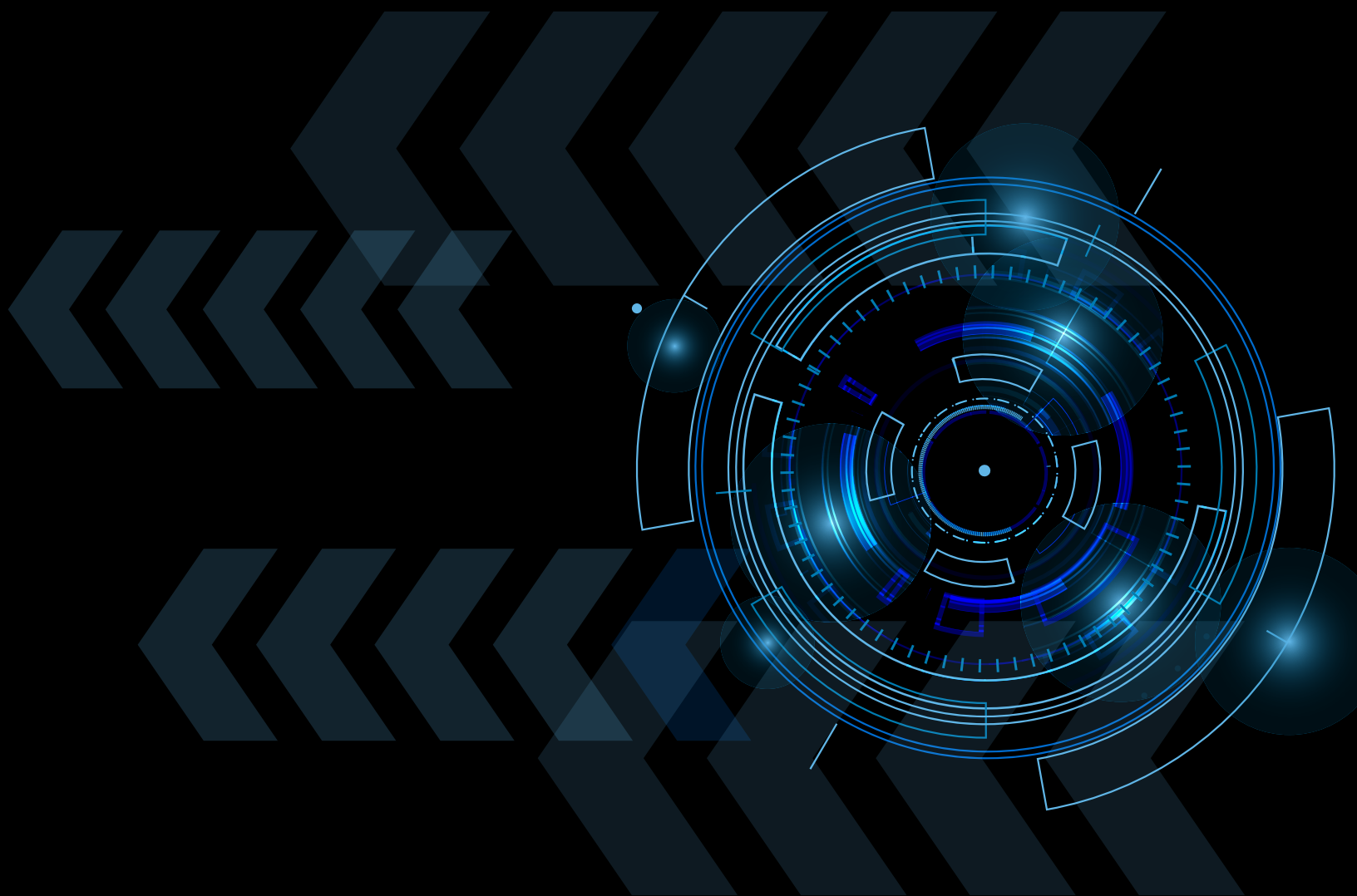


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IPO Preparation: The Legal Department's Role

Going public can be all-consuming. Those working on the transaction may likely be hard pressed to perform their day jobs as they try to address the additional responsibilities associated with an initial public offering (IPO).

Of course, that is especially true for the legal department. Even when, as is often the case, outside counsel has a major role in the IPO, internal counsel retains responsibility for many matters critical to the deal, such as legal entity management and planning how new public company legal matters will be handled after the transaction is completed.

Legal entity management in an IPO

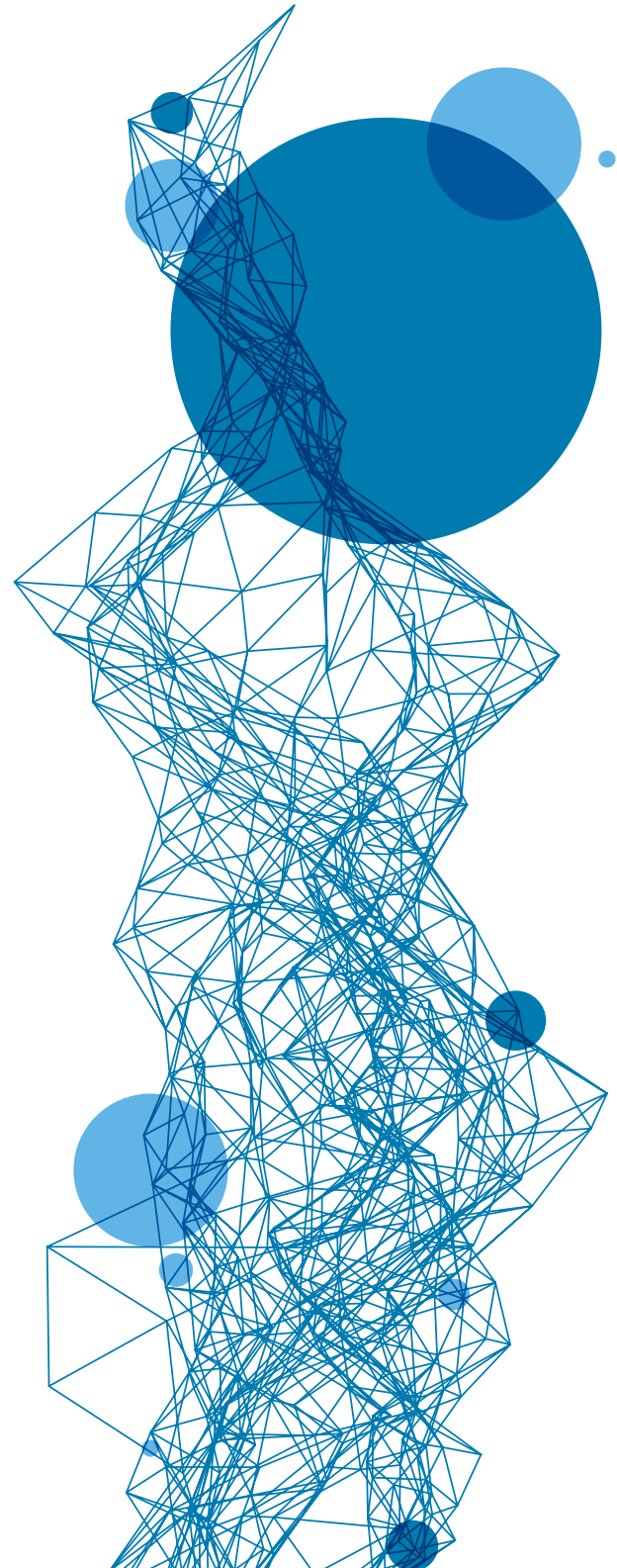
One of the key areas involved in planning an IPO is determining and creating the entity structure of the publicly held enterprise. Will there be a holding company structure? Will assets across the enterprise be held by one entity or by multiple entities and, if the latter, which assets will go where? What types of entities should be used for that purpose, and in which jurisdictions will they be organized? How will the structure impact taxation? These are just some of the questions that will need to be addressed in the context of the IPO.

Once these and other decisions are made, it may be necessary to form new entities and to get them “up and running” by qualifying them to do business in various jurisdictions, electing slates of officers and directors or other executives, and establishing procedures designed to comply with ongoing legal and operational requirements such as filing required reports on time, maintaining industry or other standards, and maintaining separate books and records.

In addition to these activities, the enterprise needs to consider rationalizing their corporate structures, including consolidating some entities and eliminating others. For example, it may be desirable or necessary to dissolve entities formed solely to facilitate prior acquisitions or that previously held assets that have been sold. Multiple entities that own assets in a particular jurisdiction may be combined to eliminate duplication and thereby reduce costs.

Beyond these activities, organizations conducting an IPO need to consider conducting a comprehensive health check of all entities across the enterprise – a process to provide assurance that those entities comply with federal, state, local and/or foreign requirements to file reports or take other actions needed to maintain operating or other licenses. The failure to comply with these requirements can disrupt the IPO process, such as when the entity going public is unable to represent that its subsidiaries are duly qualified and authorized to do business in significant jurisdictions, or to maintain the licenses or permits needed to conduct operations.

Given these and other potential consequences, businesses planning an IPO should consider engaging a third party to provide legal entity management services. A qualified service provider can not only facilitate compliance but can also free the legal department to execute other responsibilities at a critical time, when resources are stretched and there is little or no bandwidth to address strategic matters associated with the IPO or otherwise. Moreover, using a qualified service provider permits the leveraging of technology that is unavailable to the enterprise or, if available, at prohibitive cost.



The legal department during and after the IPO

Even before the IPO gets underway and proceeds towards completion, the enterprise needs to consider the current and future states of its legal department so that matters critical to the IPO or otherwise can be addressed and that the department has the resources and competencies needed to carry out its responsibilities going forward. This assessment operation generally focuses on the following aspects of the legal operation:



Operations and activities



Existing staff, including capabilities and areas of specialization



Existing and available technology



Existing processes



Budget vs. needs

Once these are determined, the assessment considers the gaps between the current state of the legal operation and its responsibilities during and after the IPO, including:

01.

What is needed to complete the IPO

04.

What technology is available and whether it should be bought or rented, including through outside advisors

02.

What will be needed once the IPO is completed

05.

What new or modified processes can be implemented to achieve greater efficiency or achieve other objectives

03.

What internal and external resources are available and whether those resources should be "bought" (i.e., by hiring) or "rented" (i.e., by engaging outside counsel and/or other legal service providers)

The business also needs to consider not only cost, but also the impact of alternative approaches on employee retention and morale, future strategic initiatives and growth plans, future budgetary requirements, and how all of these factors will impact the legal operation's ability to meet future needs.

This assessment helps create a plan to build out the legal operation from the perspectives of people, process, and technology, in all cases keeping in mind how the needs of the enterprise are likely to change as a result of the IPO. With respect to technology, consideration should be made on how technology can be leveraged as an enabler across the legal department. For example, technology platforms related to contract management, legal operations (e.g., spend management, etc.), legal entity management database portals, and board portals could bring about efficiency to the legal department and to the businesses within the organization in which they support.

Conclusion

An initial public offering requires a great deal of preparation, detailed planning, and work so that legal obligations will be addressed before, during and after the offering is completed. Among the most critical areas are the need to have a legal function up and running and for the legal function to assess, develop, and implement action plans so that entities across the enterprise are in compliance with all applicable legal requirements.

According to the recently updated Corporate Legal Operations Consortium¹, the 12 key legal operations functions are:



Business intelligence: To collect and analyze data based on important metrics so as to glean actionable insights for more strategic decision-making.



Practice operations: To allocate tasks to the right skill level for better speed and efficiency.



Financial management: To plan legal spend, create budgets, implement and monitor e-Billing for legal services, manage accruals, and forecast expenses, among other things.



Program/project management: To manage projects, workflows, and programs faster without compromising on quality.



Firm and vendor management: To choose the right firms by performing due diligence, uncover opportunities, negotiate better rates, handle contract management, and, overall, onboard new vendors quickly.



Service delivery models: To define and structure service provider relationships, to break down larger projects into assignable tasks, and to reduce reliance on more expensive law firms.



Information governance: To create clear policies so as to lower corporate risk, to communicate those policies to employees, and to manage data security and compliance.



Strategic planning: To create team goals that align with the priorities of stakeholders.



Knowledge management: To facilitate knowledge hubs, create templates, and prevent knowledge loss, e.g., from staff departure or role changes.



Technology: To automate time-consuming and repetitive tasks and to increase accuracy in data collection.



Organization optimization and health: To create a hiring vision for cultural fit, encourage team members' work/life balance, and maintain a good pipeline of talents.



Training and development: To create training resources for new hires and to facilitate career development for employees.

1. Corporate Legal Operations Consortium (CLOC), "[CLOC Announces Updates to its Core 12 Functions of Legal Operations](#)", April 2020.

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