



Perbadanan Insurans Deposit Malaysia
Protecting Your Insurance And Deposits In Malaysia

NRS | NATIONAL RESOLUTION SYMPOSIUM 2023

18-19 October



PARALLEL MASTERCLASS SESSION: Insurance & Takaful Resolution – Facilitating Stressed Mergers & Acquisition / Transfer of Business of Insurance Portfolio



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Gallagher Re



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Ms. Farzana Ismail
Milliman



Panelist
Ms. Tracy Wong
Christopher & Lee Ong



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Resolution of Failing Insurance Companies

Indonesia's Experience: "Asuransi Jiwasraya, Bridge Bank – Plus Resolution"

Fauzi Ichsan

Chairman of the Board
Indonesia Financial Group

Asuransi Jiwasraya, a resolution case study: “Delaying resolution of failed corporation increases its cost of resolution”

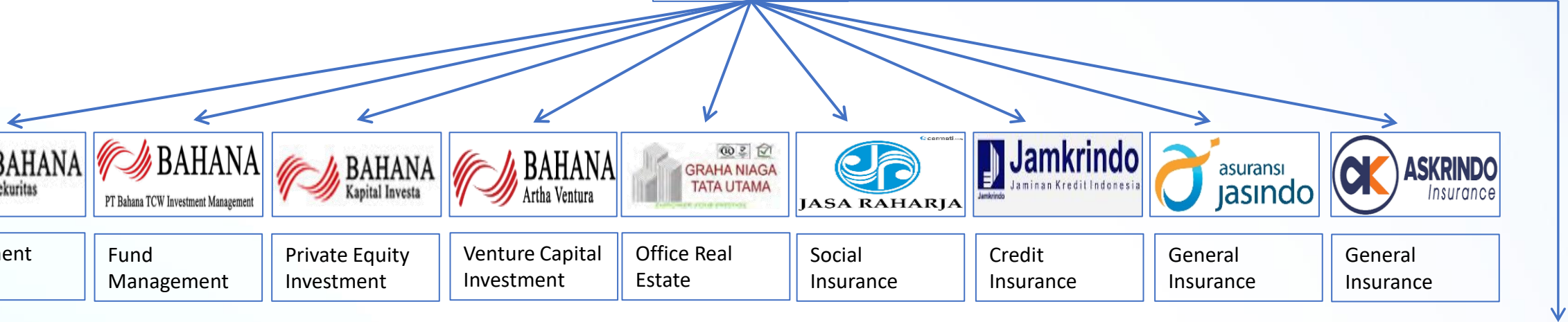
- Nederlands-Indische Levensverzekering en Lijfrente Maatschappij (NILLM) formed in 1859, nationalized and renamed to Jiwasraya in 1966, and to Jiwasraya in 1984
- Jiwasraya’s troubles began long ago – in Dec-2006, its equity deficit was already circa IDR 3,3tn
- As equity deficit rose, without needed recapitalization Jiwasraya was compelled to:
 - Reinsure risks to “reduce liabilities”
 - “Revalue assets” + request lenience to record 100% of investment assets as admitted assets, instead of 15%
 - Understate premium and claim provisions
 - To address liquidity concerns, raise IDR funding at high interest rate: +10%
- By correcting provisions, but without asset impairments, equity deficit rose to IDR 10,2tn by Dec-2018
- By Dec-2020, exacerbated by the Covid pandemic:
 - Jiwasraya’s liabilities were IDR 54,3tn, while its assets were only IDR 15,7tn
 - Its equity deficit was IDR 38,6tn, its Risk Based Capital -1.003% – vs. regulatory minimum of 120%

Asuransi Jiwasraya, a resolution case study: “Bailout without sufficient government capital and insurance guarantee scheme”

- Without IGS, Jiwasraya’s liquidation would affect over 230.000 policy holders
- But the Government’s ability to fully bailout Jiwasraya was limited due to Covid and economic crisis
- Rescuing Jiwasraya thus needed a combination of:
 1. Identification of Jiwasraya’s “best assets” (“correctly appraised” and “legally free and clear”)
 2. Restructuring of Jiwasraya’s liabilities (“discounts and hair-cuts”)
 3. Setting up a Holding Company (Indonesia Financial Group – IFG), which establishes a new subsidiary (IFG Life)
 4. Transferring Jiwasraya’s best assets and restructured liabilities to IFG Life
 5. Equity capital injection by the Government into IFG Life
 6. Additional equity capital injection from IFG into IFG Life
 7. Managing IFG Life as new business entity
 8. Eventually liquidating Jiwasraya, with remaining “bad assets” and any “un-restructured liabilities”
- Jiwasraya’s resolution is based on FDIC’s and IDIC’s “Bridge Bank” concept

Indonesia Financial Group – IFG :

“From IDR 2tn capital market group in 2019 to +IDR 135tn financial conglomerate”



Life and Health Insurance – Est. 2020

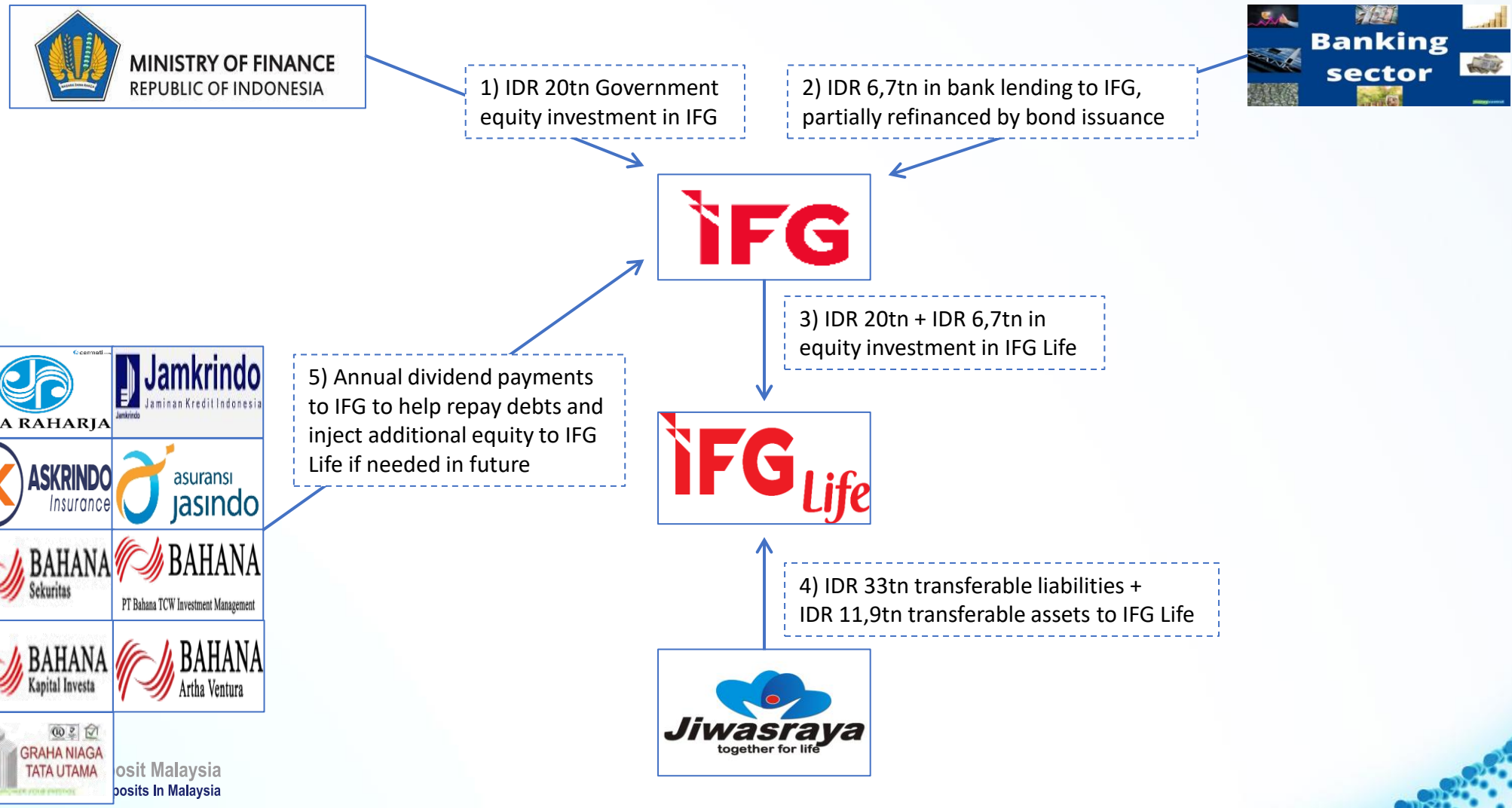
Legal Boundary

Asuransi Jiwasraya, execution of resolution: “The need for realistic financial and legal due diligence”

In 2021-22, the resolution of Jiwasraya included:

1. The approval to transfer to IFG Life circa IDR 33tn in restructured Jiwasraya liabilities – of originally IDR 54,3tn
2. The approval to transfer to IFG Life circa IDR 11,9tn of Jiwasraya assets – of originally IDR 15,7tn
3. The Government injecting equity capital of IDR 20tn into IFG, which subsequently reinvested it in IFG Life
4. IFG borrowing IDR 6,7tn from markets and used the funds as additional equity capital in IFG Life
5. The transfers of liabilities to IFG Life must also be done while ensuring RBC of IFG Life remains >120%
6. Future dividends from IFG’s profitable subsidiaries to be used by IFG to:
 - Repay IFG debts
 - Inject additional equity capital or sub-debts into less-profitable subsidiaries, including IFG Life

Asuransi Jiwasraya, a resolution case study: "Indonesia's first "bridge bank" experience"



Asuransi Jiwasraya, execution of resolution: “Addressing financial, legal, manpower, security and social challenges”

As in most complex resolution plans, there are unforeseen challenges:

1. Ensuring the values of transferable Jiwasraya assets do not decline, as this will affect the liabilities transferred
 - Before transferring financial assets, their values must be “marked-to-market” and their “market liquidity” taken into account
 - Transferrable properties must be legally “clean and clear”, without ownership disputes, resident squatters, etc.
 - To be admitted in new balance sheet, transferrable properties must already have new ownership deeds – to prevent legal disputes
 - Tax payments and legal fees for changing ownership deeds of transferrable assets must be budgeted
 - For fraud-related assets confiscated by Authorities but transferrable to new balance sheet, legally binding agreements needed
2. Addressing legal challenges by Jiwasraya policyholders that do not want to restructure their policies
 - Even for restructured Jiwasraya liabilities, rules must first be set to determine which ones are transferred first to IFG Life
 - Needed discussions with Court judges on Government policy of resolution to protect public vs. Jiwasraya policyholders rights
3. Addressing concerns of socially vulnerable policy holders, including pension funds, etc.
4. Understanding the political dynamics in which complex resolution of failing insurance company is executed

The future of Indonesia's insurance industry: "The need for consolidation and IGS"

- Parliament passed Law on Development and Reinforcement of Financial Sector in January-2023:
 1. Indonesia Deposit Insurance Corporation (LPS) to provide insurance guarantee scheme – effective in 2028
 2. LPS will only have liquidation option. LPS will: a) pay claimant of insured policyholders with maximum limit; b) transfer current insurance to other insurance companies; c) if there are no insurance companies taking over the policies, LPS returns un-earned premiums to policyholders; and d) sell off insurance company's assets to partially recover LPS insurance cost
 3. Until 2028 resolution of failing insurance companies likely to be partially conducted by Government, via MoF, MoSE, as in the case of Jiwasraya, via IFG
- Introduction of IFRS 17 (PSAK 74) painful to insurance industry but needed to enforce global standards and GCG:
 1. Postponed revenue recognition – profits cannot be booked upfront, but amortized throughout life of contract, more prudent
 2. Increased liability due to postponed profit recognition, which could affect equity and thus RBC
 3. Loss-making (onerous) contract to have the loss booked upfront without amortization
- Too many under-capitalized insurance companies – need to be consolidated through M&As
- InsureTech to fundamentally change the landscape of insurance industry

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Resolution of Insurance/ Takaful Operator

Lau Sie Liang

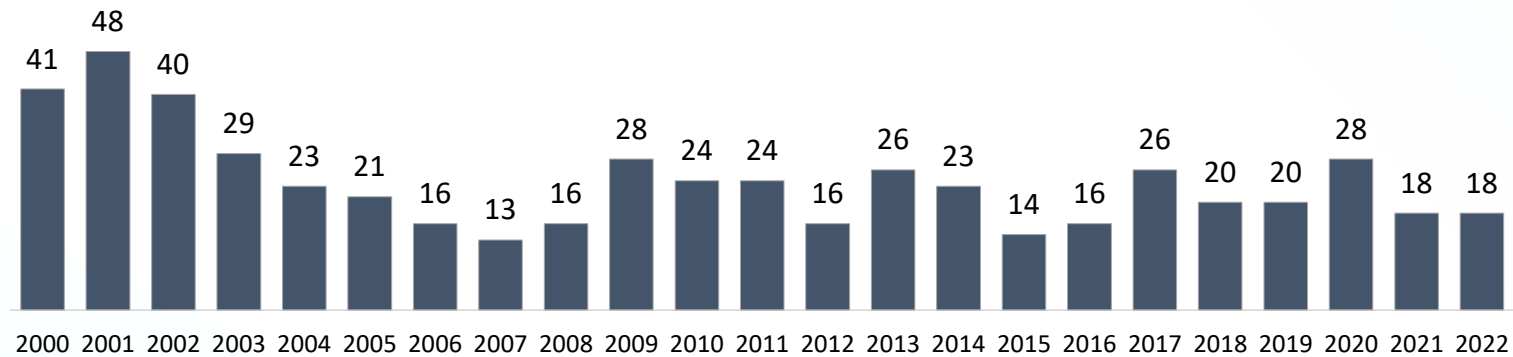
Head of Analytics, Rest of Asia

Gallagher Re

No. of insurer failures by year

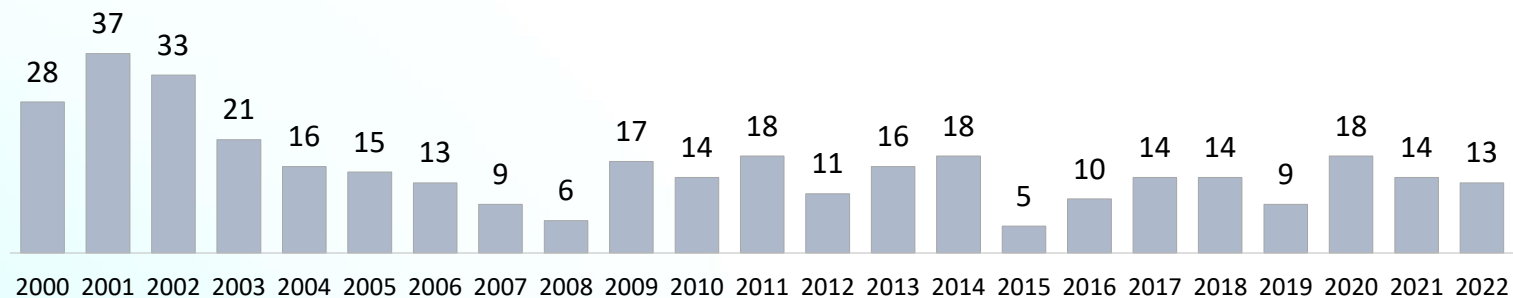
(source: PACICC, Canada)

Total Life, P&C and Composite Insurers



Total P&C Insurers

An average of 16 P&C insurers failed each year

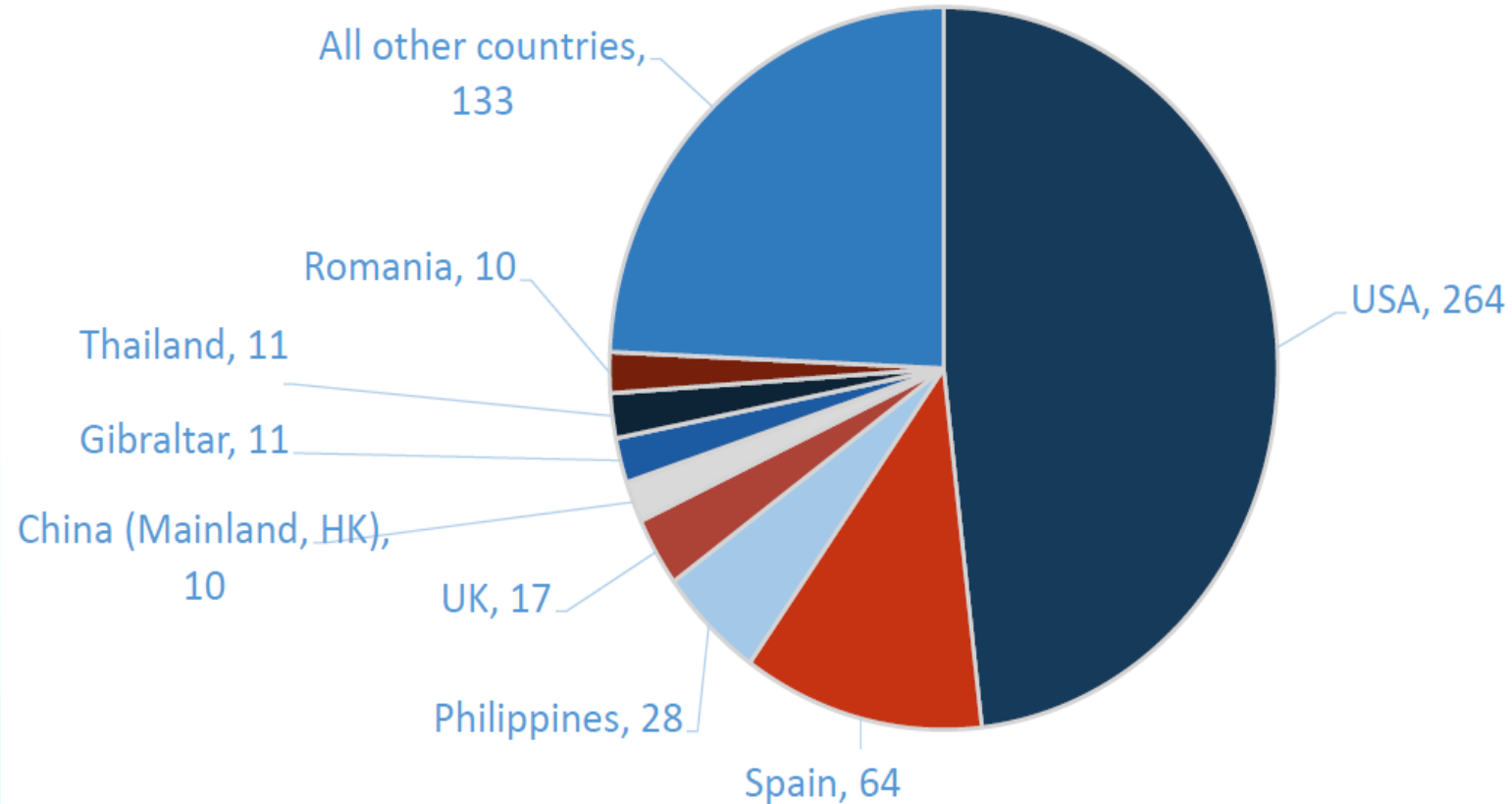


Key observations

- ▶ Between 2000 and 2022, PACICC identified 548 Insurers that failed around the globe of which 369 P&C, 151 Life, 20 Comp, 8 Reinsurer
- ▶ The average number of insurers that failed each year has been quite consistent – approximately 20 per year – since 2005:
 - ▶ 13 P&C; 6 Life; 1 Composite; and One Reinsurer failed, on average, once every two to three years

Insurer failures by country, 2000 - 2022

(source: PACICC, Canada)

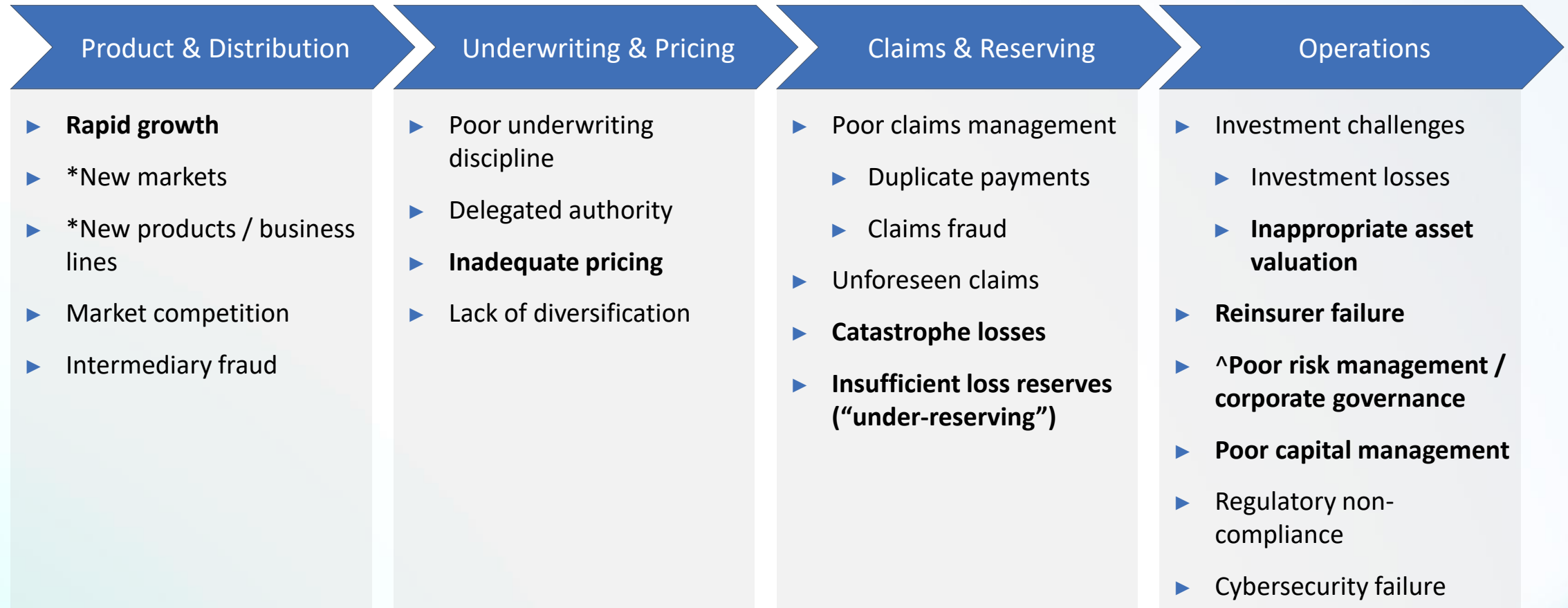


Key observations

- ▶ Insurers failed in clusters. A cluster is defined to be three or more insurers failing within a three-year period. There were 28 jurisdictions that reported a “cluster”
- ▶ Many countries reported long periods of calm between failures:
 - ▶ Malaysia – 14 years (no failures since 2009)

Why insurers fail?

Potential causes of failure across the insurance value chain



Why insurers fail?

Primary cause of failure ranking

Research findings on the failure of insurance companies (1969 – 2009)

Primary Causes	% of Total Identified
Insufficient loss reserves (Inadequate pricing)	34%
Rapid growth (Inadequate pricing)	20%
Alleged Fraud (Intermediary/Claims)	10%
Inappropriate assets valuation	9%
Catastrophe losses	8%
*Significant Change in Business	7%
^Impaired Affiliate	6%
Reinsurer failure	5%
Total Identified	100%

Source: AM Best 1999 Special Report



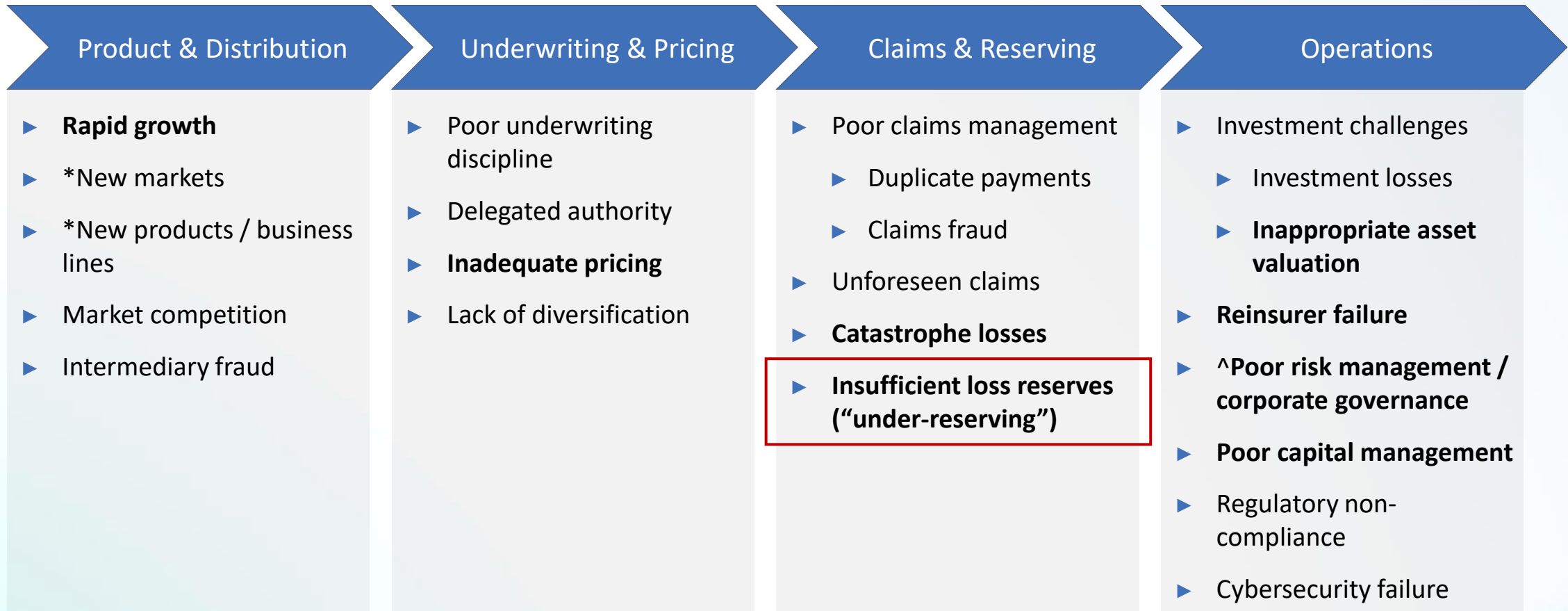
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Key observations

- ▶ Of these companies, 80% are actively writing today and are not in financial difficulty
- ▶ Most of the companies either were very large or were subsidiaries of very large companies
- ▶ Almost all the loss reserve development occurred in commercial lines, including asbestos and environmental (A&E)
- ▶ The long tails of their liabilities gave these companies more time to better evaluate and fund their liabilities, thereby strengthening their financial positions
- ▶ A more robust discussion of risk factors was introduced in mid 2000s

Why insurers fail?

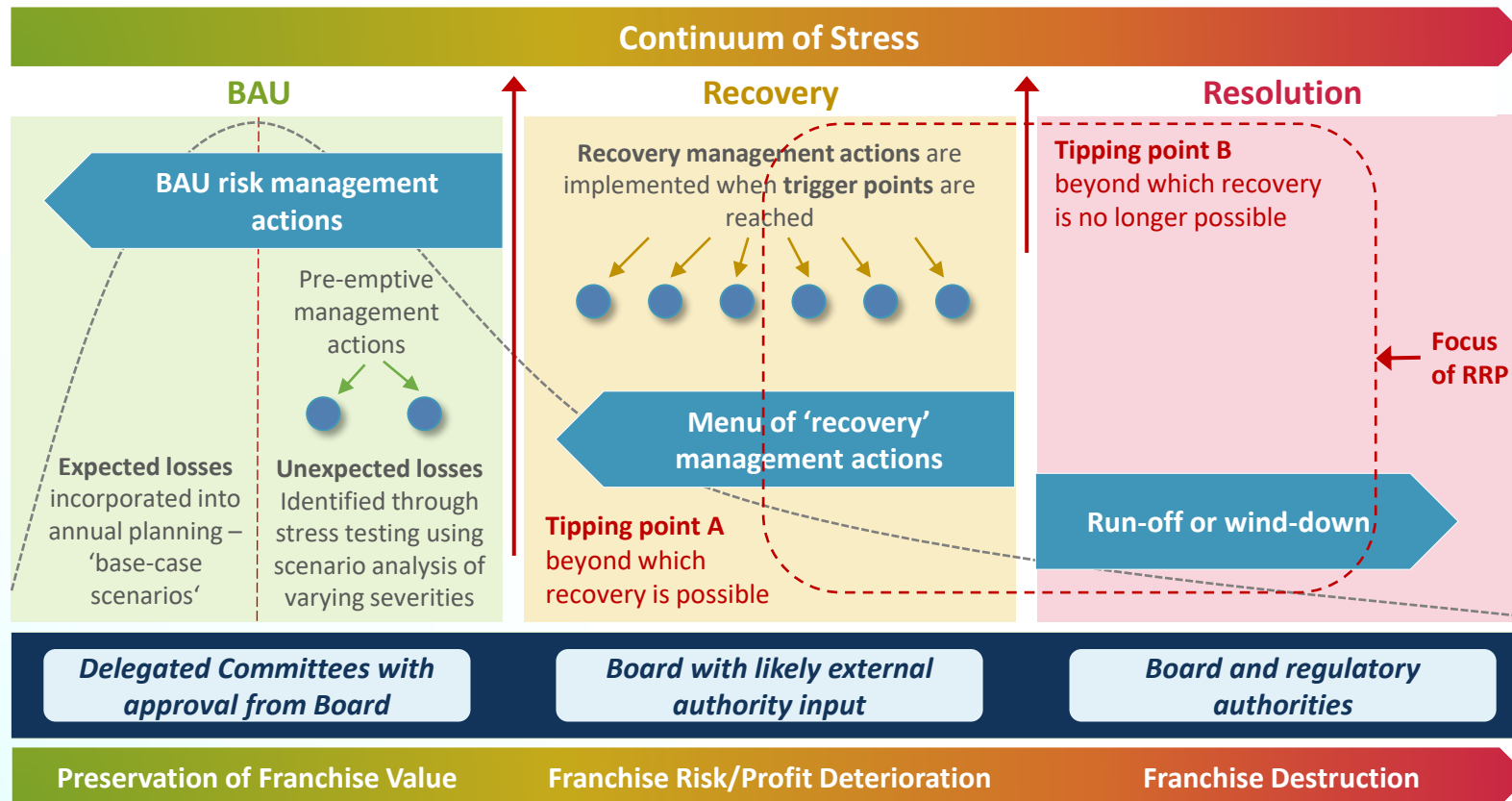
Potential causes of failure across the insurance value chain



Recovery and Resolution Plan (RRP)

Key components of an RRP

Continuum of actions from recovery through to resolution



Resolution of insolvencies – key options

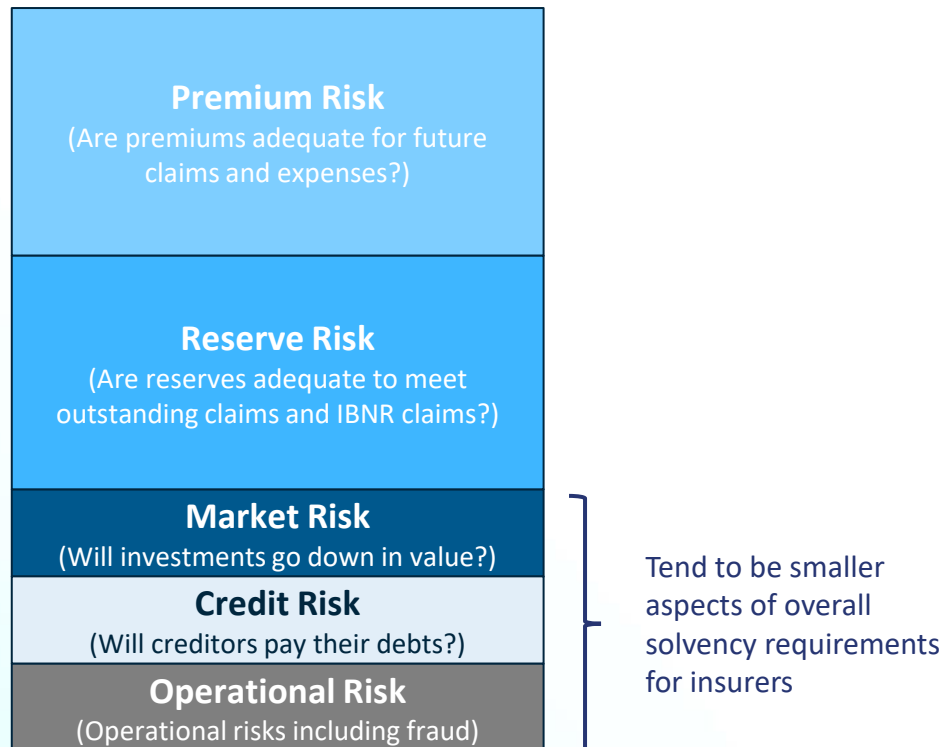
- ▶ Capital raising (debt and/or equity)
- ▶ De-risking the investment portfolio
- ▶ Enhanced use of reinsurance
- ▶ Reduce the volume of new business written / transition into run-off
- ▶ Proactive run-off by actively commuting policies
- ▶ Disposal of subsidiaries or blocks of business
- ▶ Scheme of arrangement – use existing statute or regulation to agree to a compromise that binds all parties

Source: International Actuarial Association Risk Book – Resolution of Insolvencies, April 2016

Capital solvency ratio

A common recovery/resolution plan trigger

Elements of Risk-Based Capital Solvency Requirements

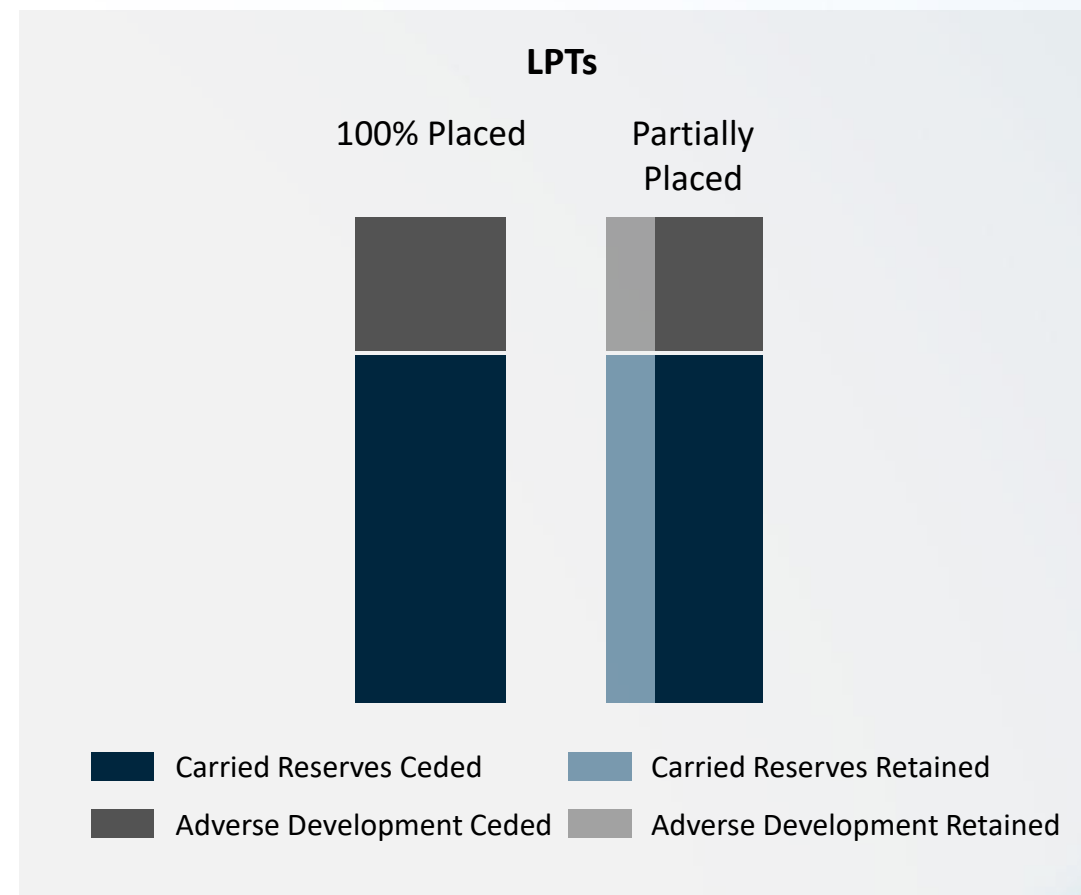


- ▶ The risk-based capital solvency ratio is the commonly used metric in the insurance industry to assess insurers' capital strength
- ▶ Deteriorating solvency margin could signal vulnerabilities in insurers
- ▶ **Loss reserves and associated assets are major contributors to risk-based capital requirements. Proactive management in this area will have a positive impact on solvency / rating**
- ▶ For example, capital efficiencies can be achieved by releasing prior-year reserves via retrospective reinsurance solutions

Preventive resolution strategy

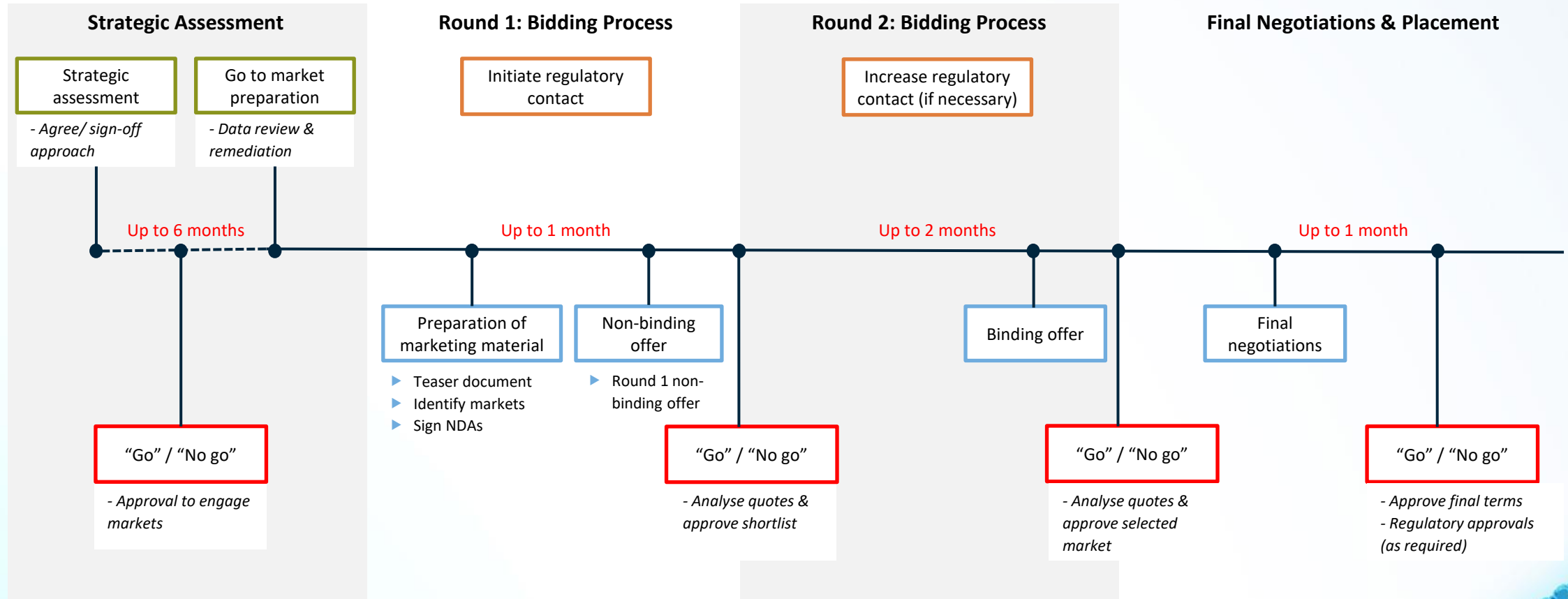
Loss Portfolio Transfer (LPT) as a tool to manage reserve risk

- ▶ Acts like a quota share
- ▶ Can cover 100% of reserves or a defined percentage
- ▶ Original relationship between policyholder and insurer remains in place, so cedant retains exposure to:
 - Contract policy limits (if any), and
 - Reinsurer default risk
- ▶ LPT reinsurers will often take over claims handling
- ▶ Possibility for cedent to release any available reserve redundancy at inception, if cost of cession is less than the value of existing net reserves
- ▶ **Immediate solvency relief for cedant since net reserves are immediately reduced**



The LPT process: timeliness & key milestones

The timelines to complete a transaction will depend on the complexity of the deal and the situation



Retrospective solutions

Key lessons learnt

- ▶ Becoming a standard risk management approach/ toolkit in the West for efficient capital management (Europe & US dominate)
- ▶ Asian deals, however, tend to be ad-hoc and time is required to educate key stakeholders to encourage buy-in
- ▶ There is a significant execution risk if stakeholders are unclear on the processes and requirements
- ▶ As such, there is an increased investment being made by brokers to promote legacy deals
- ▶ Path to placement can be tricky given the various stakeholders (including the regulator); timelines tend to be long
- ▶ Nonetheless, there appears to be growing interest from cedants in the region, as the proposition gains traction and deals are executed

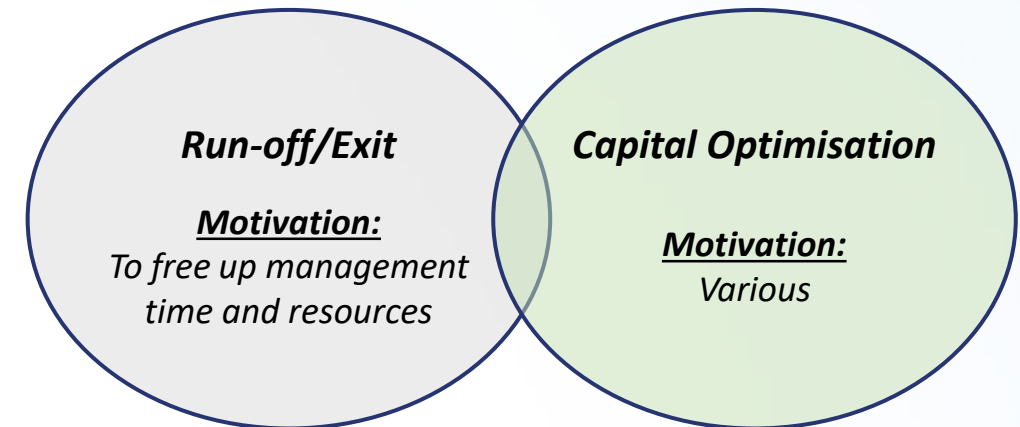
Shift in Motivations

The traditional view:

Associated with distressed business?

The emerging view:

Part of the management toolkit?



Case study

Southeast Insurance, Thai insurance

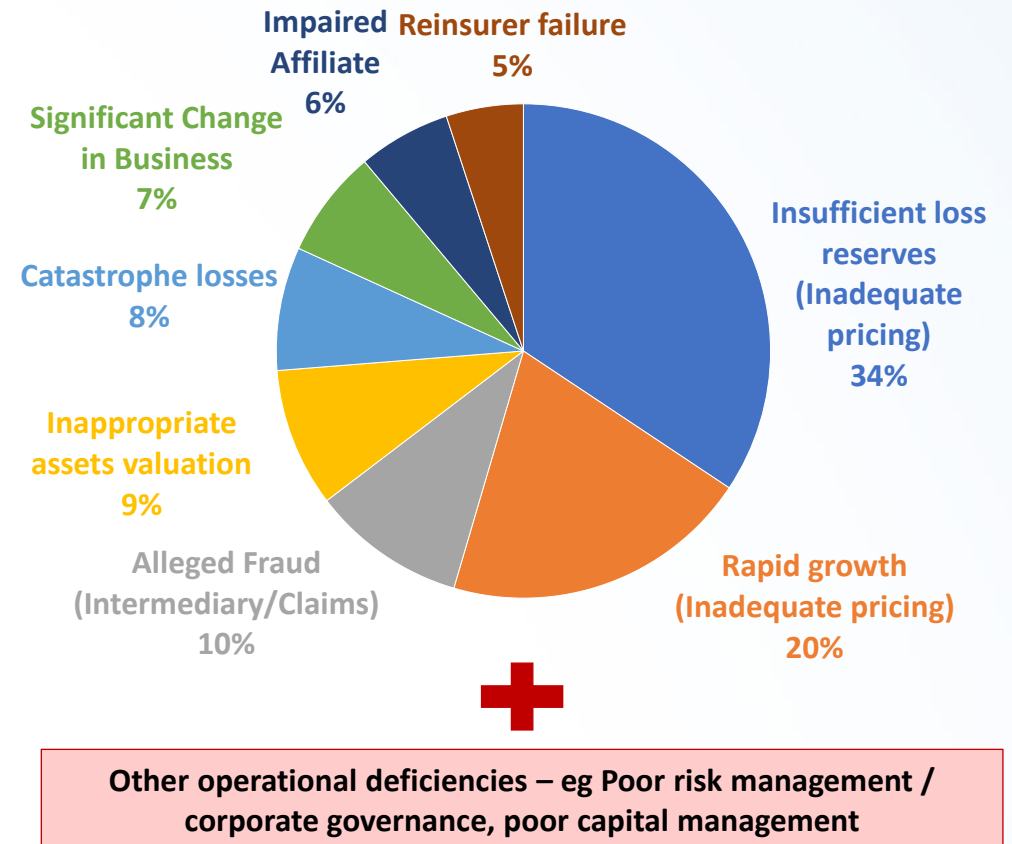
- ▶ Thailand insurers sink into bankruptcy March 2022 due to Covid-19 insurance claims

<https://www.bangkokpost.com/business/2280762/southeast-insurance-thai-insurance-ordered-to-suspend-non-life-policy-sales>



- ▶ Top Thai insurers began selling COVID-19 policies at the onset of the pandemic, on the expectation that the crisis would be short-lived. As prices raced to the bottom, customers jumped at the chance to buy up to 300,000 baht (\$8,900) of coverage for as little as 500 baht per year. In total, Southeast Insurance and Thai Insurance had sold 1.17 million COVID insurance policies, according to the OIC
- ▶ Both Southeast Insurance and Thai Insurance are operated by Thai Group Holdings, which is controlled by billionaire Charoen Sirivadhanabhakdi

Primary causes of failure



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Insurer's Role in Supporting a Merger & Acquisition Transaction or Transfer in a Resolution of Life Insurance Companies

Farzana Ismail, FIA

Principal and Consulting Actuary

Milliman

Addressing the problem - recovery measures for life insurers

Solutions will need to be tailored to the circumstances giving rise to the financial situation



Restructure	Improve liquidity	De-risk	Raise capital
Portfolio transfer	VIF monetization	Reinsurance	Equity and debt
Closure	ILS (insurance linked securities)	Capital markets	Contingent capital
Group restructure	Investment portfolio rebalancing	Investment strategy	Group finance
Other options	Product structure		Off-balance sheet
	Other options		

VIF: Value in-force



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Restructuring

Addressing the problem – recovery measures



By changing the structure of insurance companies or groups, capital and liquidity can be raised.



Alternatively capital requirements can be reduced through the disposal of capital-intensive business or by achieving capital efficiencies through increased diversification benefits (if the regulatory regime allows for this). E.g., Groups can set up branch structures whereby subsidiaries are grouped under a single head office to maximise diversification benefit.



Group can dispose certain entities or lines of business for strategic reasons, which can then result in M&A deals or public listing of insurers.



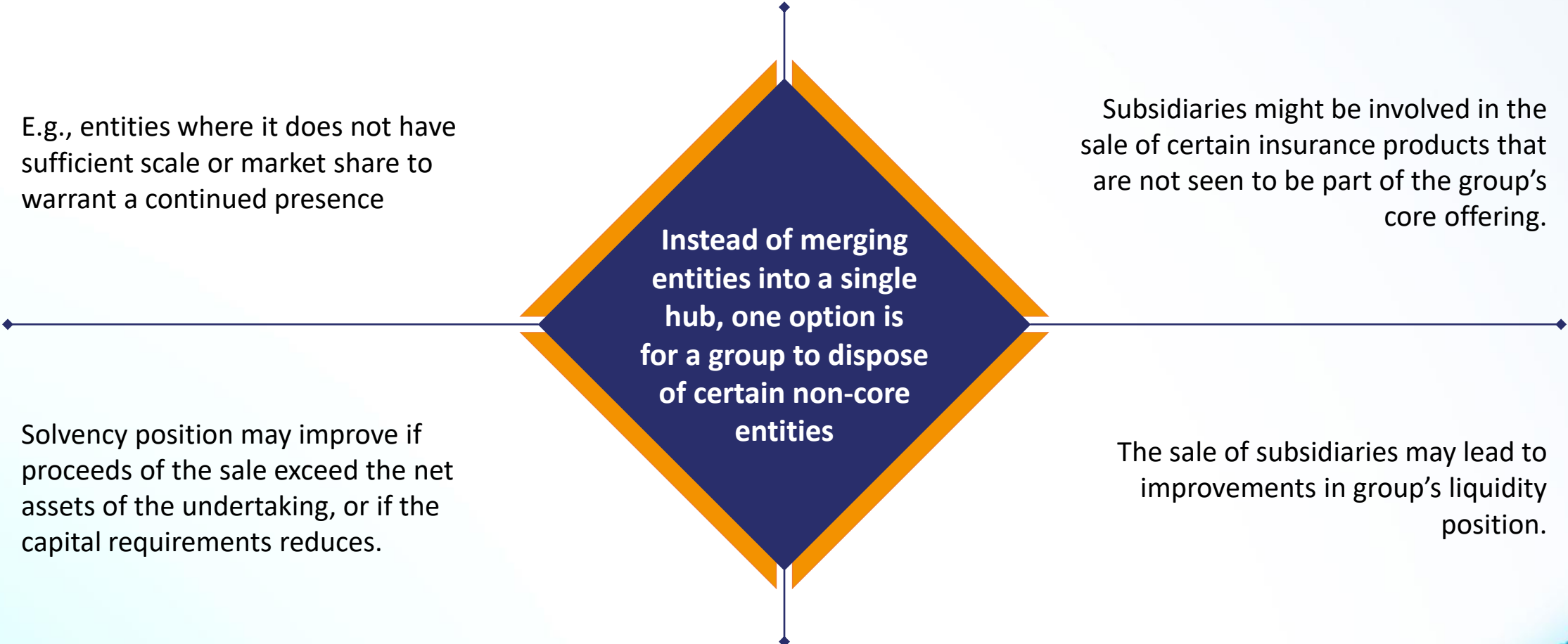
The funds generated by these activities can help repay debt and/or help to resolve the financial difficulties.

Mergers and acquisitions

Addressing the problem – recovery measures

E.g., entities where it does not have sufficient scale or market share to warrant a continued presence

Subsidiaries might be involved in the sale of certain insurance products that are not seen to be part of the group's core offering.



Instead of merging entities into a single hub, one option is for a group to dispose of certain non-core entities

Solvency position may improve if proceeds of the sale exceed the net assets of the undertaking, or if the capital requirements reduces.

The sale of subsidiaries may lead to improvements in group's liquidity position.

Case study - Aviva

As part of Aviva's strategy is 'Not everywhere – focusing only in markets and segments where we can win'



In 2014, Aviva disposed of a number of shareholdings, including holdings in life assurance entities in South Korea, Spain and Italy'



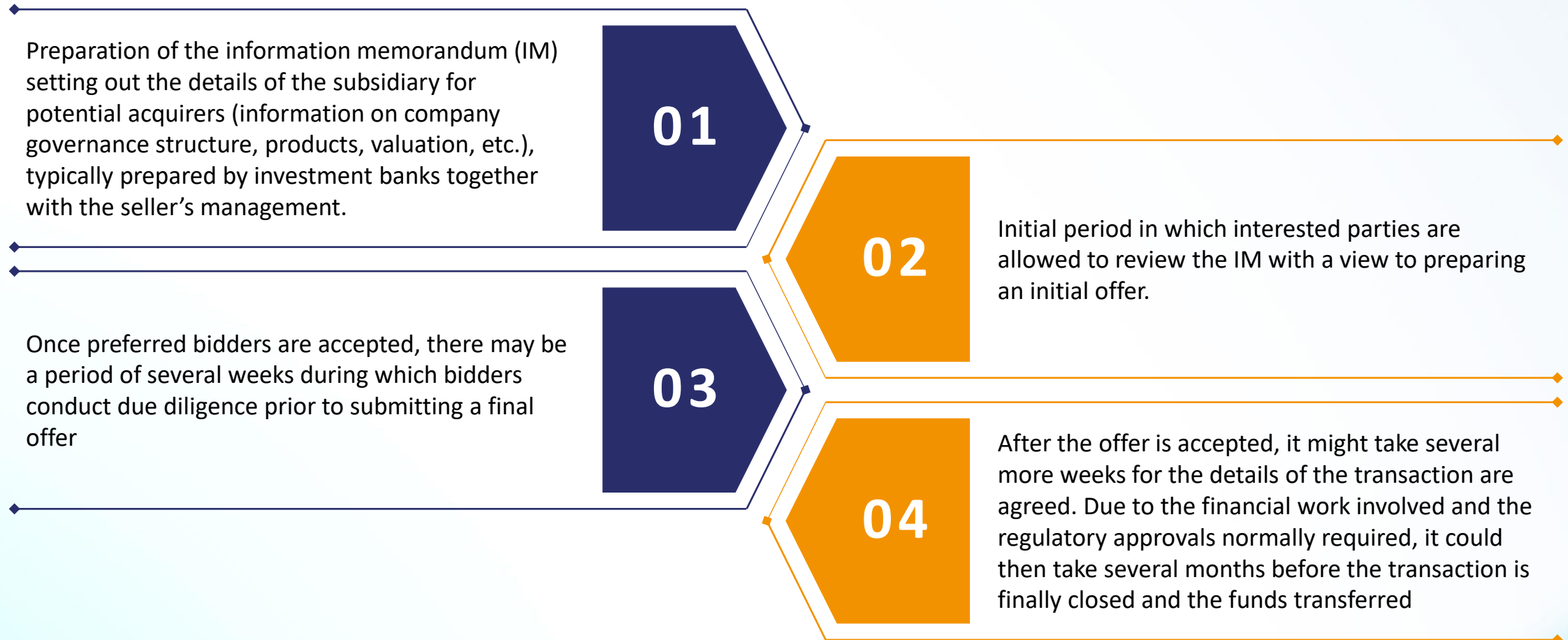
At the same time, in Indonesia, it entered a joint venture with another party (Astra International Tbk) to form Astra Aviva Life.



It has also strengthened its position in the UK market via the acquisition of Friends Life in 2015.

M&A process

Sale process to dispose a subsidiary can take several months, or even years in some cases



Insurer's role in a M&A transaction

Sale of a subsidiary or portfolio transfer: pre-transaction



Often, **only a few key personnel from the subsidiary will be involved** given that the sales process is highly confidential.



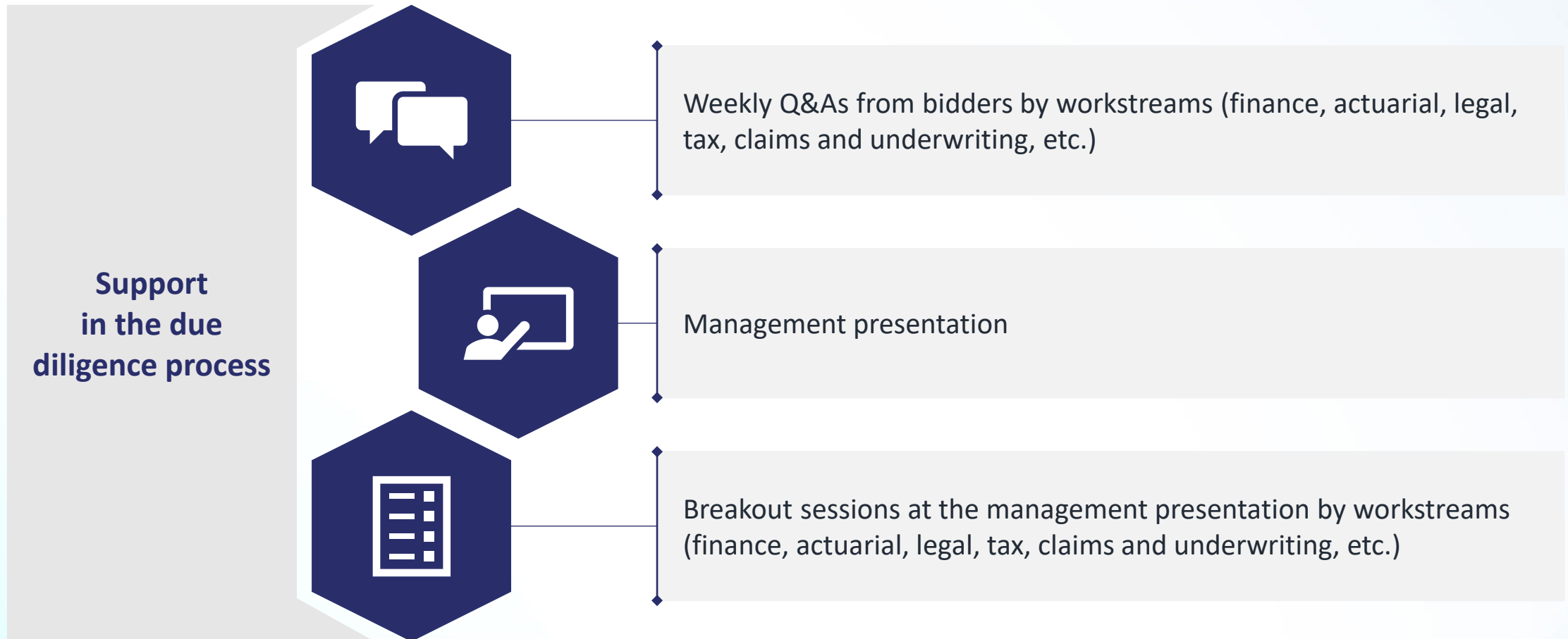
Support in providing data to the external consultant who will be performing the 'independent valuation of the subsidiary / portfolio'. Typically, a valuation report will be shared to the bidders in the process for bidders to form a view on the value of the entity / portfolio.



Providing data and information on the insurer or portfolio to be transferred. This is typically uploaded in a 'virtual data room' (typically hosted by the investment bank).

Insurer's role in a M&A transaction

Sale of a subsidiary or portfolio transfer: during transaction



Insurer's role in a M&A transaction

Sale of a subsidiary or portfolio transfer: post transaction



Integration to the buyers' Group

- ◆ Is the buyer an existing player in the same market?
- ◆ Product integration (e.g., duplicate products?)
- ◆ IT integration
- ◆ Teams integration
- ◆ If subsidiary was using 'shared system / services', there would be a 'transitional period'
- ◆ New reporting requirements?



Implementation / Change in strategy

- ◆ Change in management
- ◆ Product strategy
- ◆ Distribution strategy
- ◆ Etc.

M&As and Portfolio Transfers

The availability of this option will depend on the attractiveness of the business to the bidders and on the general economic outlook at the time of a proposed sale.

Case study: AIG, Asia focus

In Asia, AIG had holdings in a number of insurance companies, in particular AIA, which operated in several Asian countries. AIG was required to dispose certain assets (including AIA) to repay the Federal Bank of New York.

Trade sale options for AIA were explored in 2009, but bids were disappointing given the global financial crisis.

In March 2009, AIA was placed in an SPV, with the Federal Reserve Bank of New York gaining preferred interests.

In June 2009, the Federal Reserve Bank of New York agreed to receive US\$16 billion of preferred equity in the SPV.

In 2009, the Philippine Life and General Insurance Company (Philam Life) was folded into AIA instead of being disposed of separately (Philam Life also formed part of the AIA SPV).

It was then decided to pursue an IPO for AIA.

Case study: AIG, Asia focus (continued)

April 2010	IPO was initially scheduled
March 2010	Prudential announce that it had reached a deal to purchase AIA for US\$35.5 billion (although there were still many hurdles that Prudential still had to negotiate before finalizing the deal e.g., perceived high level of purchase price agreed, Prudential investors' reluctance to sanction the deal at such a price without there being a clear strategy)
June 2010	Prudential attempted to renegotiate the deal at a lower price US\$30.4 billion but AIA declined the revised offer and the deal collapsed. AIG opted to move ahead with an IPO. <ul style="list-style-type: none"> • Collapse of the deal costs prudential GBP 450 million through the triggering of a break-free clause that Prudential had agreed to pay AIG if the deal did not proceed, as well as the costs associated with the deal (e.g., underwriting and investment bank costs). • Prudential was fined GBP 30 million by the UK Financial Services Authority for failing to inform the regulatory of its acquisition plans in due time.

July 2010	IPO process restarted
October 2010	IPO completed and AIA was listed on the Hong Kong stock exchange.
March and Sep 2012	AIG sold further stakes in AIA for US\$ 8 billion
December 2012	AIG sold its final stake in AIA for US\$6.5 billion <ul style="list-style-type: none"> • Third largest IPO on record at that time • IPO raised US\$20.5 billion for a 58% stake of AIA (which was used to make repayments to the US taxpayer)
2011	Two Japanese subsidiaries (AIG Star Life Insurance and AIG Edison Life Insurance) were sold to US Group Prudential Financial for ~US\$ 4.8 billion
2011	The sale of Taiwanese insurer, Nan Shan, to Ruen Chen Investment Holding Co earned US\$2.15 billion which was repaid to US taxpayers
March 2013, Dec 2015, May 2016 and Sep 2016	AIG disposed its shares in in Chinese Insurer PICC P&C for US\$500 million, US\$750 million, US\$1.25 billion and remaining shares of US\$192 million

Case study: Equitable Life

Oldest mutual in the UK, established in 1762

Equitable life had total assets of GBP34 billion in 1999

Policies with guaranteed annuity rates (GARs)

In 1990s, market rates fell below the guaranteed rates –
Equitable life did not have enough reserves to meet claims

Policyholders took Equitable Life to court, who ruled against
the company

Company closed to new business in Dec 2020

Attempts to find a buyer was unsuccessful, given the nature
of the in-force GARs

Bank of England historic interest rates



Source: www.bankofengland.co.uk

Case study: Equitable Life (continued)

Oldest mutual in the UK, established in 1762



In 2001 and 2002, Equitable Life received from Halifax GBP 500 million in 2001 and a further GBP250 million in 2002 in exchange for a portion of the company's assets, staff and operations

2002: A 'compromise scheme' was implemented, whereby policyholders were given uplifts to their policy values and the open-ended GAR liabilities were removed from Equitable Life's balance sheet

The company sold its subsidiary, Permanent Insurance, to Liverpool Victoria Friendly Society, raising GBP 150 million.

Implemented several other measures to improve its positions e.g.

- Reduction in policy values in 2001, which ultimately required a government compensation scheme to be established to compensate policyholders who were unfairly treated.
- The company increased surrender penalties to 20% in 2002, in an attempt to curb lapses and protect remaining policyholders.



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Case study Japan: industry rescue of Nissan Life

Between 1997 – 2001, seven life insurers in Japan failed. They represented around US\$250 billion assets or 13% of the private life insurance sector in Japan.

1997: Nissan Life had a deficit of around US\$2 billion or ~15% of reported liabilities.

New sales suspended, surrenders were temporarily banned.

Life Insurance Association of Japan (LIAJ) played a leading role in developing a solution:

- Creation of new insurance company, owned by LIAJ ('Aoba' Life)
- Replacing senior management of Nissan
- Reduction of policyholder interest rate guarantees to 2.75% (from 5-6%)
- Additional surrender charge applied (grading from 15% to 0% over 7 years)
- Transfer of restructure policies to Aoba
- Contribution of JPY200 billion asset from LIAJ member companies (via a Policyholder Protection Fund established in 1996)
- This created a viable runoff company that was later sold to Artemis

Case study Japan: judicial resolution and a designated white knight



Trustee to identify a potential 'white knight' (relief insurance company). Once a 'white knight' was identified, the following restructuring components were determined, through a negotiation and due diligence process:

- Capital provided by the white knight
- Level of financial assistance provided by the Policyholder Protection Corporation
- New policyholder terms e.g.,
 - Policyholder reserve / cash value reduction
 - Reduction in guaranteed interest rate
 - Level of early surrender charge
 - Possible policyholder participation in future upside (dividends)

Many legal structures for the relief company could be possible e.g., relief company may directly acquire shares of the insolvent company, the insolvent company may be merged into the relief company, or insurance policies may be transferred to the relief company.

Case study Japan: judicial resolution and a designated white knight

Trustee would aim to negotiate with the relief company to minimize contribution of the PPC while mitigating the negative policyholder impacts.

Elements of restructuring plans for three insolvencies in Japan

INSOLVENT COMPANY	CHIYODA LIFE	KYOEI LIFE	TOKYO LIFE
"WHITE KNIGHT"	AIG	PRUDENTIAL (US)	T&D HOLDINGS
DATE OF INSOLVENCY	OCT 13, 2000	OCT 23, 2000	MARCH 31, 2001
DATE OF RESOLUTION	APRIL 20, 2001	APRIL 3, 2001	OCT 19, 2001
ASSETS (JPY BILLIONS)	2,233	3,725	690
LIABILITIES (JPY BILLIONS)	2,828	4,414	763
DEFICIT (JPY BILLIONS)	595	689	73
POLICY RESERVE REDUCTION	10%	8%	0%
INTEREST GUARANTEE ⁸²	1.50%	1.75%	2.60%
PPC FUNDS PROVIDED	0	0	0

Source: Life Insurance Association of Japan

Overall observations

Lessons learned

It is important not to underestimate the time, cost and effort required under M&As / transfers of portfolio / restructuring process.

Early action helps preserve policyholder value

Benefits of an institutionalized, well-defined process

Think holistically; reflect on all sources of value

THANK YOU

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Insurance and Takaful Resolution

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Content

01 Legal Overview - Transaction Process & PIDM's Powers

02 Pre-Transaction Legal Considerations

03 Key Issues in Transaction Documents

04 Post-Merger Key Legal Considerations

05 Summary and Q&A



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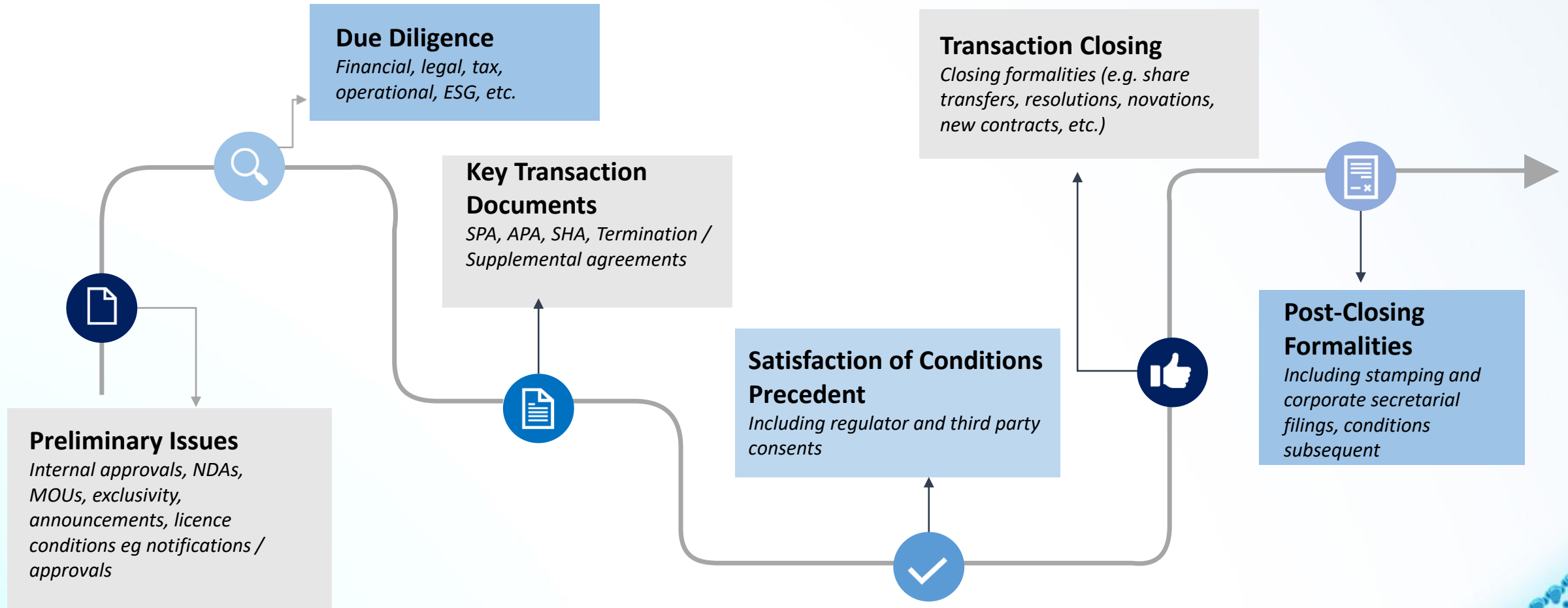


01

LEGAL OVERVIEW

- *Transaction Process*
- *PIDM's Powers*

Legal overview: transaction process



Legal overview: PIDM's resolution powers (under s99 PIDM Act)



A background image of a city skyline, likely Shanghai, featuring several prominent skyscrapers under a blue sky with light clouds. The buildings are rendered in a slightly desaturated, blue-tinted style.

02

PRE-TRANSACTION CONSIDERATIONS

- *Key Legal Considerations*
- *Legal Due Diligence*

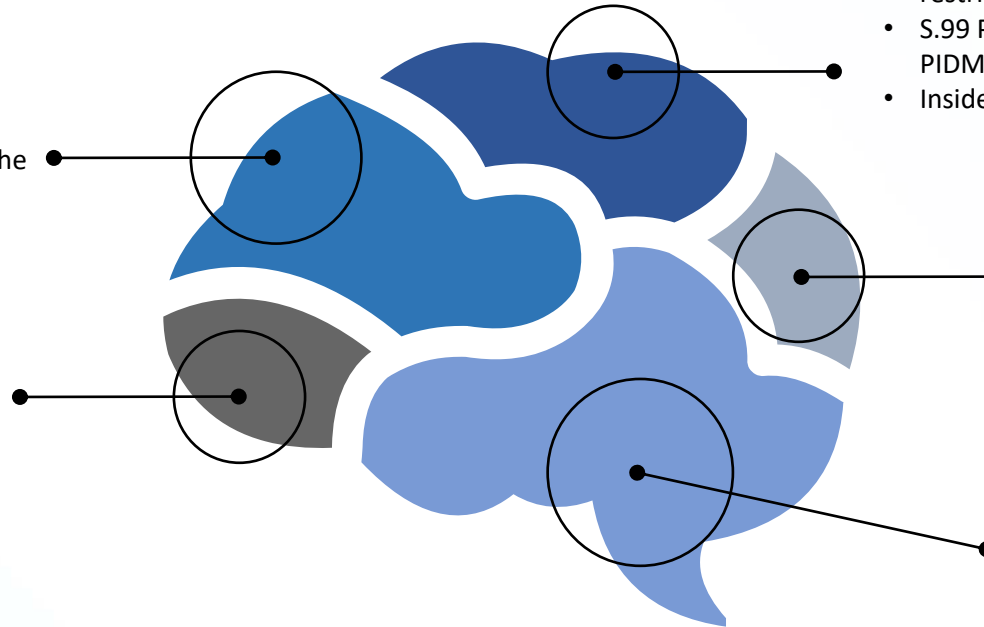
Pre-transaction: key legal considerations

BNM Shareholding Gaps

- Typically, BNM's approval is required for the acquisition of interest in shares of an MI.
- However, S.86 FSA 2013 (and IFSA) provides an exception to PIDM, its subsidiary, a bridge institution or any person appointed by PIDM to take over an MI.
- Nonetheless, Acquiror's notification to BNM on the acquisition of interest in shares of an MI is still required.

Acquiror Getting its Own Approval to Acquire Failing MIs

- S.86 FSA 2013 (or IFSA) exemption does not extend to the acquiring entity,
- Acquiror needs to obtain its own shareholders' approval to acquire.
- Requirements under BMLR, CA 2016, LOFSA, if applicable.



Insider Trading Concerns

- S.193 CMSA does not explicitly permit PIDM (or its subsidiaries or any person appointed by PIDM) to circumvent insider trading restrictions.
- S.99 PIDM Act + possible contention that acquiring shares through PIDM Act is an act made pursuant to written laws.
- Insider trading still applies to Acquirors.

Secrecy Provisions & Data Privacy

- PIDM is explicitly exempted from secrecy provisions under the FSA (and IFSA).
- If the Acquiror is another bank, exemption is not as straightforward.
- Due diligence exercises approved by the Board of Directors for asset or business sales are also exempt, provided Board approval is obtained.
- PDPA considerations.

Competition Law Considerations

- Currently no merger control regime for banking or insurance industries.
- MyCC proposing a general merger control regime for all industries.
- No exemption for mergers related to non-viable MIs instructed by PIDM.
- Options include legislative solutions, engaging MyCC, establishing clean teams for due diligence, and involving competition counsels early in the transaction.

Purpose of legal due diligence



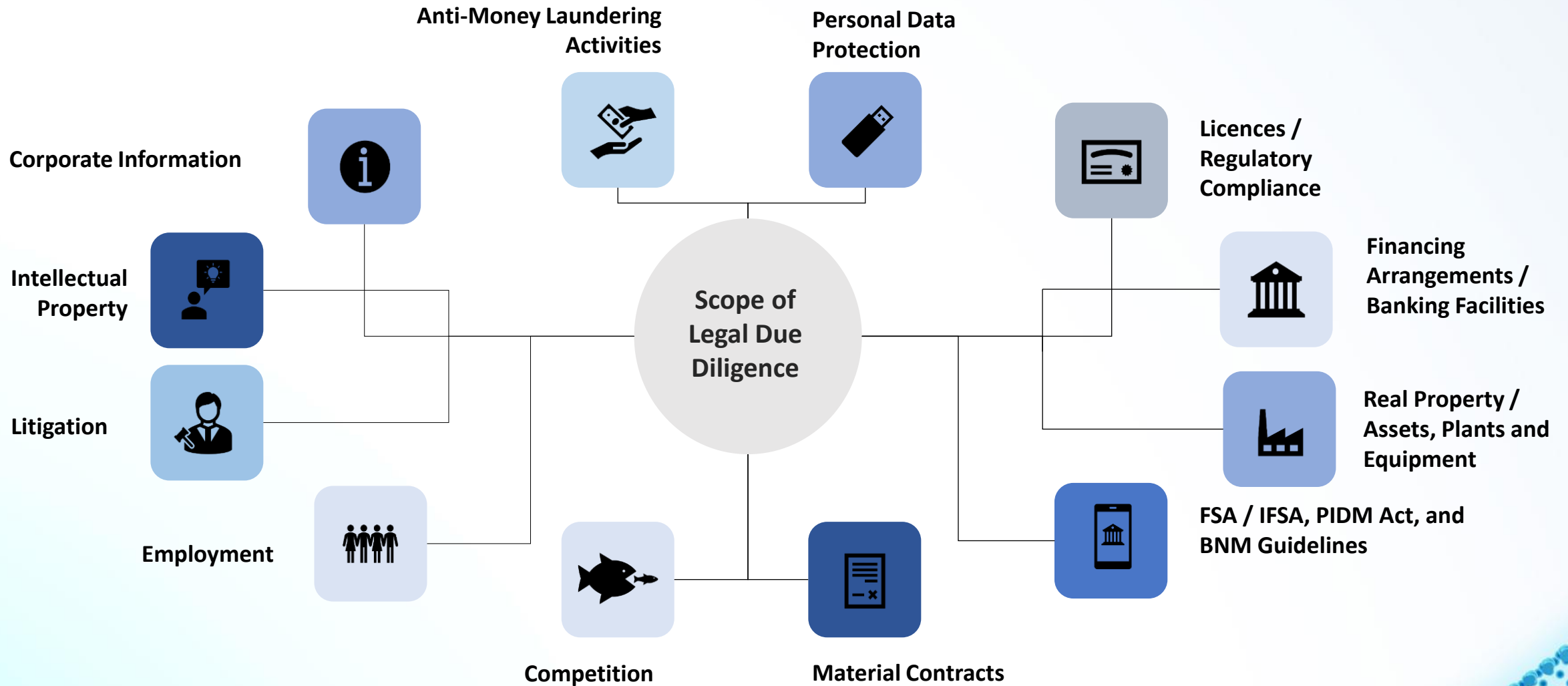
Risk assessment, Governance, Duty, MI interests

One of the main purposes of a legal due diligence exercise is for the Acquiror to **assess the potential risks** of a transaction by investigating the legal obligations and liabilities of the target company.

This provides **objective** and **reliable** information to a potential Acquiror as to whether to **proceed** with the transaction or **ring fence, exclude or limit** the risks, negotiate **warranties** and **indemnities**, or adjust the **purchase price**.



General scope: legal due diligence



A panoramic view of the Shanghai skyline under a clear blue sky with light clouds. The Shanghai Tower is prominent in the upper center, the Shanghai World Financial Center on the left, and the Oriental Pearl Tower on the right. A white rectangular box is overlaid in the center of the image.

03

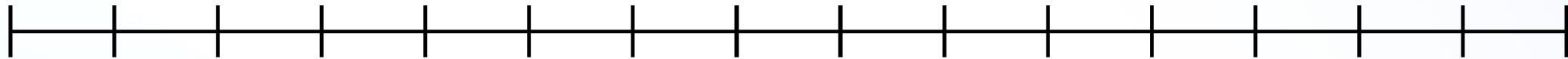
KEY ISSUES IN TRANSACTION DOCUMENTS

Key issues in transaction documents



Healthy target company

- Focus on getting a good deal, consideration heavily negotiated.
- Buyers seek reps, warranties & indemnities, CPs, pre-completion undertakings, earn outs, to mitigate risks.
- Sellers seek limitation of liabilities – quantum, time & scope; W&I.



Distressed target company

- Consideration is squeezed.
- Acquisition on an *as is, where is* basis.
- No business-related warranties. Only basic warranties (i.e. title to shares) may be provided, if at all.
- Little protection for buyer, more structuring may be required, eg selective asset acquisition.



A panoramic view of the Shanghai skyline under a clear blue sky with light clouds. The Shanghai Tower is the tallest building in the center, flanked by the Shanghai World Financial Center on the left and the Oriental Pearl Tower on the right. Other skyscrapers are visible in the background.

04 POST-MERGER INTEGRATION

- *Key Legal Considerations*

Post merger integration: key legal considerations

Regulatory

- Whether non-viable MI should remain a separate legal entity from Acquiror, or merge in to Acquiror's group.
- Consider the need to obtain new licences, approvals & permits.
- Shareholder equity restrictions.
- Capital / liquidity requirements, and time frames.
- BMLR requirements.
- Conduct – anti-competitive, data privacy, governance.

Employment

- Reporting structures, overlaps, terminations.
- Transferred employees must retain or receive no less favourable terms.
- Integration of failed MI's employment terms with Acquiror's terms.
- Union rights, obligations, claims.
- Redundancies likely require severance payments (<RM4k vs >RM4k employees: Employment Regulations vs employment contracts).
- Support and skill set to implement merger – beyond scope of work?

Contractual Rights

- Novate vs new contracts (eg stamp duty costs, availability of signatories, timing).
- Rights to use – approvals & consents – internal & external (eg credit/financing agreements may require notice or approval for the integration process, updates to security arrangements, data, IP, assets, software).
- Variance in MI's processes vs Acquiror's internal requirements (eg contract limits, vendor lists).
- Third party suits & claims.

A panoramic view of the Shanghai skyline under a clear blue sky with light, wispy clouds. The image features several prominent skyscrapers, including the Shanghai Tower (a twisting tower), the Shanghai World Financial Center (a tower with a large trapezoidal opening at the top), and the Oriental Pearl Tower (a tower with three large spheres). The buildings are rendered in shades of blue and grey, with some reflecting the sky. The overall scene is bright and clear.

05

SUMMARY

Summary

1. Regulatory landscape – PIDM, BNM, SC, JPDP, MyCC, MACC, Bursa
2. Legal issues – contractual obligations, DD findings, disputes, employees
3. Practical considerations – tight timelines, incomplete information, potentially significant liabilities, shareholder approvals, integration

THANK YOU

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Mr. Lau Sie Liang
Gallagher Re



Panelist
Ms. Farzana Ismail
Milliman



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THANK YOU