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Cross-border outsourcing – Lessons learned

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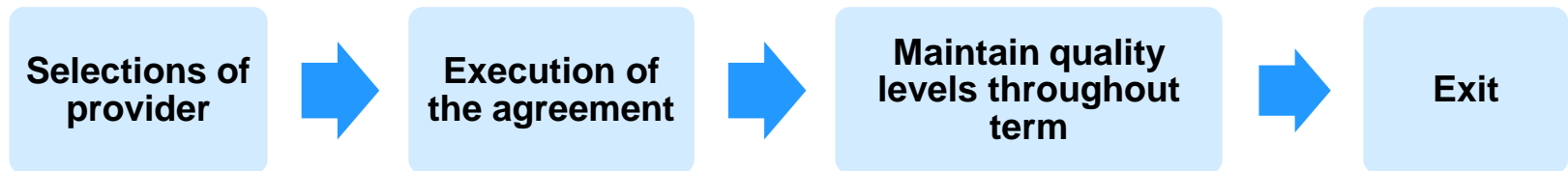
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Cross-border Outsourcing – Driving Factors

- Outsourcing projects result of a variety of operational, financial and technological issues
- Growing demand for innovation, pressure from stakeholders, lack of skills
- Most relevant reasons in Switzerland: lack of skilled people, high costs
- Attractive to outsource to Central and Eastern European countries
- Highly skilled people, lower cost levels

Cross-border Outsourcing - Challenges

- Outsourcing triggers operational, technological, organizational and legal issues
- Ensure, provider will make outsourcing a success
- Ensure, customer will receive agreed services at agreed quality levels throughout the term
- Think through the project until the end
- From customer's perspective 4 main topics/phases



Selection of the Provider / 1

- Selection starts with tender
- Request for Proposal (RfP)
 - Customer's current status
 - Customer's needs
 - Customer's expectations
- Request for Information (RfI)

Selection of the Provider / 2

- RfP creates pre-contractual relationship
- Rights and obligations of the parties
- In case of violation liable for damages
- e.g. claim for restitution of provider's project costs
- Participation in tender / preparation of offer costly

Selection of the Provider / 3

- Possible argumentation, process not in line with RfP rules
- Avoid disputes by
 - ➔ Clear / comprehensive rules re tender process
 - ➔ Regulate relevant legal issues, e.g.
 - Deadlines
 - Costs
 - Provider selection
 - Jurisdiction

Selection of the Provider / 4

- Provider offers to cover
 - operational, financial, technical, organizational topics

AND

- comments on outsourcing agreement
- After first review, downselection of providers, but to more than 1
- Customers intend to maintain competitive situation

 negotiation power

Structure of the Outsourcing Agreement



Contract Drafting

- Who holds the pen?
- Master Agreement – Customer
- Other contract documents – Provider
 - project and service related topics
 - no legal topics
 - reflect the provider's solution design
 - expertise of provider relevant

Content of the Agreement

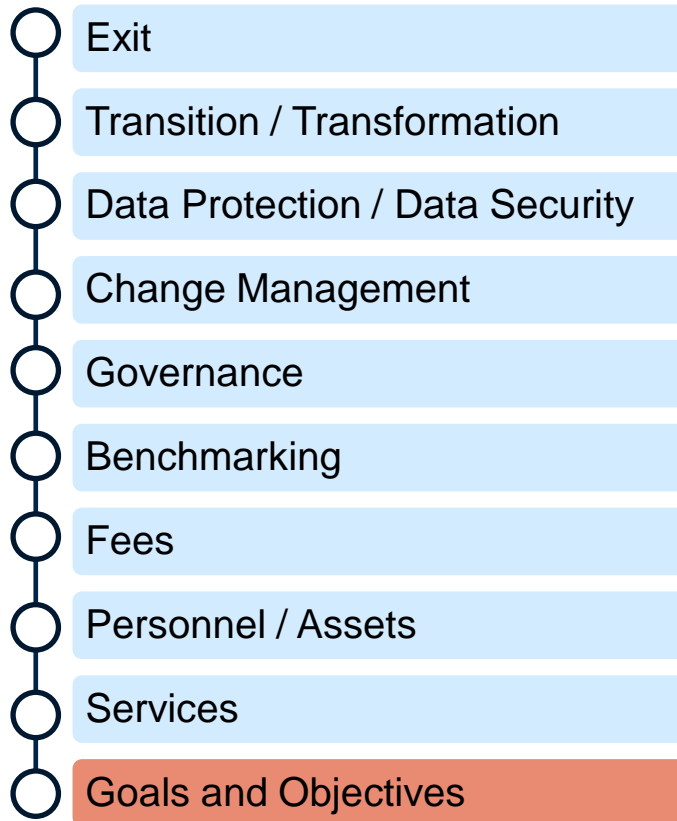
- So far we discussed “how” to achieve a “good” agreement?
- Now, “what” is covered in a “good” agreement?

 10 most relevant topics

Goals and Objectives



10 most relevant topics

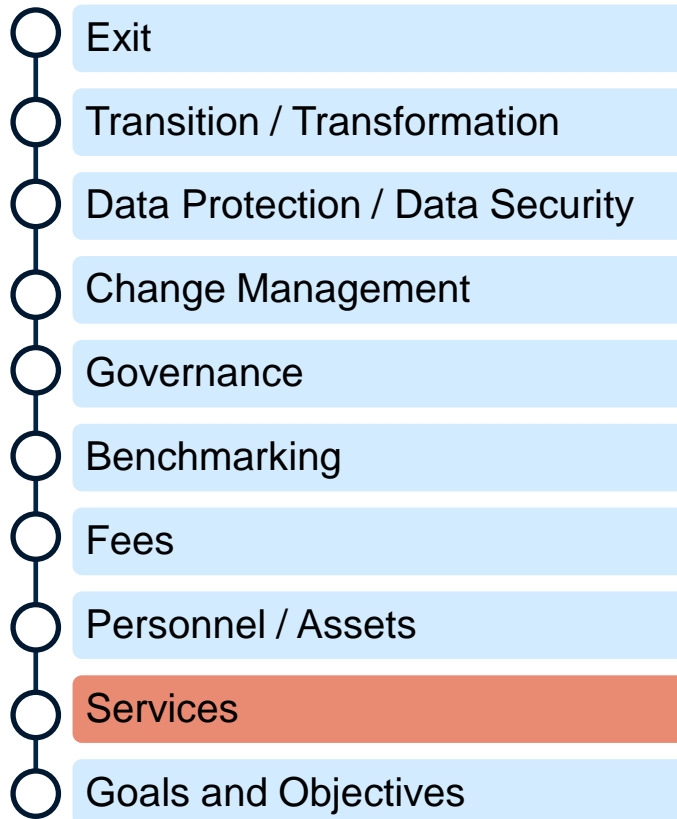


- not binding
- agreements voluminous due to complexity
- not every issue regulated in all details
- supports construction / understanding of agreement
- practical value

Services



10 most relevant topics



- service specification is core
- define “what”
- define «how», e.g. ITIL
- service levels
- service credits
- processes for service quality improvement
- main terms in MOSA, details in SOWs, Exhibits

Personnel / Assets



10 most relevant topics

- Exit
- Transition / Transformation
- Data Protection / Data Security
- Change Management
- Governance
- Benchmarking
- Fees
- Personnel / Assets
- Services
- Goals and Objectives

- take over of personnel
- details in Exhibit
- HR department to be involved
- personal qualifications
- possibly takeover of assets
- consider merger control

Fees



10 most relevant topics

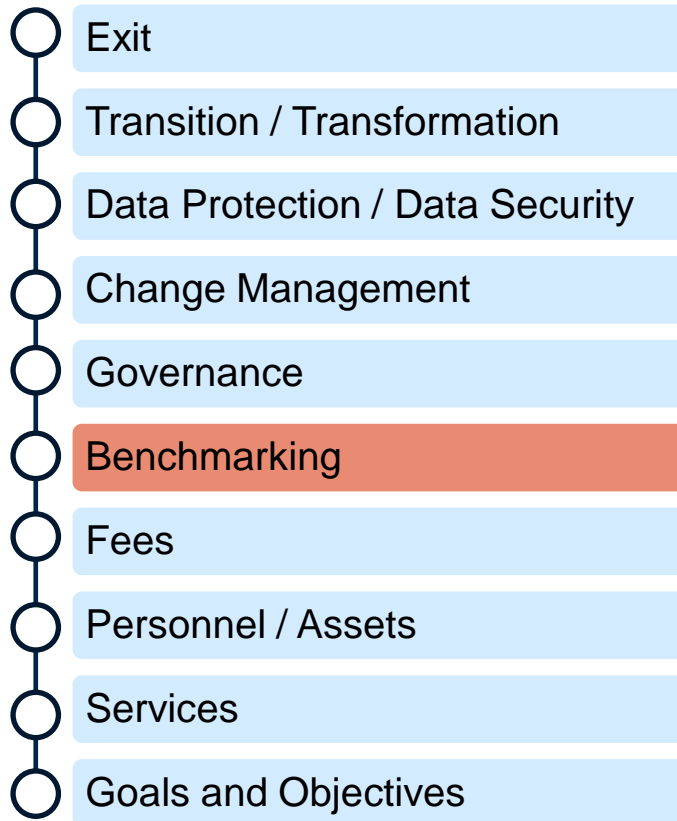
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- pricing complex
- fixed fees / volume based pricing
- clear, detailed rules required
- attach calculation examples
- dispute resolution procedure in case of disputed invoices

Benchmarking



10 most relevant topics

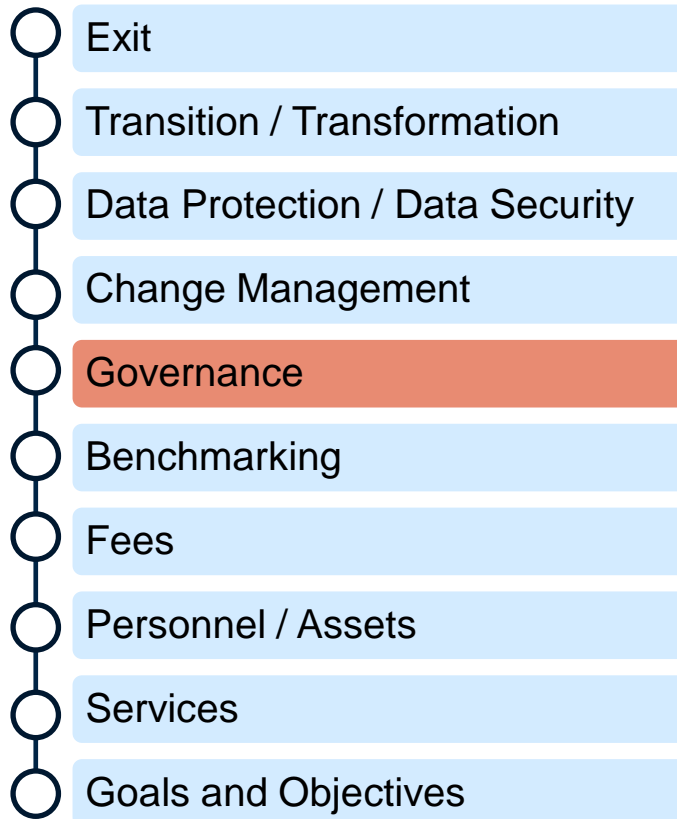


- long term of outsourcing projects
- dependency
- service quality “frozen”?
- prices no longer competitive?
- comparison to market conditions
- possibly amendments of agreement

Governance



10 most relevant topics



- organisation of the project
- to be delivered by provider
- governance – no contract changes
- audits, service monitoring
- standard audit reports, or
- individual audit

Change Management



10 most relevant topics

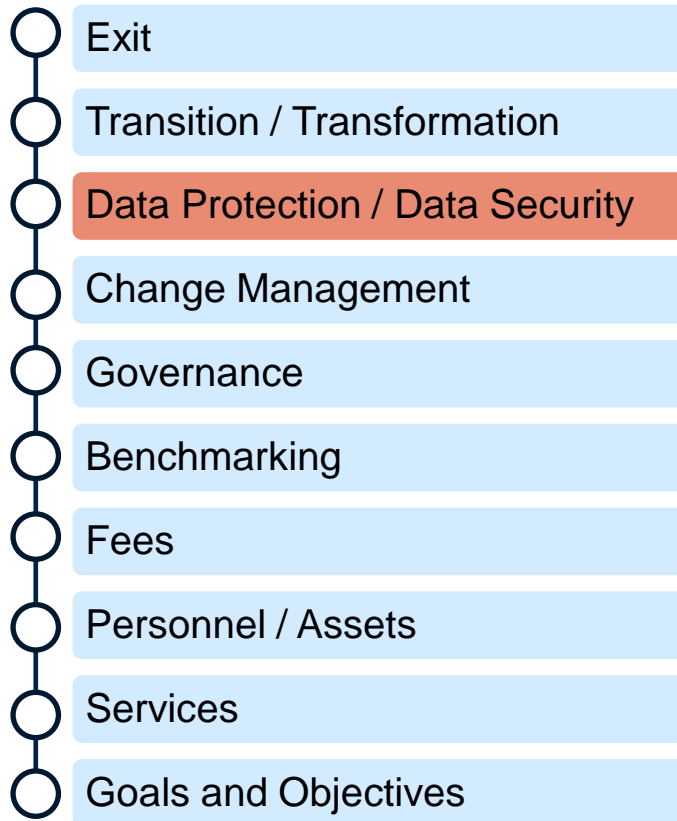
- Exit
- Transition / Transformation
- Data Protection / Data Security
- **Change Management**
- Governance
- Benchmarking
- Fees
- Personnel / Assets
- Services
- Goals and Objectives

- amendment of specifications, prices
- process of contract change
- process of (technical) implementation of change

Data Protection / Data Security



10 most relevant topics



- potential dealbreaker
- general data protection laws
- sector specific confidentiality obligations (e.g. banking)
- “white-listed” jurisdictions
- enforcement
- protective measures obtainable?

Transition / Transformation



10 most relevant topics

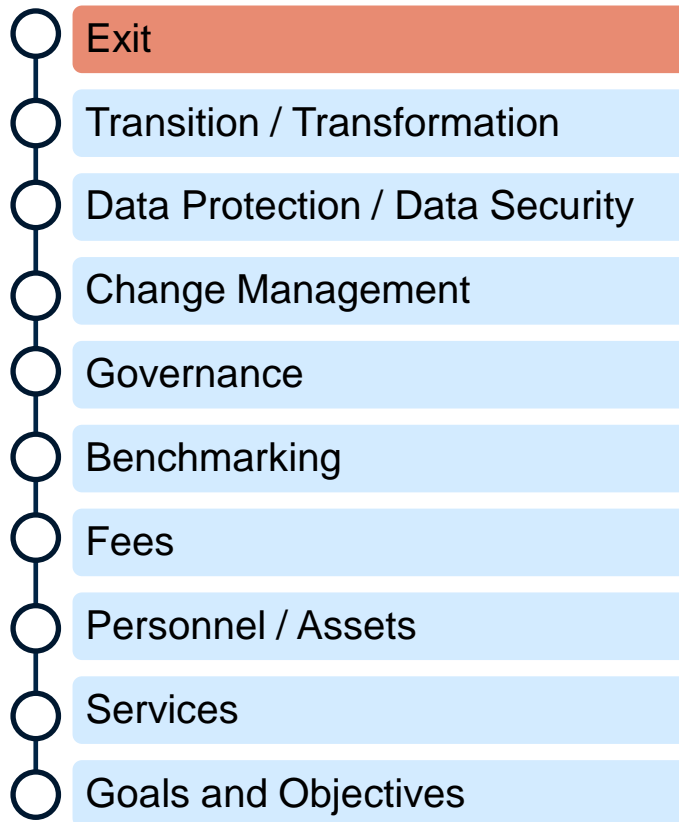
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- transition – take over “as is” by provider
- transformation – integration into provider service organization
- complex procedure
- “gradual” take over
- careful drafting required
- consider re-transfer / project stop

Exit



10 most relevant topics



- think ahead
- regulate exit at the outset
- do not wait until dispute arises / relationship comes to an end

Operation

- Governance
- Change management
- Service levels
- Monitor service delivery
- Implement corrective measures

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