capital to invest in the operation and growth of retained or new businesses or to return to investors.

Sometimes a transaction starts out as a spin-off but the public announcement of the proposal brings out into the open potential bidders for the part of the group being divested and the transaction transforms into a carve-out sale.

> "I see increasing demand for top-tier legal advice from firms that can deliver local market knowledge across multiple jurisdictions. We are right at the leading edge of that in our profession."

Wim Dejonghe, A&O Senior Partner

Why divest in this way?

Organisations are constantly looking at alternative strategies to maintain or increase profitability and add value for their shareholders. Changes in market and global conditions often lead to changes in strategy and now, more than ever, fundamental priorities for many corporates **have re-focused and even completely shifted**.

Markets continue to be driven by **significant changes in regulation**, **accelerated adoption of new technologies** and **increased investor and societal pressures**. All of this requires corporates to manage their portfolios actively and reshape them to respond to, and stay ahead of, shifts in their sectors and industries.

Spin-offs and carve-out sales have always been seen as having the potential to **unlock substantial value for shareholders**. Not only this, but they allow the parent group to **focus on its core businesses and strengths** and **improve operational efficiencies**, without having to spend time and resources on a non-core and/or underperforming business.

As the trend towards simplification continues, corporates look to **streamline their businesses** and focus on **building appropriate scale** for increased efficiency and return. Importantly, a spin-off or carve-out sale gives each standalone company **greater flexibility** to pursue their own **focused strategies for growth** (whether organic or through acquisitions), without having to compete with other business divisions for management time or the capital to do so.

The **need for liquidity** and to **reduce debt burden** has come into sharp focus in recent times. As a result, many corporates may consider spinning-off or selling non-core assets to redress these issues, which in turn can help to fund operations and investments (eg acquisitions) in the core business.

The number of spin-offs and carve-out sales has increased significantly over recent years and all indications suggest that this trend will continue as the markets, investors and competitive pressures drive change.

"The thoroughness and clarity of recommendations are all top-notch and the best I've ever received from any law firm. The quality of service, the way it's delivered and their availability are equally impressive."

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What are the challenges?

Spin-offs and carve-out sales are **complex** transactions, particularly for international groups where operating subsidiaries are located throughout the world.

In some cases, separate business divisions operate through **distinct** subsidiaries within a group and so it is a matter of **organising** these subsidiaries into a structure which can be spun-off or sold. Even where the businesses are legally separate, there is likely to be operational integration within the group and this will need to be separated.

In other cases, the business divisions are more **integrated** with businesses to be retained not only operationally but structurally too. As such, the business to be spun-off or sold will need to be extracted, both legally and operationally, and reorganised prior to the ultimate spin-off or sale.

Therefore, a spin-off or a carve-out sale needs to be carefully **planned and executed**, which is usually both **time-consuming and labour intensive**. The legal workstreams need to be **carefully coordinated** with the financial, operational and tax workstreams and the internal deal and functional teams need to be **aligned** with the external advisers.

With A&O's **experience and extensive global reach**, we are able to work with our clients to ensure time and cost efficient planning and management of the transaction. The end result is the smooth and seamless execution of a large, complex and often long-running transaction.

Key issues to consider

Set out below are a selection of the key legal issues to consider:

Transaction agreements

The global transaction agreement (separation and distribution agreement in the case of a spin-off or the sale and purchase agreement in the case of a sale) should be carefully drafted and negotiated to ensure it captures the perimeter and complexity of the business being sold and is broad enough to encapsulate international differences. Other transaction agreements may also be needed to deal with the treatment of liabilities, including historical tax, employment and ongoing litigation matters.

Transition services

International TSA feasibility issues should be determined early to identify the services which can be provided post spin-off/sale at the local level, especially if there is to be a long-running TSA. In certain cases specific local TSAs may be required or constitutional documents/business licences of local entities may need to be amended in order to allow the provision of services at the local level.

Commercial contracts

Material commercial contracts should be reviewed for issues arising out of the spin-off or sale. For example, change of control provisions where consent or a formal assignment is required, contracts that need to be relocated to the correct business prior to the spin-off or sale and cross-business contracts that need to be split.

Employees

Verifying whether any works council/employee consultation issues are triggered should be checked in the jurisdictions where an entity with its own employees is involved in the transaction. In addition, local employee transfer legislation should be considered to determine the legal mechanism for transfer with any employment related liabilities, such as automatic severance liabilities, being identified and managed early in the process.

Pensions

The separation and division of retirement benefits should be given early consideration, particularly if defined benefit schemes exist within the group. Pension trustees often see changes such as spin-offs and sales as an opportunity to renegotiate terms which may cause timing issues for the transaction. In addition to company operated retirement benefits, there may be state or industry specific schemes to consider in certain jurisdictions.

Real estate

Particular care is needed when dealing with real estate especially where the business has leasehold interests. In many jurisdictions, underpinning any lease there will be significant local law and practices that should be considered. Establishing ownership in the correct business will be important and shared premises and co-location issues should also be thought through.

Regulatory/Permits and licences

Governmental and regulatory consents (eg foreign direct investment consents) should be identified early as these may cause timing issues for the transaction and are often required to be disclosed on signing. Permits and licences should be transferred or amended to sit within the correct businesses going forward and any name changes to the entities holding the permits and licences should be reflected accordingly. They should also be reviewed for change of control provisions.

Intellectual property

The name and identification of a company is one of the most valuable assets of a business. Any new name or new logo for the business being spun-off or sold would need significant diligence to ensure it works and is acceptable around the world. In addition, if IP is held centrally within the group, transfers will be required for any IP associated with the business to be divested. Shared IP will need to be identified and appropriate licences granted.

Treasury matters

If public and/or bank debt is held at the holding company level or in another central place within the group (often in a specific financing subsidiary), consent or a formal assignment may be required prior to the spin-off or sale. In addition, the business being spun-off or sold may require its own public and/or bank debt to support its operations post the divestiture. Internal cash pooling arrangements and intra-group debt may also need to be terminated, settled or re-aligned.

Stock incentive plans

In a spin-off international stock incentive issues (ie securities laws, filing requirements and taxation issues) are likely to impact the adjustment of awards required as a result of the need to roll the plan over to the new top holding company of the spun-out business. Implications for existing stock incentives should also be considered in the context of a carve-out sale (eg international implications in relation to terminating equity reimbursement or recharge agreements).

Lifecycle of a spin-off/carve-out sale

A&O has a proven methodology for successfully implementing international spin-off and carve-out transactions, whether they be very large in scope or smaller scale. Our approach is highly adaptable to suit the type of transaction, as well as our client's business and legal needs.

We combine our legal expertise with A&O's Advanced Delivery & Solutions offerings (see below) to manage and drive forward the multiple workstreams efficiently across the lifecycle of a spin-off or carve-out sale and deliver a highly successful transaction for our client.

Resource and scoping

At the outset of a spin-off/carve-out sale we:

- determine the right resourcing model, drawing necessary support from the core A&O offices/team from **A&O Belfast**, our lower cost Advanced Delivery centre, and **Peerpoint**, A&O's dedicated consultant lawyer platform;
- brief **A&O offices/teams** and external **non-A&O relationship firms** across the world where necessary and establish efficient reporting lines back to the central A&O team; and
- apply appropriate **project management** support (either through our lawyer team or our dedicated **Project Management Office** or a combination of both) to scope the work, set timing and fee parameters, and ensure the correct level of client reporting tools are applied, including the use of **legal technology management platforms** where appropriate.

Planning

Spin-offs/carve-out sales require detailed planning and diligence to ensure early identification and management of key issues, avoiding any surprises and saving time and cost later.

We plan at a:

- **macro level**, where we identify early any key legal constraints, third party involvements (such as regulatory consents, employee representative consents/procedures or documentary formalities) and timing and cost implications; and
- **micro level**, where we identify all actions, documents and processes required from a legal perspective to implement the separation, identifying detailed formalities, signatory requirements and specific dates and timings.

Our approach to planning ensures alignment with the wider transaction and facilitates efficient **project management** to track and report on progress through implementation.

Documentation

Global transaction documents must capture the perimeter and complexity of the business being divested. We use our **global expertise** and **vast international experience** to produce global transaction documents quickly and efficiently, catering for international differences to allow for smooth implementation at the local level.

For local implementation documents, we utilise **centrally developed templates** (all regularly refreshed and updated), which are tailored for local law requirements and work seamlessly with the global transaction documents.

The use of **document sharing platforms** allows for easy dissemination of drafts, centralisation of comments and collation of documents for execution. **High quality documentation** allows for easy review and saves our clients time to focus on matters that require their attention.

> "Allen & Overy always apply a commercial lens and their partners are sensational."

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Implementation

Our central and local teams coordinate in every relevant jurisdiction to conduct the implementation of the separation methodically.

Our detailed **project managed** plan allows for synchronisation across different time zones and workstreams to ensure seamless implementation.

Where specific actions are required locally (eg notarial requirements, local board meetings etc), our teams provide detailed itineraries to ensure nothing is missed.

Use of **online deal platforms** enables collaborative and automated work for more process driven activities such as collating final signed documents, dating and automatic release of documents at the right time.

This, combined **with virtual signing technology** (where permitted by local law), significantly reduces email traffic and helps maintain deal momentum.

Post-implementation and integration

Our **focused planning** ensures post-separation matters are completed diligently and without delay (eg updates to company books and registers and commercial registry/governmental filings and notifications avoiding the time and inconvenience of having to sort "loose ends" later).

The use of **online deal platforms** allows for the creation of immediate soft copy transaction binders/bibles, with our **A&O Belfast** team available to help collate and sort any hard copy originals not required to be kept locally.

Our central and local teams remain on hand to assist with post-separation cash repatriation, entity rationalisation or to track and monitor transitional arrangements.

A&O Consulting can further help with post-separation workstreams by building any required strategy, culture, governance, risk and/or conduct frameworks.

“With their global offices, A&O can provide legal services for a wide range and high depth of issues.”

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Case studies

A&O, with its **experience, global reach and local depth**, is perfectly placed to provide all the external legal support our clients need to enable them to successfully deliver their international transactions on time and within budget.

The following examples demonstrate that **major international corporates** trust in us to advise them on their **most complex and challenging spin-off and carve-out sale transactions**.

Examples of our experience

We advised:

Tyco International

- on the international aspects of its USD65bn separation and spin-off of TE Connectivity and Covidien from Tyco International, across 90 jurisdictions.
- on the international aspects of its separation and spin-off of its North American Security (ADT) business and the separation and sale to Pentair of its Flow Control business, involving 75 jurisdictions.

WPP

- on the USD3.1bn sale of a 60% stake in Kantar to Bain Capital, including a pre-sale carve-out reorganisation involving 90 countries.
- on the sale of 49.99% of the newly combined Finsbury, Glover Park and Hering Schuppener Group, a new global strategic communications advisory firm, and related reorganisation involving nine countries.

Thomson Reuters

- on the USD7bn sale of a majority stake in its Financial & Risk business (Refinitiv) to a consortium led by the Blackstone Group and related carve-out reorganisation across 70+ countries.

TE Connectivity

- on the international aspects of the USD3bn separation and carve-out sale of its global Broadband Network Solutions business to CommScope, Inc., involving 57 jurisdictions.
- on the international aspects of the USD350m separation and carve-out sale of its Circuit Protection Devices business to Littelfuse, Inc., involving 16 jurisdictions.

Covidien

- on the international aspects of the USD2.5bn separation and spin-off of its pharmaceuticals and imaging business (Mallinckrodt), involving 48 jurisdictions.

Pentair

- on the international aspects of the USD3.15bn separation and carve-out sale of its Valves & Controls business to Emerson Electric Co., involving 45 jurisdictions.
- on the international aspects of its separation and spin-off of nVent from Pentair, across 43 jurisdictions.

The Carlyle Group

– on its acquisition of Veritas, the Information Management business of Symantec, in a carve-out sale by Symantec, involving 38 jurisdictions.

Ali Group

– on the international aspects of the carve-out sale to Ali of Emerson's international InterMetro business, involving 18 jurisdictions.

Mallinckrodt

– on the international aspects of the pre-sale separation (for retention) of its nuclear medicine business and the subsequent carve-out sale of its contrast media and delivery systems business to Guerbet SA, with A&O managing 16 jurisdictions.

News Corporation

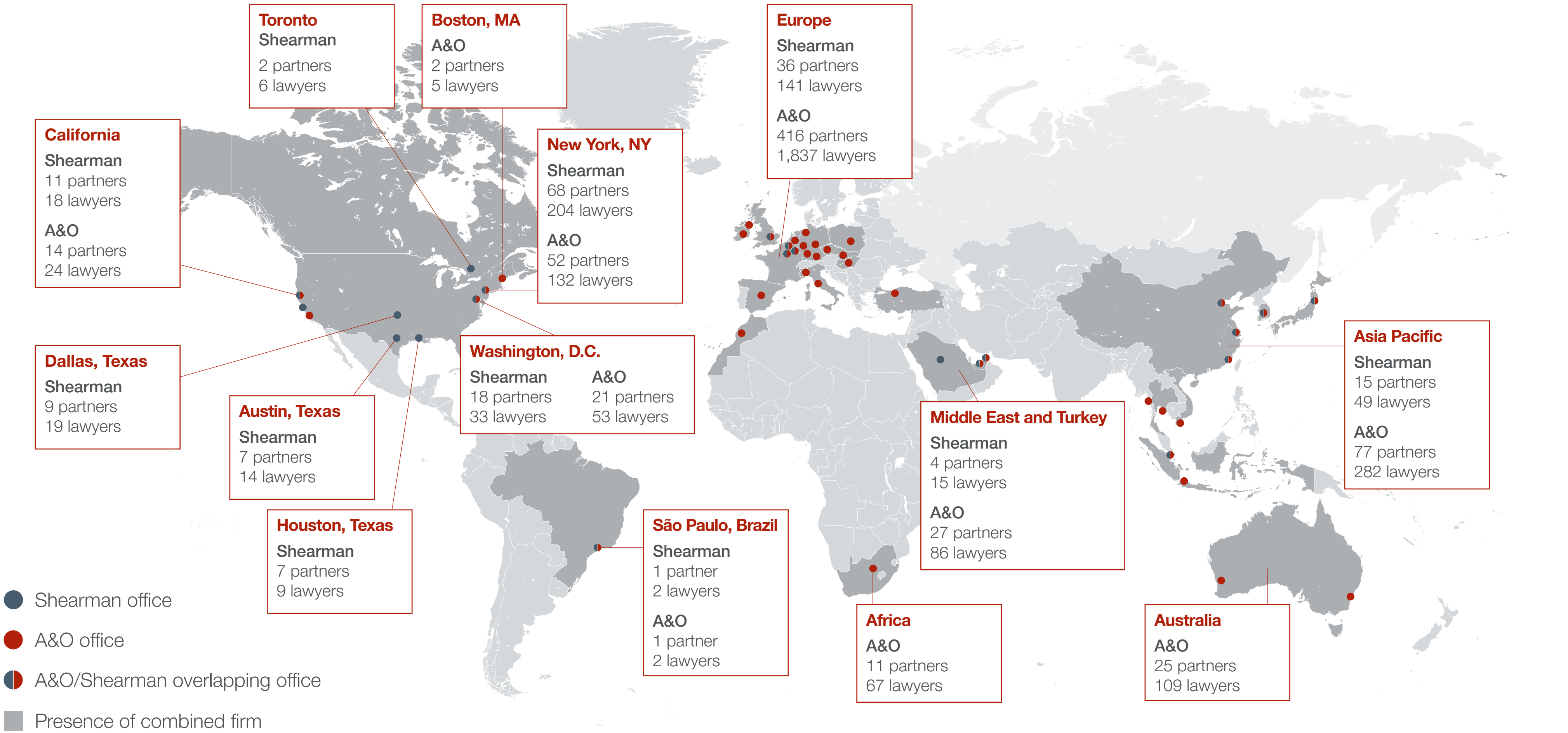
– on the spin-off of its publishing business, broadcasting interests in Australia and education division (under the name News Corporation) with the retained broadcasting business being renamed 21st Century Fox, involving the U.S. and the Caribbean, the UK and other parts of Europe, the Middle East, Hong Kong and Australia.

SIG

– on the EUR222.7m carve-out sale of its Air Handling Division to France Air Management across ten jurisdictions.

Snapshot of A&O Shearman upon closing – global view

A combination of Shearman and A&O would result in a truly global firm with appropriate scale to provide integrated and exceptional advice and service in markets around the globe.



Note: 3 offices of Shearman are associated offices: Milan, Riyadh and Rome

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Global presence

Allen & Overy is an international legal practice with approximately 5,800 people, including some 590 partners, working in more than 40 offices worldwide. A current list of Allen & Overy offices is available at www.allenovery.com/global_coverage.

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