



Perbadanan Insurans Deposit Malaysia
Protecting Your Insurance And Deposits In Malaysia

NRS | NATIONAL RESOLUTION SYMPOSIUM 2023

18-19 October



PARALLEL MASTERCLASS SESSION: Bank Resolution – Facilitating Stressed Mergers & Acquisition / Purchase & Assumption



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NATIONAL RESOLUTION
SYMPOSIUM 2023



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Root Causes of Bank Failure and Transfer Process

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<https://srb.europa.eu>

Disclaimer:

The views presented are those of the presenter and should not be understood or quoted as being made on behalf of the Single Resolution Board.

How do banks fail?

- Banks fail for a variety of different reasons. One reference is CAMELS - a six-part rating system to evaluate banks' overall condition capturing many of the key factors.



Capital
Asset quality
Management expertise
Earning strength
Liquidity
Sensitivity to market risk

Recent crisis cases show the importance of liquidity

US Cases

- Bank failures of SVB, Signature Bank and First Republic Bank were driven by extremely rapid deposit flight.
- Banks were transferred with FDIC support to acquirers.
- The US launched the Bank Term Funding Program to “support American businesses and households by making additional funding available to eligible depository institutions to help assure banks have the ability to meet the needs of all their depositors.”

Credit Suisse

- At the time of failure, Credit Suisse remained well capitalised.
- However, loss of customer confidence and significant market pressure in early 2023 led to its takeover by UBS.
- To support this takeover, the SNB provided Credit Suisse and UBS with liquidity assistance credit limits of up to CHF 250 billion. Of this amount, CHF 100 billion were backed by a federal default guarantee. Loss protection were also provided by the Swiss Government.

Previous SRB resolution cases

Banco Popular Español (2017)

BPE: The SRB's first case

The BPE case demonstrated that resolution can succeed. The General Court has confirmed the legality of the SRB's decision to adopt a resolution scheme regarding Banco Popular Español and the European Commission's endorsement of that resolution scheme, both of which implement the resolution legal framework.

SRB Decision:

- Positive Public Interest Assessment: resolution
- Sale of business tool – sale to Banco Santander for EUR 1, after the write-down of equity and AT1 instruments, and conversion of T2 instruments into shares

Sberbank AG (2022)

Sberbank: A successful, yet unique case

Sberbank Europe AG (AT, with a branch in DE) was the direct EU subsidiary (total consolidated assets EUR 12.9bn) of Sberbank Russia and the parent company of entities in the EU (in the BU – SI, HR and outside BU – HU, CZ) and outside the EU. Although the size of the bank was modest compared to other institutions under the SRB's remit, complexity arose from the cross-border dimension of the group.

SRB Decision:

SRB applied the moratorium tool to have sufficient time needed to conduct the PIA for the different entities, devise the best strategies for each of them and ensure their effective application.

- Sberbank Europe AG had no critical functions and had a low footprint in Austria, whereas the main impact on financial stability or a critical function was identified in other EU countries. Sberbank Europe AG was subject to orderly wind down.
- Sale of Business Tool was applied to subsidiaries in SI and HR.
- Failures of subsidiaries outside the BU were managed by relevant national authorities.

Managing failures: what are the resolution tools?

HELP TO PROTECT MARKETS AND CITIZENS FROM FUTURE CRISES

Different tools can be used to safeguard public interests, including the continuity of the bank's critical functions and financial stability, at minimal costs to taxpayers

SALE OF BUSINESS

Shares or other instruments of ownership, or all or any assets, rights and liabilities can be sold to a potential purchaser.

Art. 24 of SRMR
Art. 38-39 of BRRD

BRIDGE BANK TOOL

Shares or other instruments of ownership, or all or any assets, rights and liabilities can be transferred to a temporary entity, which is wholly or partially owned by one or more public authorities, and is controlled by the resolution authority.

Art. 25 of SRMR
Art. 40-41 of BRRD

ASSET SEPARATION TOOL

Assets, rights and liabilities can be transferred to an asset management vehicle, wholly or partially owned by one or more public authorities.

Art. 26 of SRMR
Art. 42 of BRRD

BAIL-IN

Equity and debt can be written down and converted, placing the burden on the shareholders and creditors of the bank rather than on the public.

Art. 27 of SRMR
Art. 43-44 of BRRD

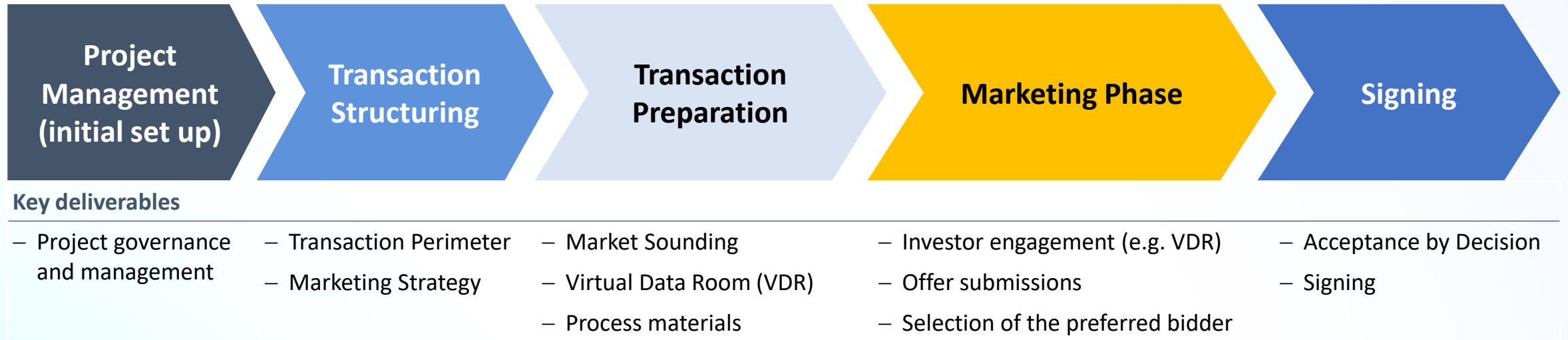
Details on the resolution transfer tools

What are the pre-conditions, and what is not needed, for successful use of the resolution tools?

	SALE OF BUSINESS	BRIDGE BANK TOOL	ASSET SEPARATION TOOL
Pre-conditions	<p>Consent of the potential purchaser</p> <p>Compliance with BRRD marketing criteria; except in a limited number of factual circumstances</p>	<p>Consent of the bridge institution (under the control of the RA)</p>	<p>Consent of the bridge institution (under the control of the RA), in case of implementing the bridge bank tool as well</p>
Not needed	<p>Consent of the shareholders of the Institution under resolution</p> <p>Consent of any third party</p> <p>Compliance with any procedural requirements under company or securities law</p>		

Illustrative market standard transfer process

The due diligence and marketing processes are inherently intertwined



Challenges and uncertainties:

Uncertainty about investor interest and capacity:

- The resolution authority must be able to engage efficiently with potential investors to measure their interest and capacity to transact, drawing both on experience from resolution planning process and on market practices in going concern

Uncertainty about underlying asset quality:

- The resolution authority may have to improve the risk profile of the (f)ailing bank to meet investors' capital and/or risk management constraints. Its options include a loss sharing agreement, carve-outs and/or partial transfers

Uncertainty about available time:

- While available time will always be an uncertainty, the following can lend support:
 - Continuously increasing resolution preparedness with rigorous planning and testing
 - Efficient use of templates and tools
 - Resort to bridge bank tool as fall-back option
 - Integrate requirements and steps to realise synergies across the preparation for and potentially execution of different resolution tools

Conclusions

- Executing a transfer transaction requires significant work and planning.
- Ensuring firms have relevant capabilities is critical, as is having sufficient flexibility to manage the unique circumstances of a given resolution case.



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Challenges and Key Success Factors

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Agenda

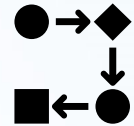
1

Recent key divestments by large international banks



2

Challenges faced during divestments and in post deal integratoin



3

Key success factors and lessons learnt



What is driving banking divestments?



Sale of retail banking business in the Canada, France and branch operations in Greece while acquiring AXA Singapore

“Ambition to **grow the wealth management business** across Asia and plays to its strength as an **Asia-centered bank**”

Surendra Roshia, Co-CEO, Asia-Pacific at HSBC



Regional sale of the bank in multiple markets including Malaysia, Indonesia, Vietnam and Thailand to UOB

“We want to **close the return gap with our peers**, and to do that you take a candid assessment of **which of the businesses that you’re going to be in a position to succeed in winning, and which ones are perhaps in better hands with another bank**”

Jane Fraser, CEO, Citi

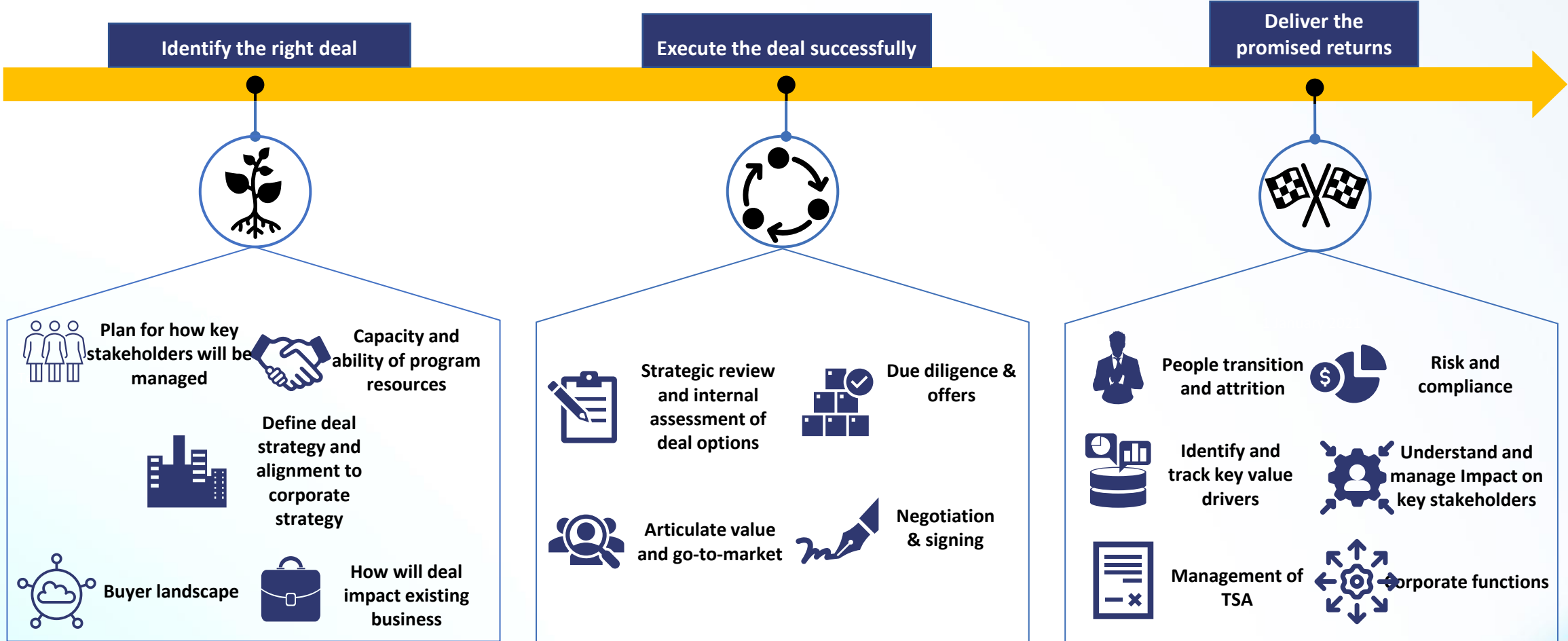


Announced sale of the subsidiaries in Angola, Cameroon, The Gambia, and Sierra Leone, and its Consumer, Private & Business Banking (CPBB) business in Tanzania







“This strategic decision allows us to **redirect resources within the AME region to other areas with significant growth potential**, ultimately enabling us to better support our clients”

Sunil Kaushal (Regional CEO, Africa & Middle East)

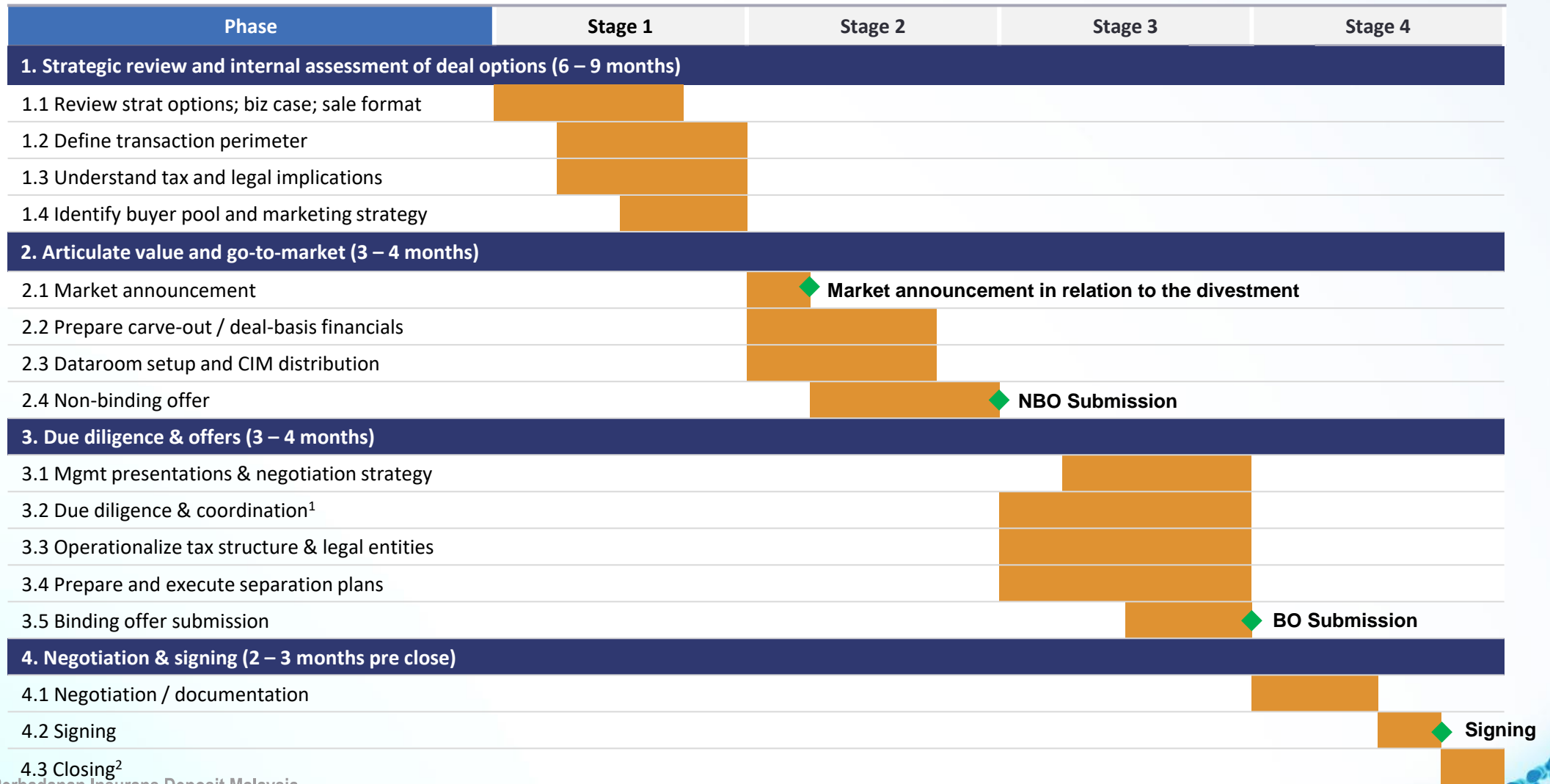
Getting a deal executed well requires careful planning through the transaction lifecycle



Identifying the right deal: Addressing challenges early and pro-actively, helps avoid unintended issues later in the deal process

Pre-deal stage challenges	Description	
	<p>Define deal strategy and approach</p>	<ul style="list-style-type: none"> ▶ Is this a market exit or a carve-out? Are you also exiting other markets? . ▶ Scenario plan taking into account overall deal value, execution complexity and bandwidth
	<p>Plan for your key stakeholders</p>	<ul style="list-style-type: none"> ▶ Who are the key stakeholders? Establish a plan for managing each of them: including: (i) People (ii) Customers (iii) Regulators (iv) Shareholders ▶ Develop training programs for key leaders to manage communication strategy - communication is key
	<p>Type of buyer for the transaction</p>	<ul style="list-style-type: none"> ▶ Who will be the logical buyers for this business? Will they have the ability to execute the transaction smoothly? ▶ Identifying whether this is a regional buyer / global / local / financial and their ability to execute the deal is a key deal consideration.
	<p>Capacity and ability of program resources</p>	<ul style="list-style-type: none"> ▶ Do you have sufficient resources who understand the nuances of the divestiture process? ▶ Are they in the right place and do they have the right bandwidth?
	<p>Risk and compliance</p>	<ul style="list-style-type: none"> ▶ Do you have sufficient capability and understanding in country? ▶ The effort needed to meet the regulatory commitments across jurisdictions can cause delays in execution and final transfer, higher costs and risk reputational damage
	<p>Impact on existing business</p>	<ul style="list-style-type: none"> ▶ Poorly planned separation for the bank can cause management to spend more time and effort to manage the separation and getting distracted from running BAU ▶ Attrition of critical mass of customers and employees throughout the execution period can be biggest cause of value erosion of the deal – also one of the focus area for buyer

Executing the deal: No two deals are the same, early planning and tailoring to local market and buyer pool is required.



Note:


(1) Typically 8 weeks of VDD followed by 4 weeks of buy-side DD

(2) Timing required for closing can differ significantly across APAC depending on regulatory approval process


This information/document has been classified: Public

Executing the deal: Seller needs to anticipate the needs of the buyers and plan how to address such issues


Defining Transaction Perimeter

 Finalization of business to be divested (e.g. excluding specific parts of banking if legal entities are co-mingled)


Carve-out Adjustments

 Adjustments to carve out financial impact of items not transferring (e.g. shared services, technology related assets)


FTEs and Premises

 Finalizing FTEs and premises that will transfer with the business (potential stranded costs for bank going forward)

Customer segments


 Understand the customer base that is transferring vs being retained.

COVID-19 / other macro impact


 Impact of COVID-19 / macro economic environment on financial performance.

Key focus area of buyer


Cost of Funds

 Replacing internal funding costs with a 3rd party view using external benchmarks


Historical Performance

 Key drivers for historical performance in the historical period


Quality of Loan Book

 Providing views on delinquency and provisioning levels under IFRS as well as local GAAP (as this will be more meaningful for bidders)

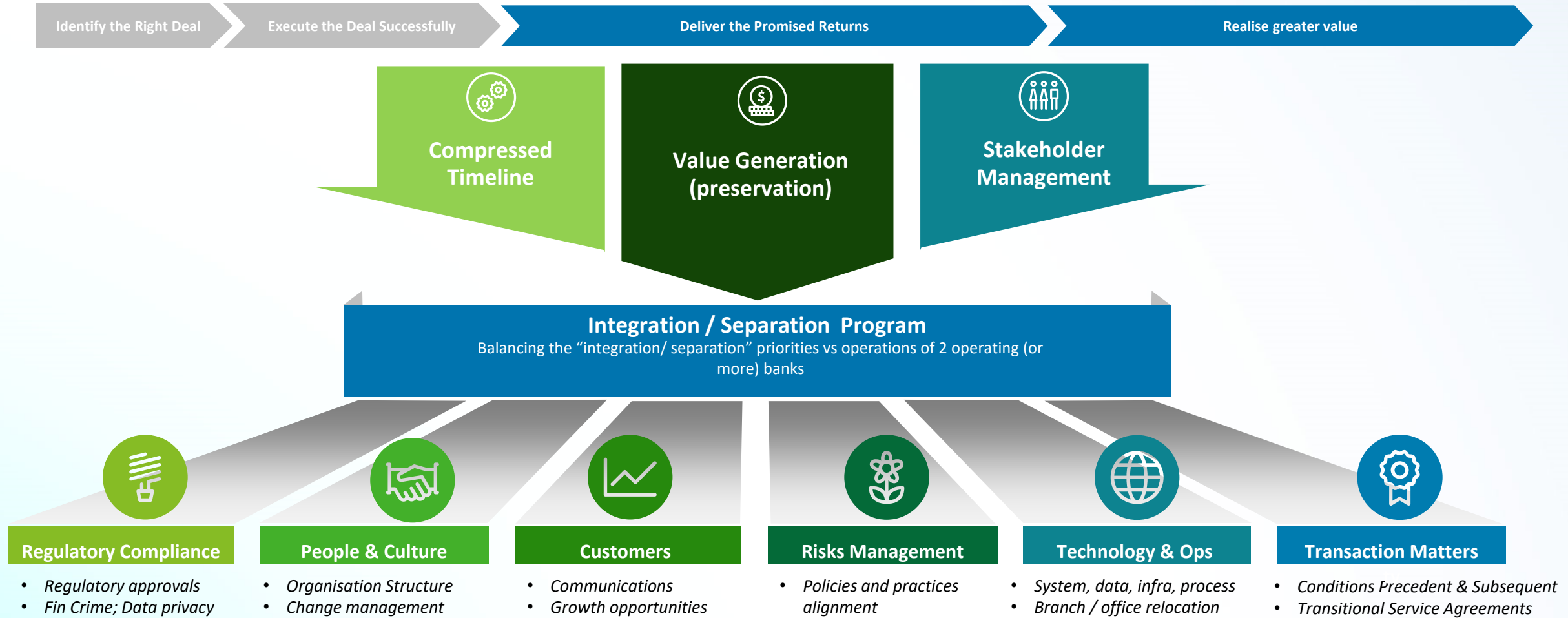
Rewards Reserve

 Outlining methodology for non-loan related balances (e.g. rewards reserves)

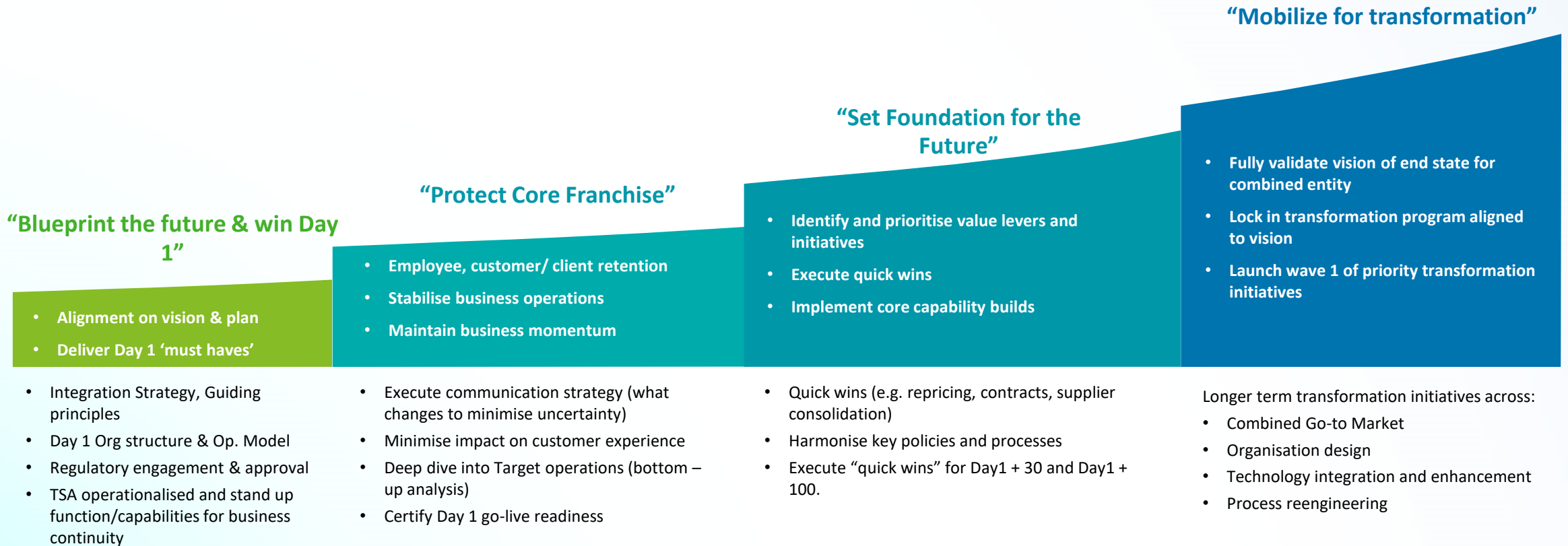
Reliance on RemainCo

 Extent to which entity operates on a standalone basis vs reliance on RemainCo (e.g. tech infrastructure, regional bancassurance and 3rd party contracts)

Deliver the promised returns: Common integration (and separation) challenges

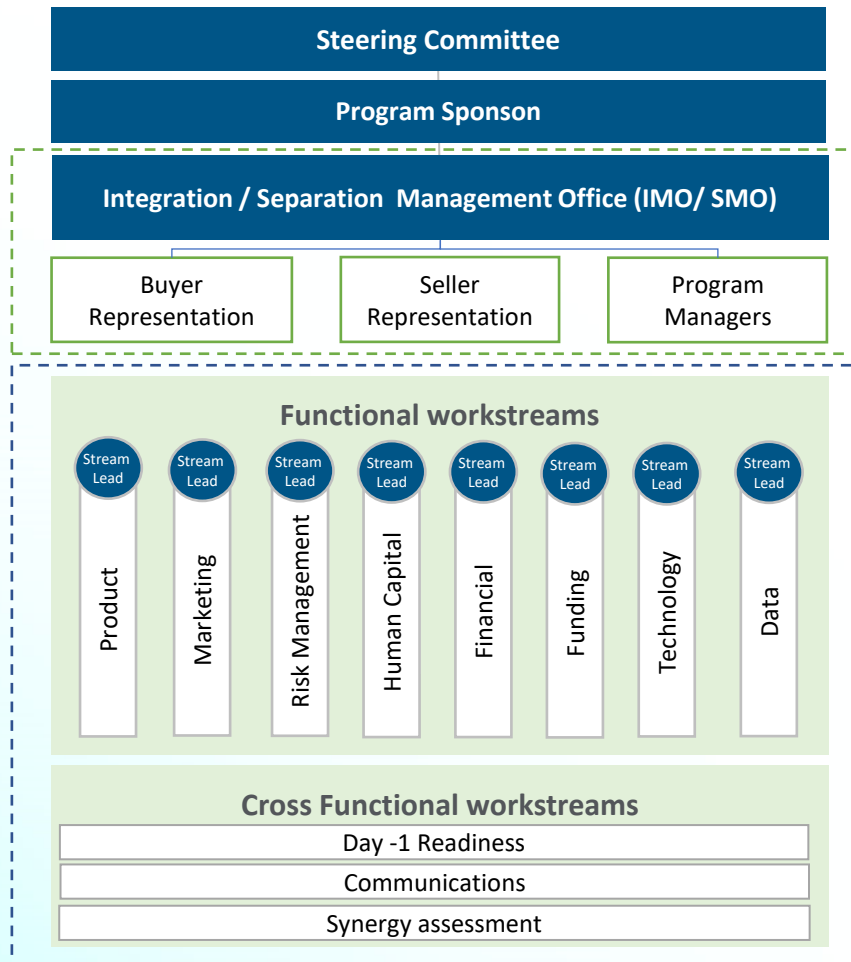


Deliver the promised returns: A well structured integration program is important



An IMO / SMO sets the tone and accelerate execution

Proposed Governance



What we have seen works well:

Steering Committee and Project Sponsor

- Establish a joint steering committee consisting of representatives from Buy-Side and Sell-Side
- Provide strategic direction and oversight, decisions making and issues resolution
- Program Sponsor is accountable for successful delivery of the integration project

Integration / Separation Management Office (IMO/ SMO)

- IMO / SMO consist of Buyer and Seller representatives
- Staffed with “mid to senior” level employees; supported by strong program manger(s)
- Coordinate across various teams to drive execution, resolve issues, and facilitate decisions

Functional Workstreams

- Responsible for workstream planning and execution
- Execution includes detailed analysis and communicating with external parties.

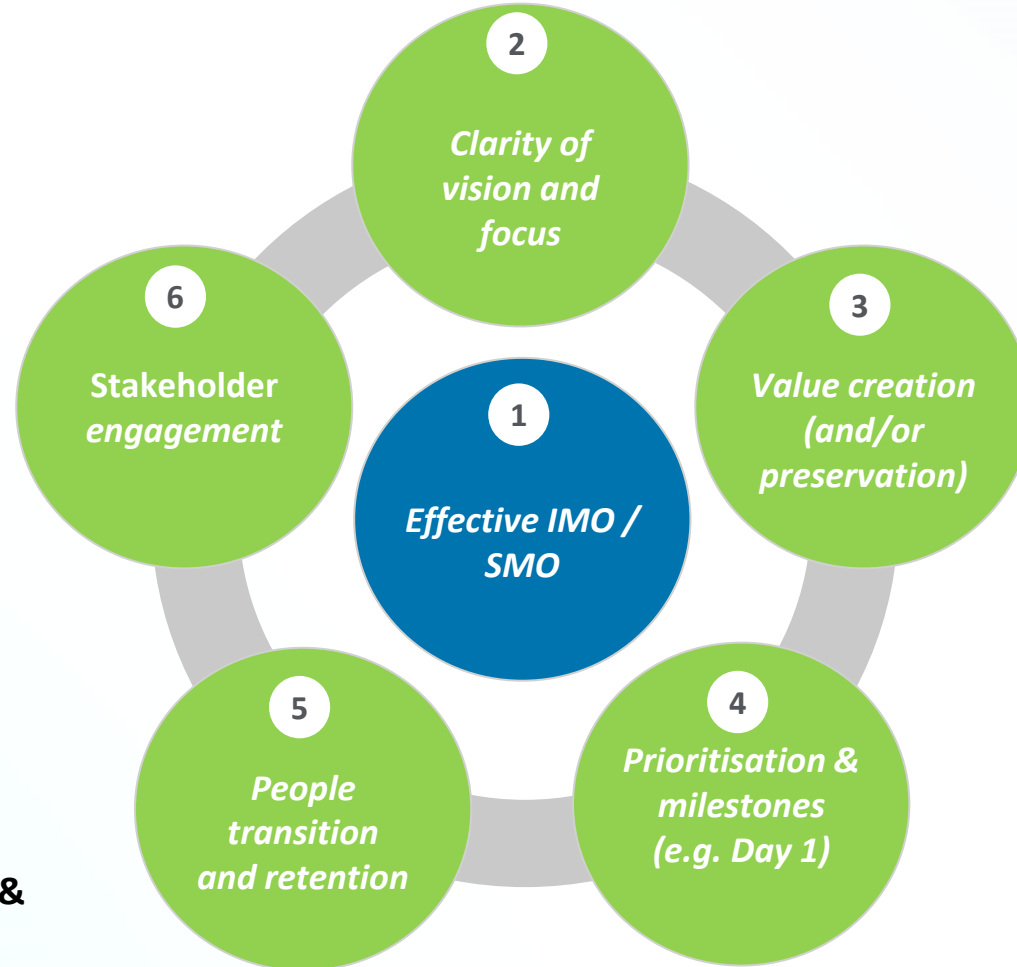
Cross functional Workstreams

- Cross functional workstreams involves all functional workstream leads
- Specific leads (or IMO / SMO) would lead these initiatives
- Workstreams participation in essential events such as Day-1 readiness etc

Key success factors for a separation / integration in banking industry

1 Drive pace and control via a disciplined IMO / SMO

2 Communicate and rally the organization to the vision & strategy



3 Identify, validate and track the key value drivers

6 Proactively manage key stakeholder
(Customers, Regulators, Shareholders, Employees etc/)

4 Set and prioritise the Day 1 'must haves'

5 Identify the leaders and manage critical transition & cultural aspects

Key takeaways

Topic



Drivers for bank divestments

- Bank divestments are driven by several key levers
 - Need to release capital for other priorities
 - Strategic focus on new/different business segments
 - Lack of scale to compete in the certain business segments or markets
 - Customer centricity



Challenges faced

- Banks face multiple challenges across different stages of the deal
 - **Pre-deal stage:** Management of key stakeholders, block sale vs individual sale, selection of the type of buyer, capacity and ability of program resources, risk and compliance, and impact on existing business
 - **Deal stage:** Strategic review and internal assessment of deal options, articulate value and go-to-market, due diligence & offers, and negotiation & signing
 - **Post-deal stage:** Employee and customer attrition, TSA and data management, risk and compliance, and corporate functions



Key success factors

- Planning ahead and taking immediate steps to realize the maximum value of the transaction
- Managing key stakeholders and a plan for each - customers, people, shareholders, regulators
 - **Pre-deal stage:** Determine an appropriate divestment strategy with sufficient resources allocated for the strategy, establish a consistent narrative and communicate pro-actively
 - **Deal stage:** Focus on evolving KPI that can predict future growth, search for opportunities to right-size corporate functions and leverage on experts
 - **Post-deal stage:** Formulate the 30-60-90 days and full execution plan with immediate priorities, with a strong program governance to ensure oversight

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Resolution Of A Conventional Bank

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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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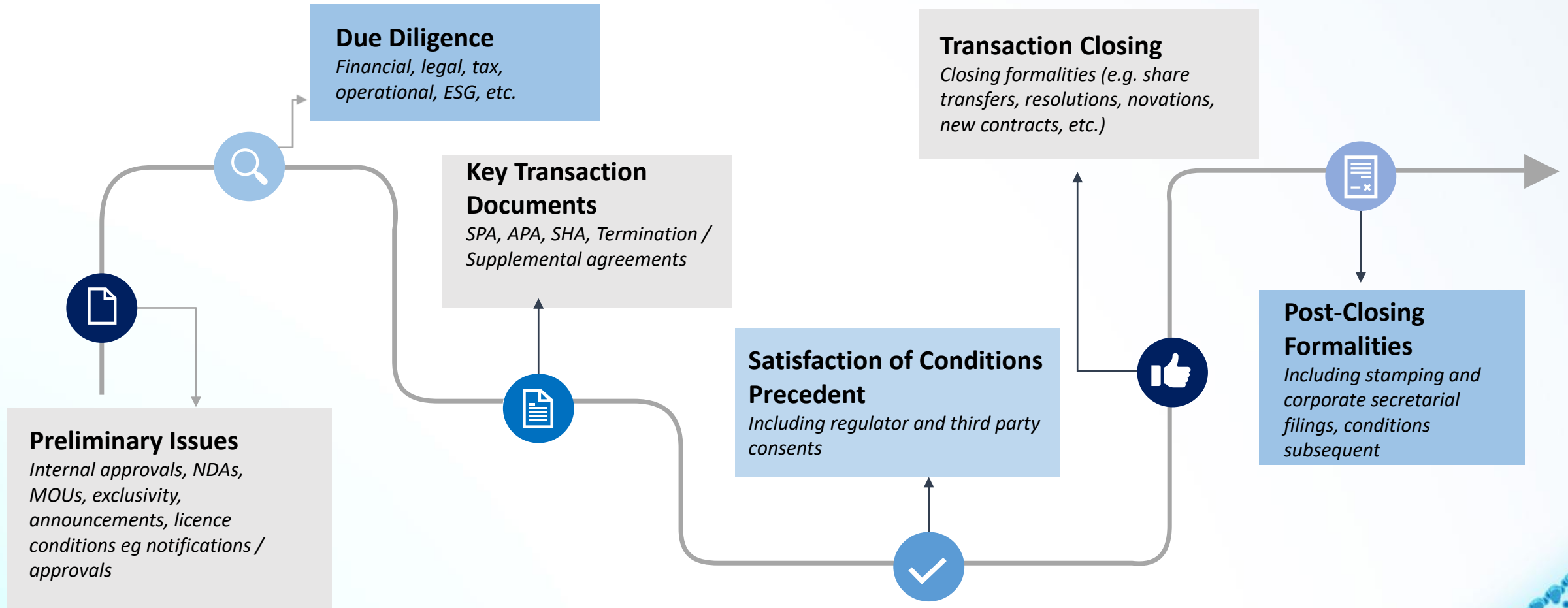


A panoramic view of the Shanghai skyline under a blue sky with wispy clouds. The Shanghai Tower is prominent on the left, and the Oriental Pearl Tower is on the right. A white rectangular box is overlaid on the center of the image.

01

LEGAL OVERVIEW
- Transaction Process
- PIDM's Powers

LEGAL OVERVIEW: Transaction Process



LEGAL OVERVIEW: PIDM's Resolution Powers (under s99 PIDM Act)



02

PRE-TRANSACTION CONSIDERATIONS

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

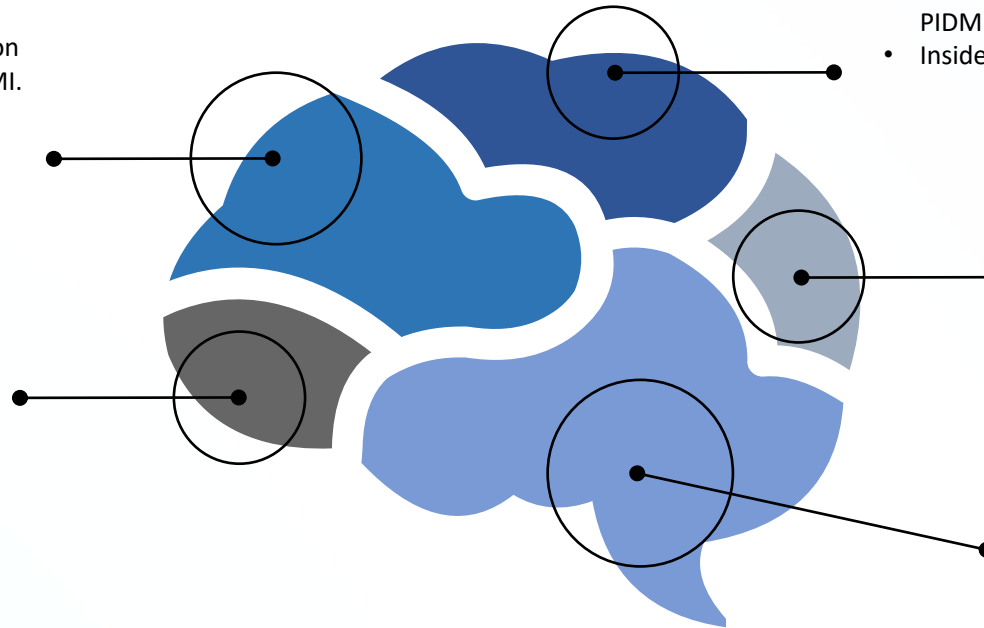
PRE-TRANSACTION: Key Legal Considerations

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



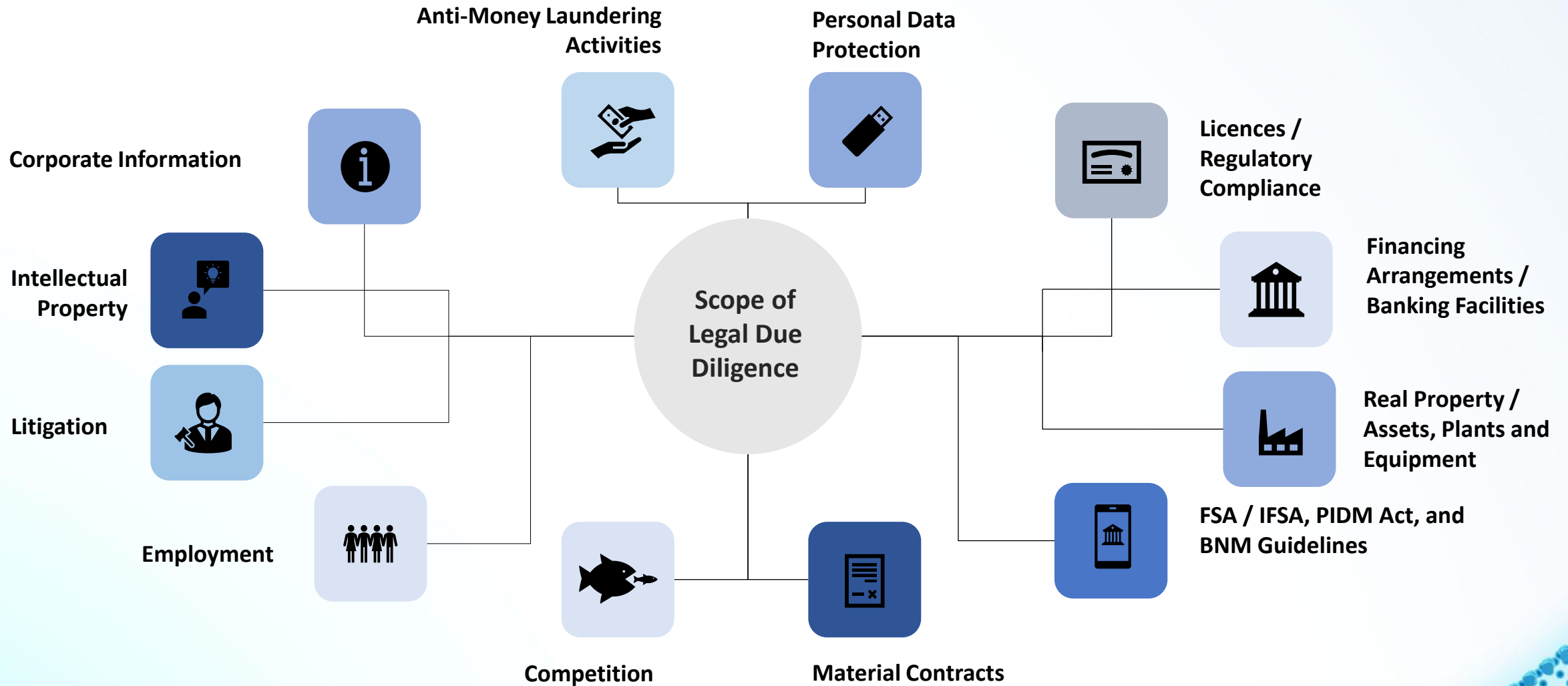
Risk assessment, Governance, Duty, MI interests

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 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 and a domed building are visible in the foreground.

03

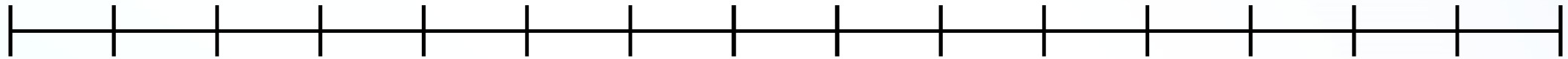
KEY ISSUES IN TRANSACTION DOCUMENTS

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 at dusk or dawn, featuring prominent skyscrapers like the Shanghai Tower, the Shanghai Financial Center, and the Oriental Pearl Tower. The sky is a mix of blue and orange, with wispy clouds.

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.

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05

**SUMMARY and
QUESTIONS & ANSWERS**

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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Q&A



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