

32nd Annual Asia Pacific Tax Conference

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JW Marriott Hotel Hong Kong

Managing restructurings in Asia – case study

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Pigeonhole

- Wi-Fi log in details
- **Network:**
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BAKERM

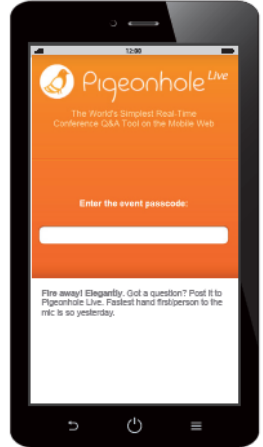
BAKER & MCKENZIE

Q&A with Pigeonhole

Join the conversation in 5 easy steps:

- 1 Log in into Wi-Fi on your mobile device. Information will be provided on screen.
- 2 Open your browser and go to this URL: <https://pigeonhole.at/>
- 3 Type in the password.

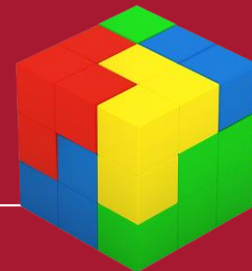
BAKERM
- 4 Post your question.
- 5 Take part in the audience poll and get instant access to poll results.



Agenda

- The view from global HQ
- Delivering a successful integration
- Common issues in Post Acquisition Integration (“PAI”)
- Introduction to case study

The view from Global HQ



Why does post-deal integration matter?

“It is no surprise that approximately 50% of M&A deals result in partial or substantial value erosion mainly due to problems encountered during integration. In other words, the chances are that one in two integrations will fail.”

Accenture— Seven Catalysts for Merger Integration Success

“Successful integration, the key to avoiding the risks of a merger or acquisition and to realizing its potential value, is always a challenge. And it is complicated by the simple fact that no two deals should be integrated in the same way, with the same priorities, or under exactly the same timetable.”

Bain & Company— Ten Steps to Successful M&A Integration

Delivering a Successful Integration



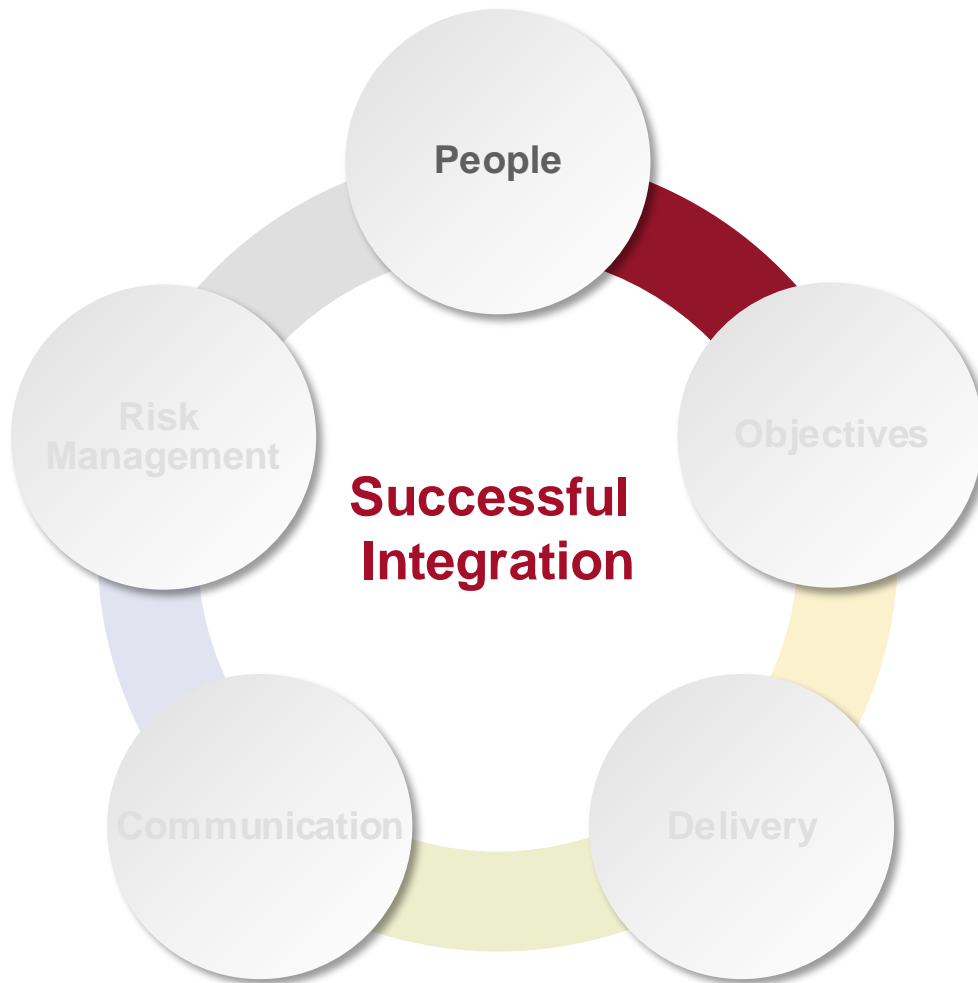


Delivering a Successful Integration





Delivering a Successful Integration



Cultural Impact

Retention of Talent and Institutional Knowledge

Incentives and harmonisation of terms and conditions



Delivering a Successful Integration



Clarity of integration objectives

Don't over-estimate synergy savings

Alignment with acquisition objectives

Fiscal efficiencies



Delivering a Successful Integration



Clear direction

Senior champion

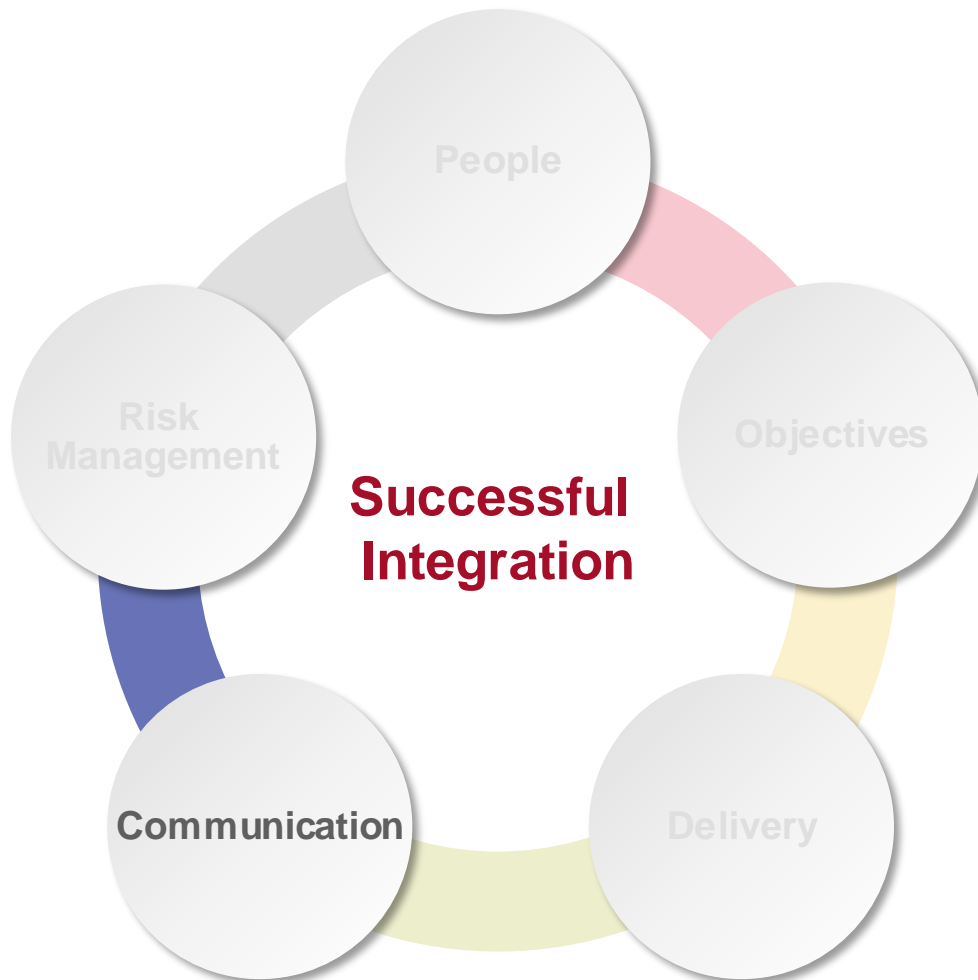
Achievable deadlines

Balanced integration team

Integrated project management



Delivering a Successful Integration



Implement all encompassing communication strategy

Top down communications

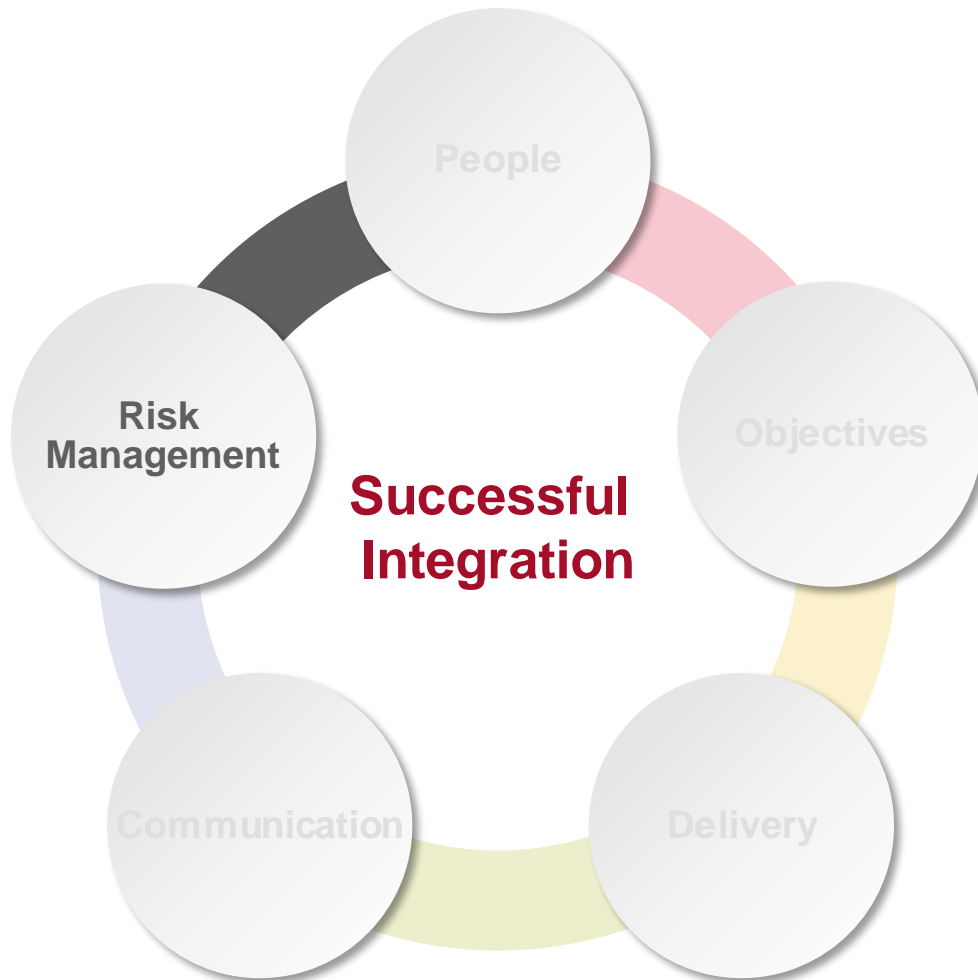
Communication between workstreams

Employees and Unions

Market Profile



Delivering a Successful Integration



Minimise disruption to day to day management of business

Manage conflict with business objectives

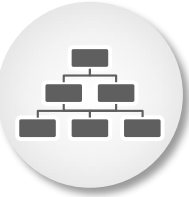
Minimise opportunities for competitors

IT systems, financial reporting

Compliance + Code of Conduct

Common issues in PAI





Holding Company Structure

- Consider whether the current holding company structure remains the best option given your newly formed group.
- Is the group structure aligned with the management reporting structure, or does it create unhelpful “fiefdoms” or other inefficiencies.
- Can cash be circulated around the group/distributed up through the ownership chain tax efficiently? A “flat” legal structure can reduce the risk of cash becoming trapped in the future



Tax Planning

- Has the acquisition given rise to any new Controlled Foreign Corporation (“CFC”) issues for the group?
- Has the acquisition impacted on the tax attributes of the acquiring or acquired group?
- Can tax attributes be efficiently utilised between the acquiring and acquired groups?
- Does the group holding structure enable or prevent single-country tax consolidated groups to be formed? Can improvements be made to the structure of the combined group?
- Ensure that tax compliance and reporting processes are robust in the acquired group and can be integrated into the wider group.

A changing tax landscape

- Lots of new rules
- Tax authorities becoming more aggressive in audits
- More focus than ever on Permanent Establishments and Transfer Pricing
- Information sharing
- Reputational risks

BEPS | Impact on Merger & Acquisition Activity

- Holding company must have substance in order to rely on tax treaty benefits
- Target company valuation
- Due Diligence
 - Country by Country Reporting (“**CbCR**”) is a valuable resource; ability to use data analytics on CbCR and analyse variances from base case, provides a indication of risk and will provide opportunity for efficient focus of due diligence activities
 - CbCR as public document may represent increased reputational risk requiring input from e.g.. Government relations
- Post Acquisition integration
 - Greater incentive to integrate to own model as risk of poor internal comparables
 - Tax authority ability to use internal comparables that are unique to the acquired entity

Assessing tax risks in a deal

- Understand the operating model
- Indirect tax costs and opportunities
- Reputation
- Financing - interest deductibility
- Transfer pricing / permanent establishment
- Effective tax rate drivers
- Aggressive tax authorities
- Where is the intellectual property?
- Rulings

Deal structuring and post-deal integration

- Substance, substance, substance
- Reputation and stakeholder management
- CbCR aspects – profits in tax havens?
- Financing isn't dead, but...
- Aligning supply chains and transfer pricing models



Compliance

- Its not always possible to conduct detailed due diligence into the target's affairs at the time of an acquisition. Consequently, it is good practice to implement a compliance risk assessment of the target as soon as possible following completion to understand the target's approach to compliance and identify potential areas of risk.
- Consider:
 - reporting and other regulatory requirements arising from your or the target's shares being listed on any stock exchange
 - local and extra territorial anti-bribery and corruption regulations (such as the FCPA in the USA, the Bribery Act in the UK, and the Unfair Competition Prevention Act in Japan)
- Ensure the acquired business has clear anti bribery policies and procedures in place that align with those of the acquirer, including Code of Ethics, Compliance Manual, an escalation process for employees to report suspicions and appropriate procedures for dealing with these.



IP & Brand Protection

- Will company and brand name changes be required within a certain period post-closing of the main deal?
- Will changes to packaging/sales materials and invoices be required within a certain period post-closing? What will be the cost? Are there any regulatory issues to consider when planning changes to packaging/sales materials?
- Availability and protection of new trademarks
- Review existing IP licences and agreements to identify any inconsistencies or overlaps
- Decide on business name for the wider / group – you may want to make company names consistent, align the names of acquired companies, pick a new name, refer to the acquired business as “a division of” your existing business
- Identify the transition period for branding changes (if not dictated by the purchase agreement)
- Consider the effect of your branding on your customers
- Consider long term IP plan for consolidated group. Is this a time to rationalise or review the strategy
- Consider location of IP ownership and possible tax incentives (e.g. patent/IP box regimes, R&D tax credits)



Finance and Treasury

- Following an acquisition, it may be possible to realise various efficiencies by combining group cash flow and other treasury tools with that of the target. There may also be new treasury risks presented by the target that the group should consider, such as specific cash flow requirements in jurisdictions where the group has not previously had a presence.
- How do local entities report on their financial performance on a monthly basis? What accounting and IT systems do they have, or do they need, to support this process? When is the new business' financial year end?
- Who are the new business' Auditors? Does this provide any issues of conflict with the existing business' auditors, or other financial and accounting services providers? Changes to Auditors (this can take significant time depending on the jurisdiction)
- Identify which entities are “cash generative”, and are there any entities with “trapped cash”? What bank accounts does the new business have, and with which banks?

- Is it necessary to re-balance the cash position of the group following the acquisition?



IT Systems

- How quickly can you change email addresses, web-sites and branding? Ensure that the project communication plan and IT strategy are aligned.
- Failure to plan ahead on the IT side can result in problems with basic business functions immediately after closing e.g. inability to invoice customers or pay vendors and can lead to tax return, VAT, and payroll problems
- Incompatible legacy systems can cause headaches in reconciling accounts
 - This can have implications for Sarbanes-Oxley, FCPA and other compliance regimes
 - Invoicing in the name of the wrong company can lead to unenforceable claims for payment and will also violate invoicing directive in Europe
- Consider putting in place a staged approach to IT system integration, complemented by a set of interim operating rules to ensure as smooth a transition as possible and to try to avoid having to deploy expensive manual workarounds to systems incompatibility issues.
- Integration plans can be delayed by months, and in some cases years, because of the IT integration timetable and the inability to alter customer invoicing and revenue tracking before these changes are made.

Cash Repatriation Techniques

- Active cash management – aim to run target with lowest cash balance
- Can the cash be used to fund other integration steps
- Consider whether it is possible to use letters of direction to position cash in 'easier' jurisdictions

Other Routes out



- Registration requirements?
- Restrictions on borrowing under the deal terms?
- Restrictions on cross-border lending
- If i/co loans cannot be repaid, can they be repositioned within the target group?

I/CO Loan Repayment



- Statutory processes, often long lead times
- Financial information requirements
- Sequencing with other implementation steps e.g. stock transfers

Return of Capital



- Lack of distributable reserves
- Availability of Interim dividends
- Financial information requirements
- Timing restrictions on when an entity can declare a dividend

Dividends

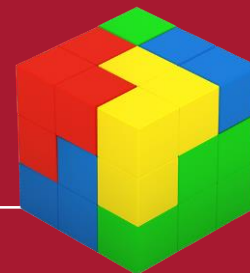


Target subsidiary

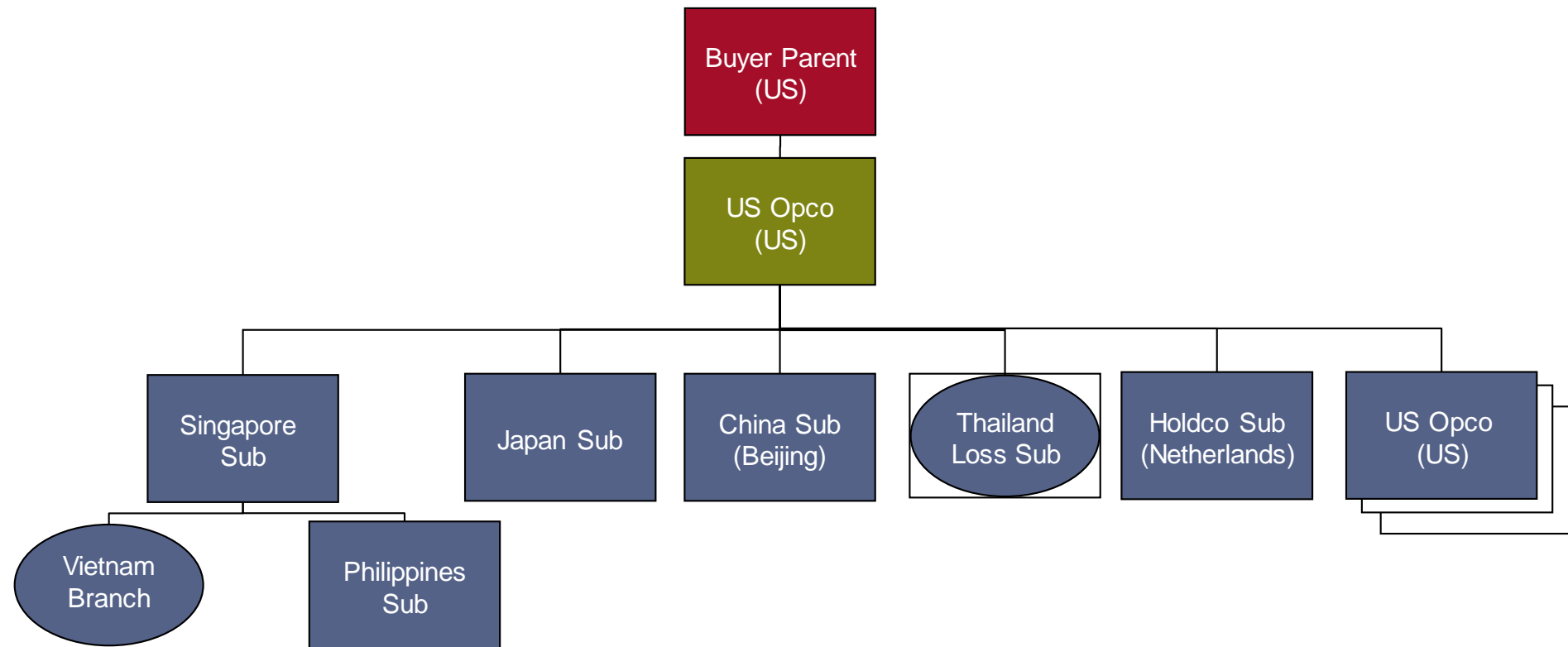


TRAPPED CASH

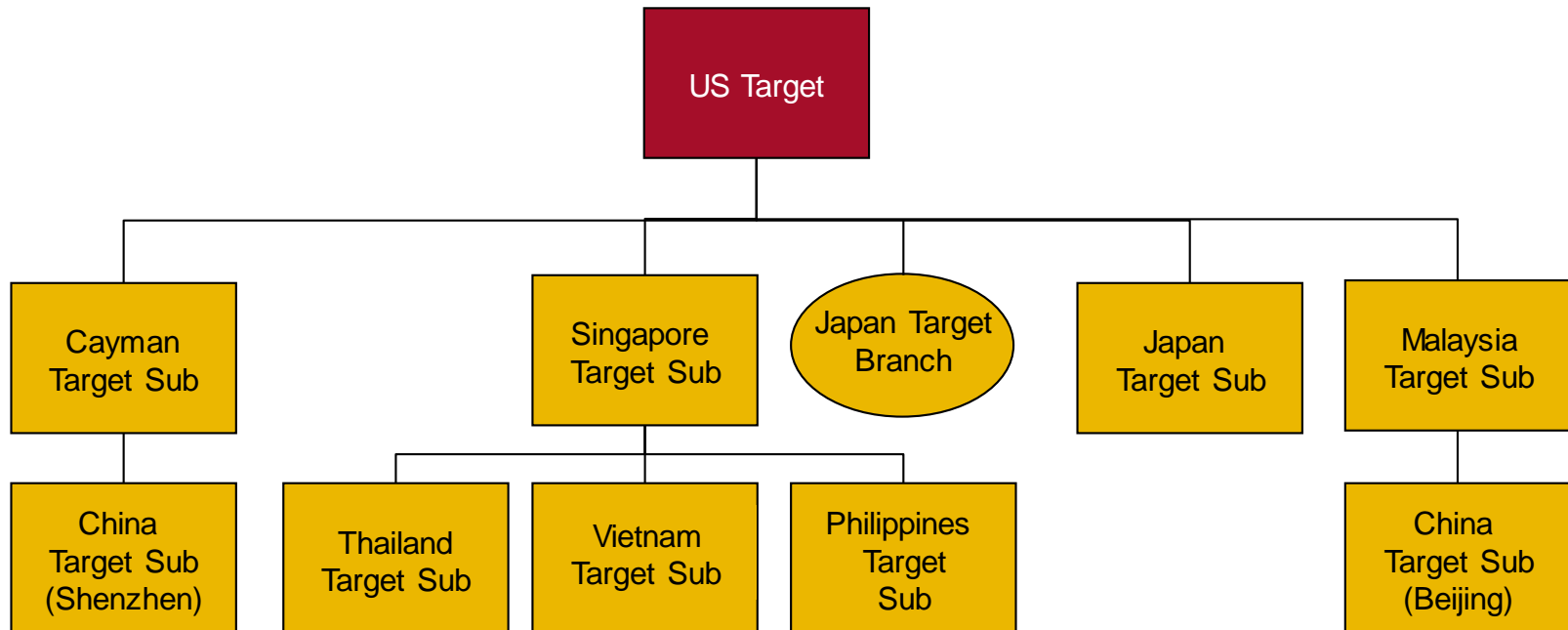
Case Study



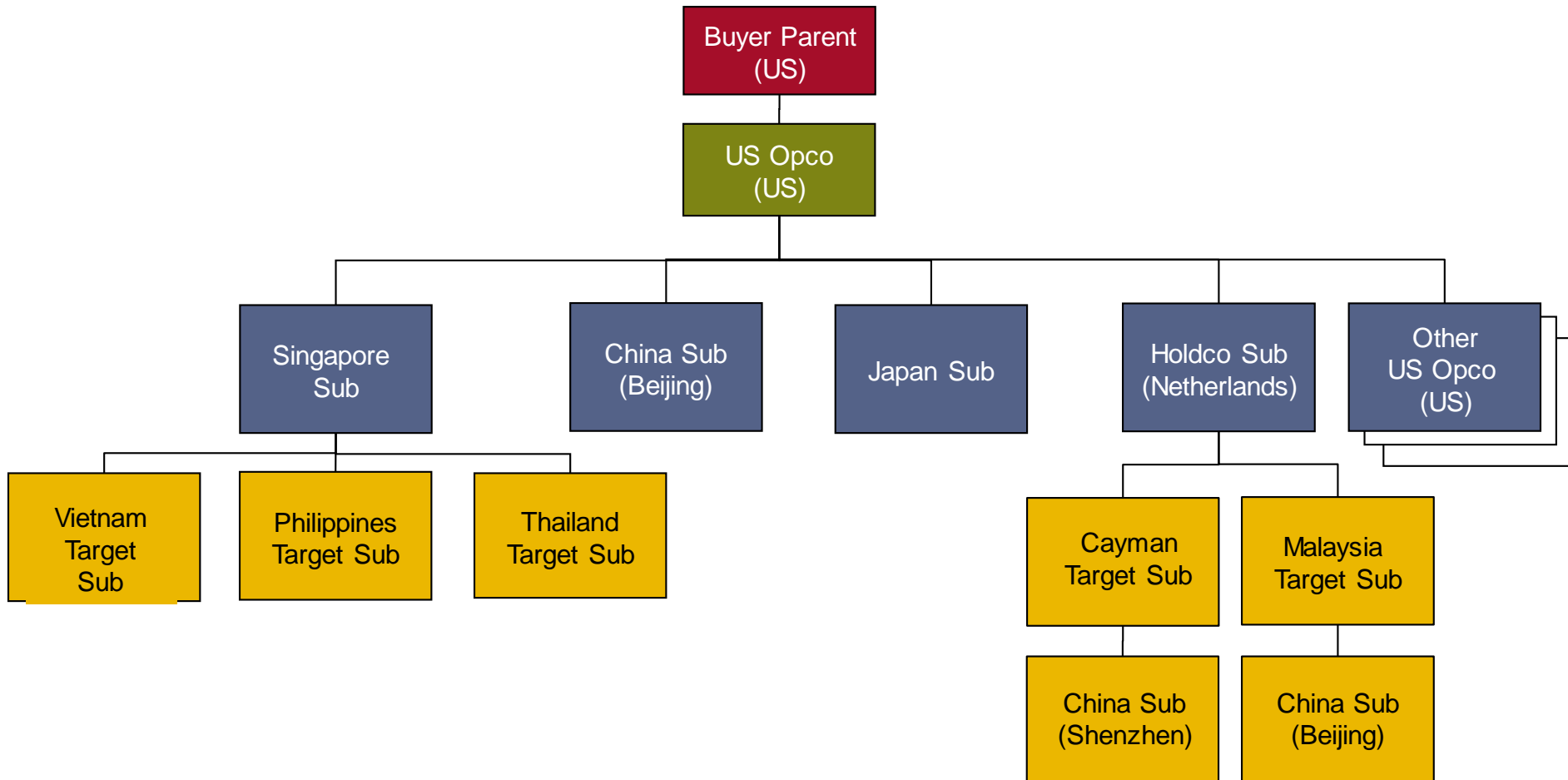
Case Study – Current Structure



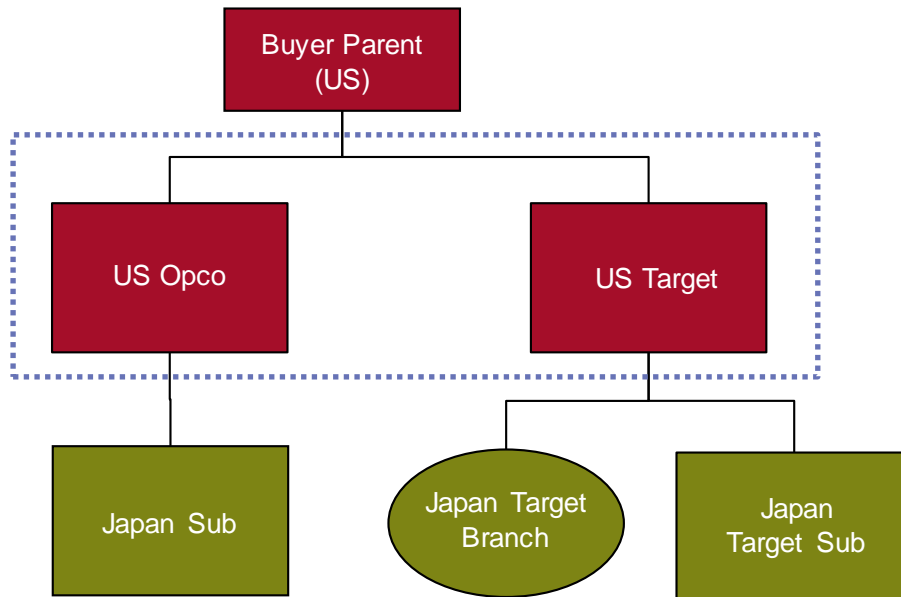
Case Study – Acquisition of US Target



Case Study – Final Structure



Japan 1

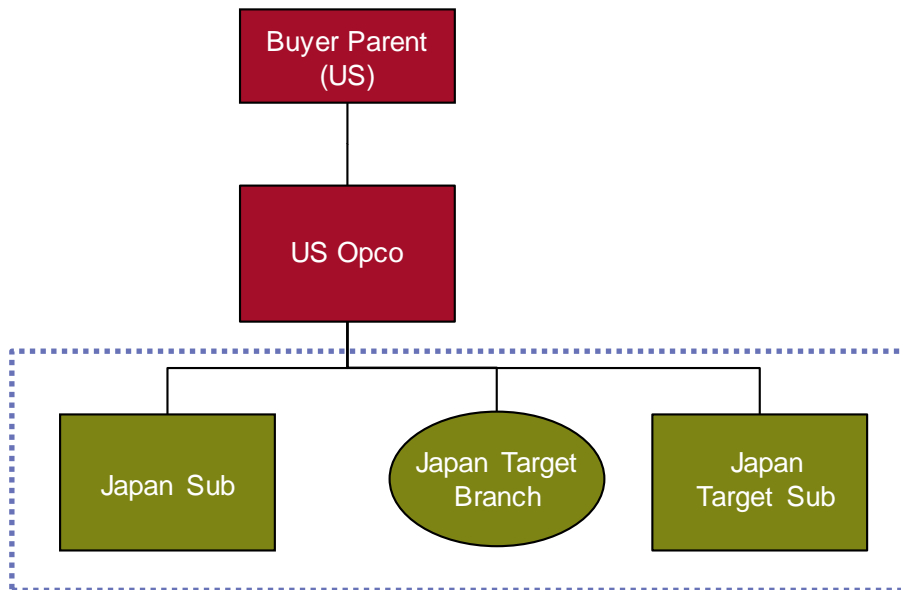


Tax Considerations:

- When Buyer Parent buys US Target?
- If US Target merges into US Opco?

Legal Considerations:

Japan 2

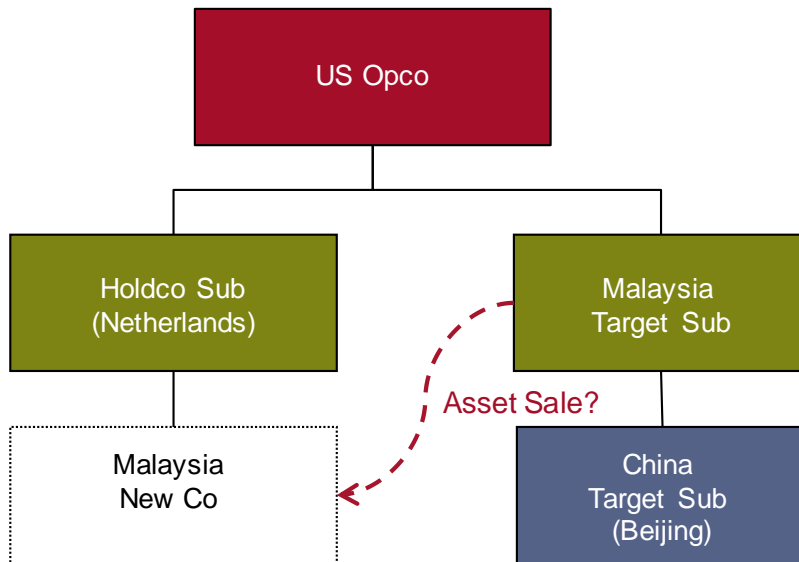


Tax Considerations:

- What is the best method to integrate Japan Target Branch and Japan Target Sub with Japan Sub?
 - Can Japan Target Branch be converted into a subsidiary, and then merge into Japan Target Sub / Japan Sub?
 - Can a branch and subsidiary merge in Japan?
 - Group relief rules
- Transfer of assets by Japan Target Branch and Japan Target Sub to Japan Sub, and follow-up by striking off / liquidation of the Target entities?

Legal Considerations:

Malaysia

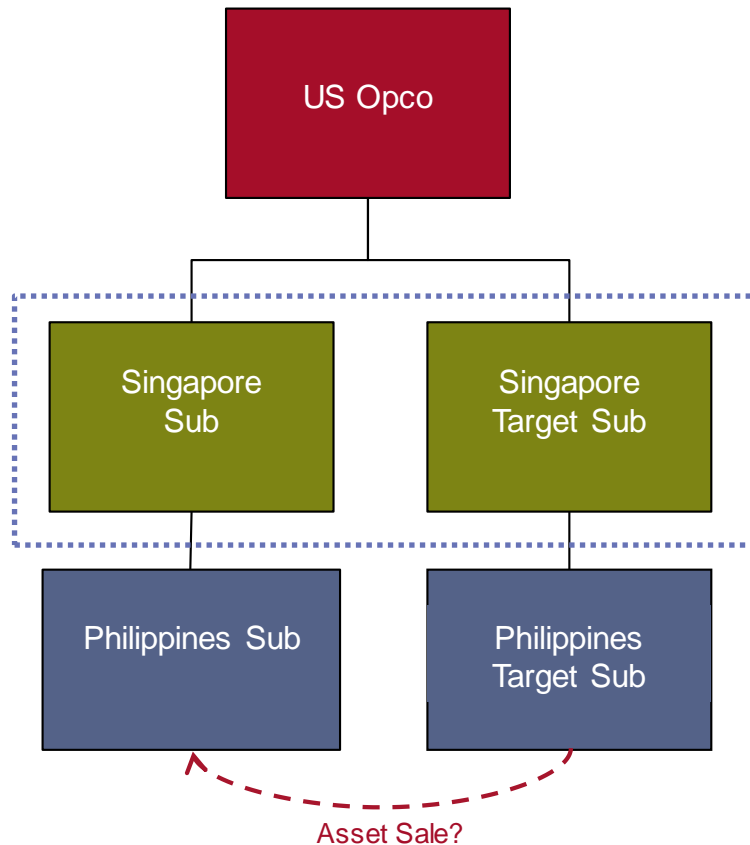


Tax Considerations:

- When Buyer Parent buys US Target?
- If US Target merges into US Opco?
- If US Opco contributes Malaysia Target Sub to Holdco Sub?
- What if Malaysia Target Sub has a tax incentive in Malaysia and has substantial real properties?
- If a new Malaysian Co is set up to acquire assets from the Malaysian Target Sub, follow-up by the liquidation of Malaysia Target Subsidiary?
- GST implications – share transfer vs assets transfer

Legal Considerations:

Philippines

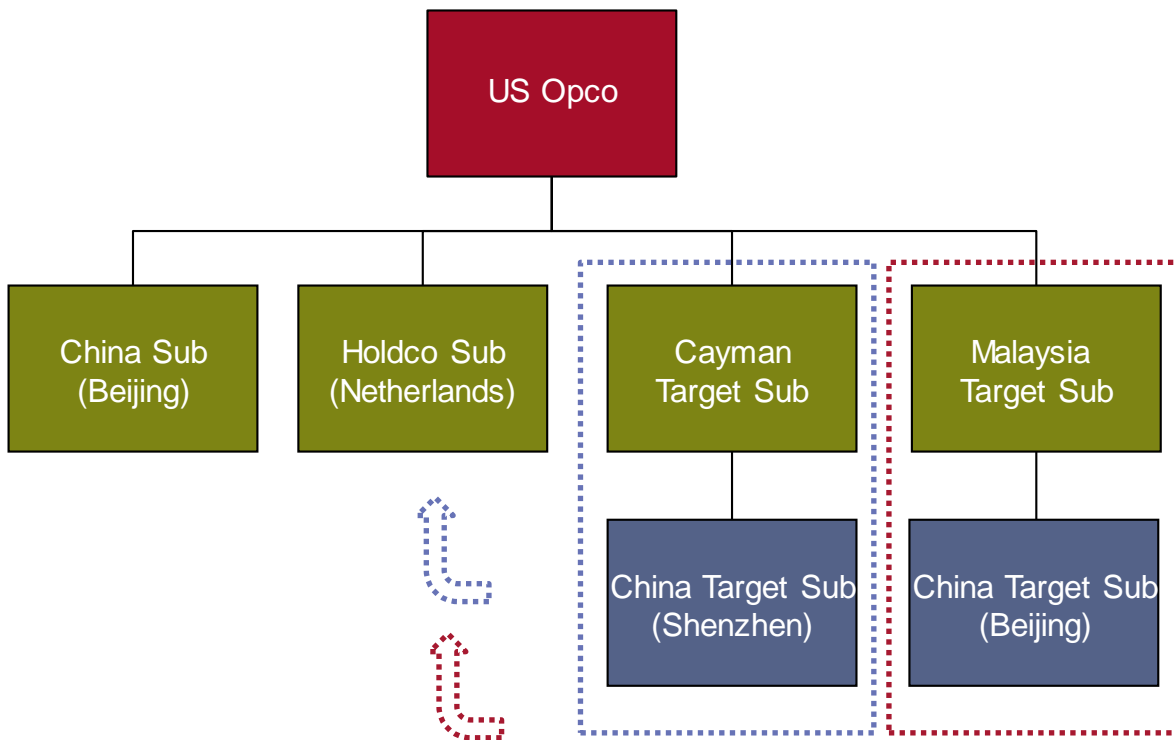


Tax Considerations:

- When Buyer Parent buys US Target?
- If US Target merges into US Opco ?
- If Singapore Sub amalgamates with Singapore Target Sub?
- If US Opco contributes Singapore Target Sub to Singapore Sub?
- Sale of Philippines Target Sub to Singapore Sub and a merger / amalgamation of Philippines Sub with Philippines Target Sub?
- Sale of assets from Philippines Target Sub to Philippines Sub?

Legal Considerations:

China



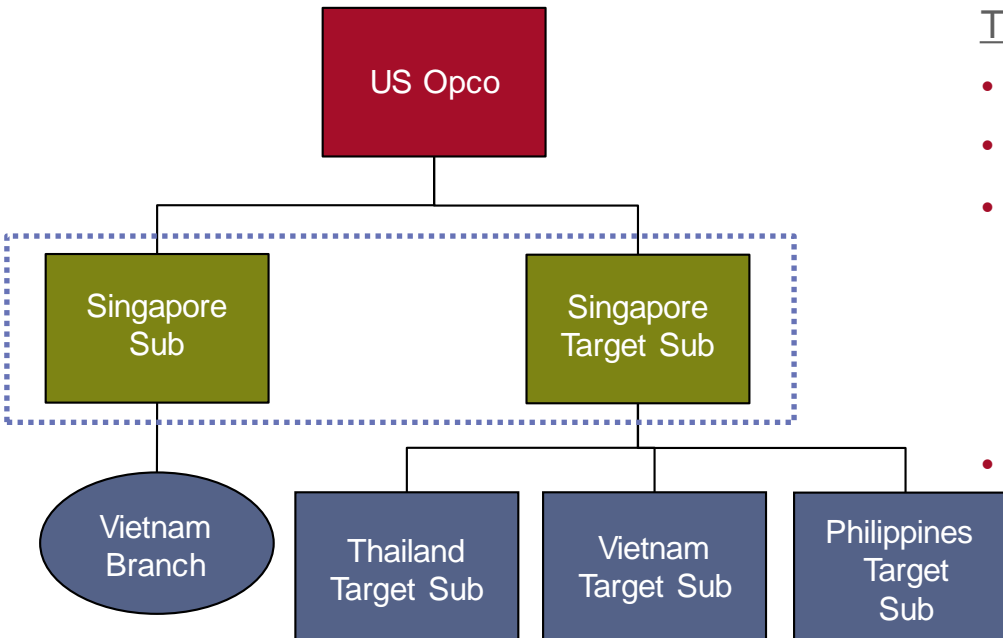
Tax Considerations:

- When Buyer Parent buys US Target?
- If US Target merges into US Opco?
- If US Opco contributes Cayman Target to Holdco Sub?
- If US Opco contributes Malaysia Target Sub to Holdco Sub?
- Merger / amalgamation of China Sub (Beijing) and China Target Sub (Beijing)?
- Transfer of assets by China Target Sub (Beijing) to China Sub, and follow-up by striking off / liquidation of China Target Sub (Beijing)?

Legal Considerations:

[Note to draft – Build in cash repat considerations]

Singapore



Tax Considerations:

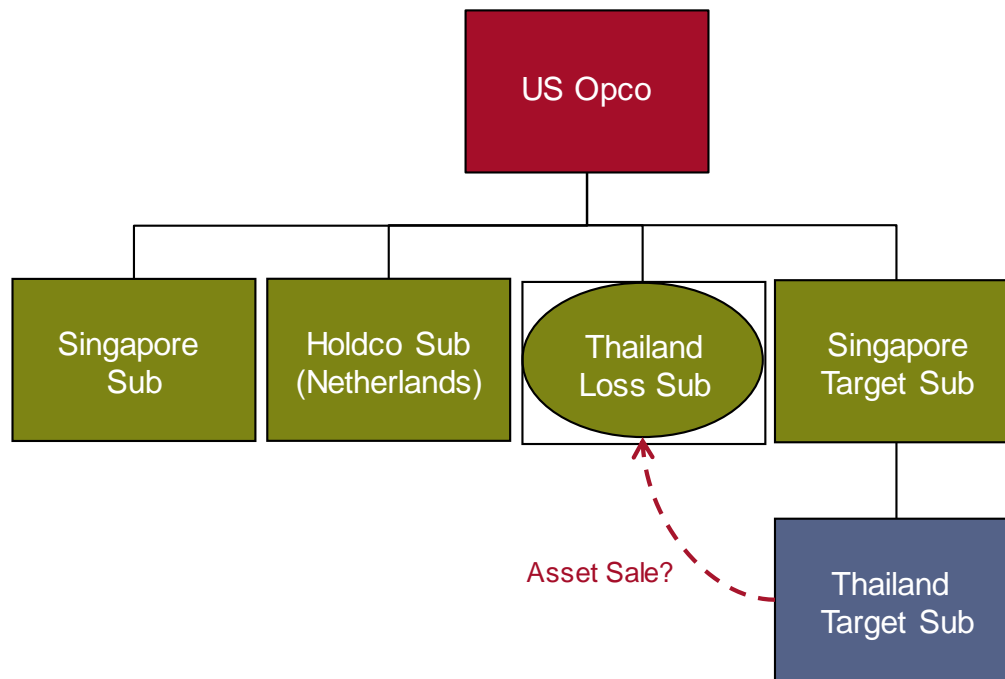
- When Buyer Parent buys US Target?
- If US Target merges into US Opco?
- If Singapore Sub amalgamates with Singapore Target Sub? Selection of surviving entity
 - Thailand, Vietnam and Philippines considerations?
- If US Opco contributes Singapore Target Sub to Singapore Sub?

Tax incentive in Singapore

Transfer of assets by Singapore Target Sub to Singapore Sub, and follow-up by striking off / liquidation of Singapore Target Sub?

Legal Considerations:

Thailand

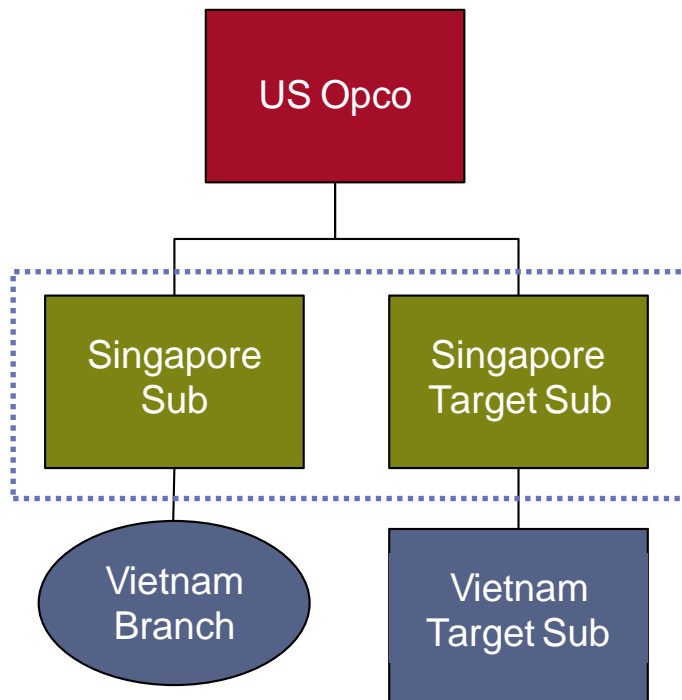


Tax Considerations:

- When Buyer Parent buys US Target?
- If US Target merges into US Opco?
- If Thailand Target Sub sells its entire business to Thailand Loss Sub and follow-up by striking off / liquidation of Thailand Target Sub?
- Sale of Thailand Target Sub to US Op Co or Thailand Loss Sub, and a merger / amalgamation of Thailand Loss Sub with Thailand Target Sub?
- Tax audit risks?

Legal Considerations:

Vietnam

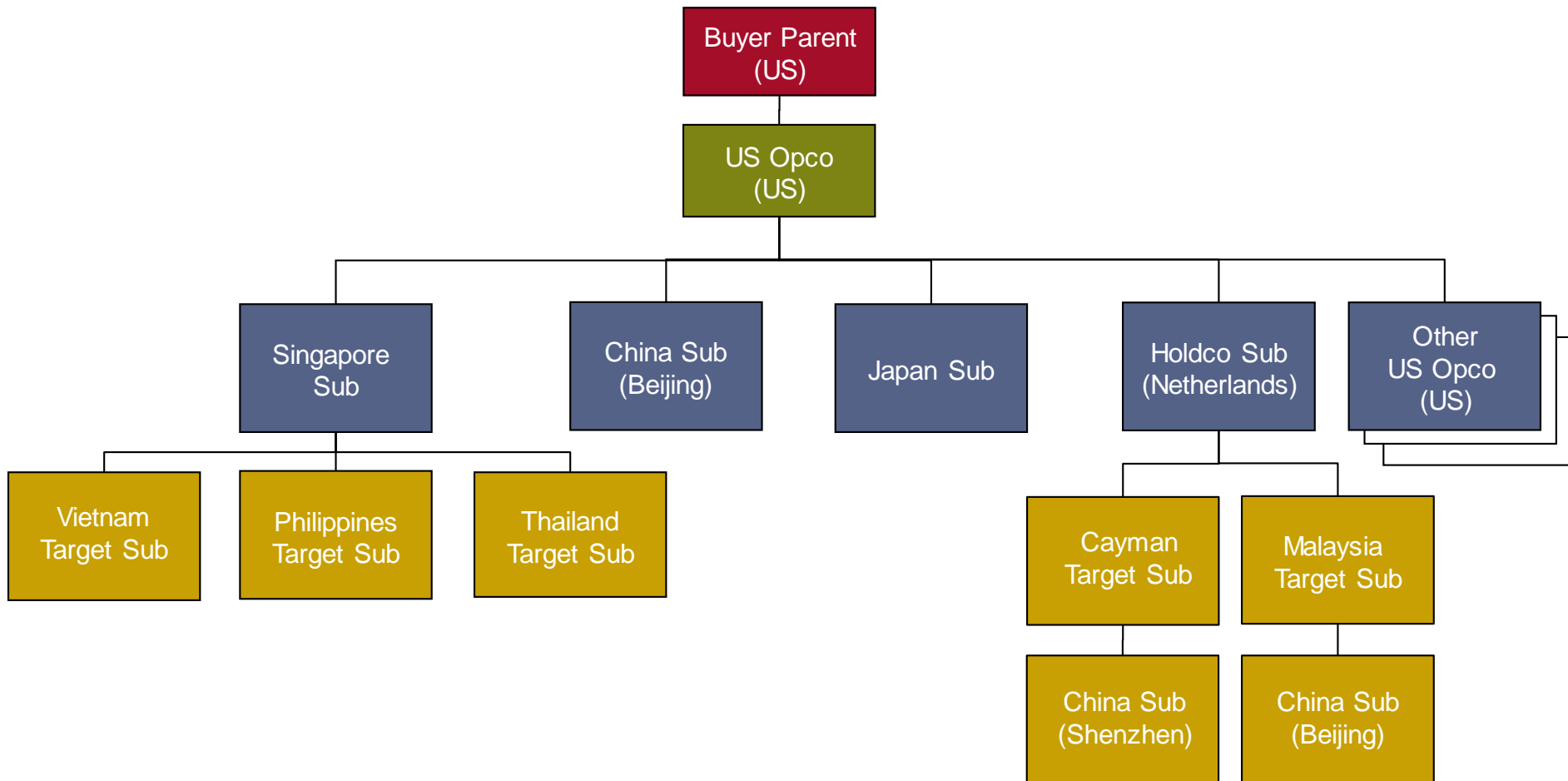


Tax Considerations:

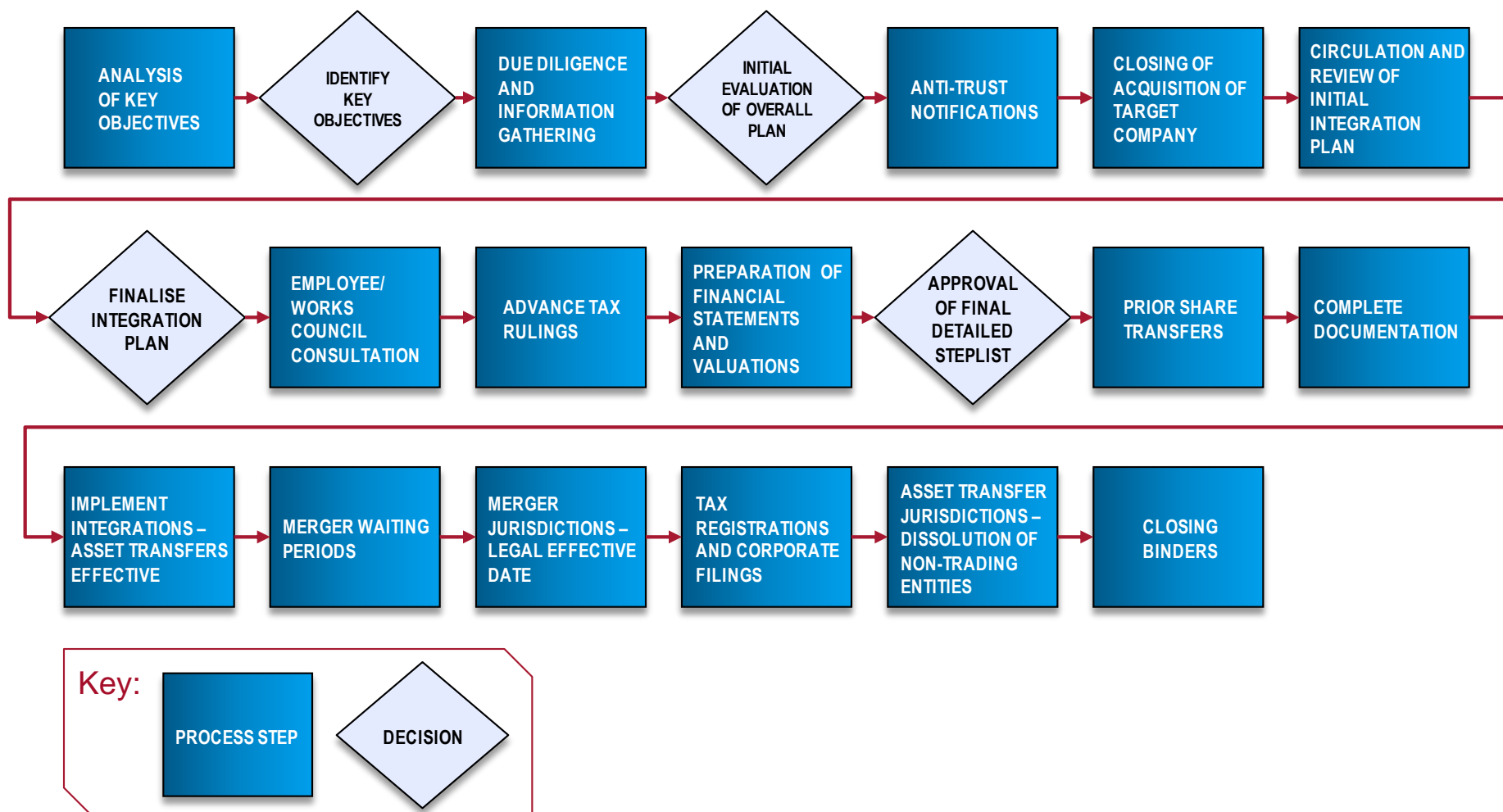
- When Buyer Parent buys US Target?
- If US Target merges into US Opco ?
- If US Opco contributes Singapore Target Sub to Singapore Sub?
- Can a branch and subsidiary merge in Vietnam?
- Group relief rules
- Sale of assets from Vietnam Target Sub to Vietnam Branch?
- Tax audit risk?

Legal Considerations:

Case Study – Final Structure



Integration Process Flowchart



PAI planning timeline

First 30 Days

- **Treasury.** Information gathering and consolidate reporting systems
- **Corporate structure.** Information gathering; consider rationalising structure and integration options
- **Corporate Governance.** Director changes required
- **Brand.** Name changes required?
- **HR.** Communicate with employees
- **Compliance.** Analyse potential risks and resolve any issues
- **Customers and Suppliers.** Dialogue with key third parties to pre-empt issues that might arise.

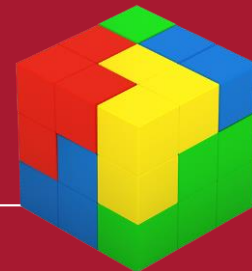
First 180 Days

- **Treasury.** Change auditors and financial year
- **Corporate structure.** Plan consolidations
- **Corporate governance.** Ensure that all group companies are in compliance
- **HR.** Consider aligning benefits. Review and change, as appropriate management structure to ensure appropriate incentivisation of target's employees
- **Compliance.** Ensure that all group companies are in compliance
- **Brand.** Consider name changes and actions required to protect brand

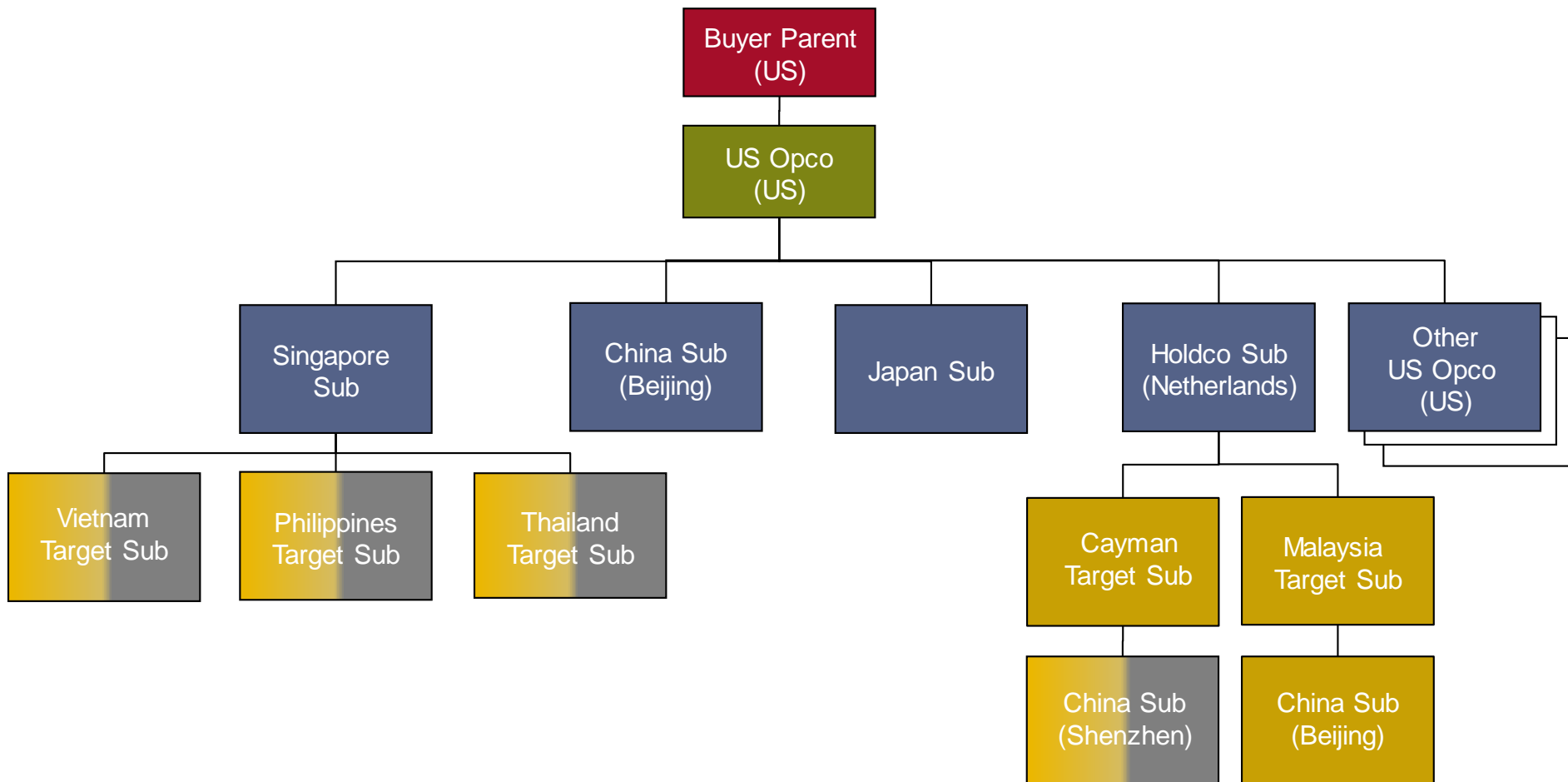
And Beyond...


- **Treasury.** Consolidate and combine treasury tools
- **Corporate structure.** Implement rationalisation and/or integration
- **HR.** Review size of workforce
- **Brand.** Review long term IP plan
- **Real estate.** Consider combining office space

The end or is it?



Case Study – Post Acquisition Disposal?



- 
- As part of the ongoing strategic review of the group, it has been decided that one of the target's business lines is non-core and not complementary to the combined group.
 - Management decide to investigate the possibility of disposing of the non-core business line.
 - You are now faced with a complex disposal, what should you be thinking about from the outset ...?

Key messages from our experience

1

Be strategic in planning your deal

- Is the target likely to be an attractive proposition?
- Can you front load any restructuring steps to make the target/deal more appealing?
- Can you leverage your PAI diligence to enhance the VDD process
- Would an auction process help to raise the price?

2

Invest in thought planning

- Create confidence with a clear and robust plan
- Identify likely implementation issues early
- Install and maintain confidence in the process and timing
- Consider any necessary TSA arrangements and pricing

3

Find the optimal structure

- Who is likely to buy the target – a strategic or financial buyer?
- What structure works best for you and appeal to the likely buyer?
- Be careful to minimise disruption to the target
- Stand alone incremental cost analysis

4

Listen to local experts

- Who has the institutional knowledge about the target business?
- Engage local experts early to protect the global deal from local issues

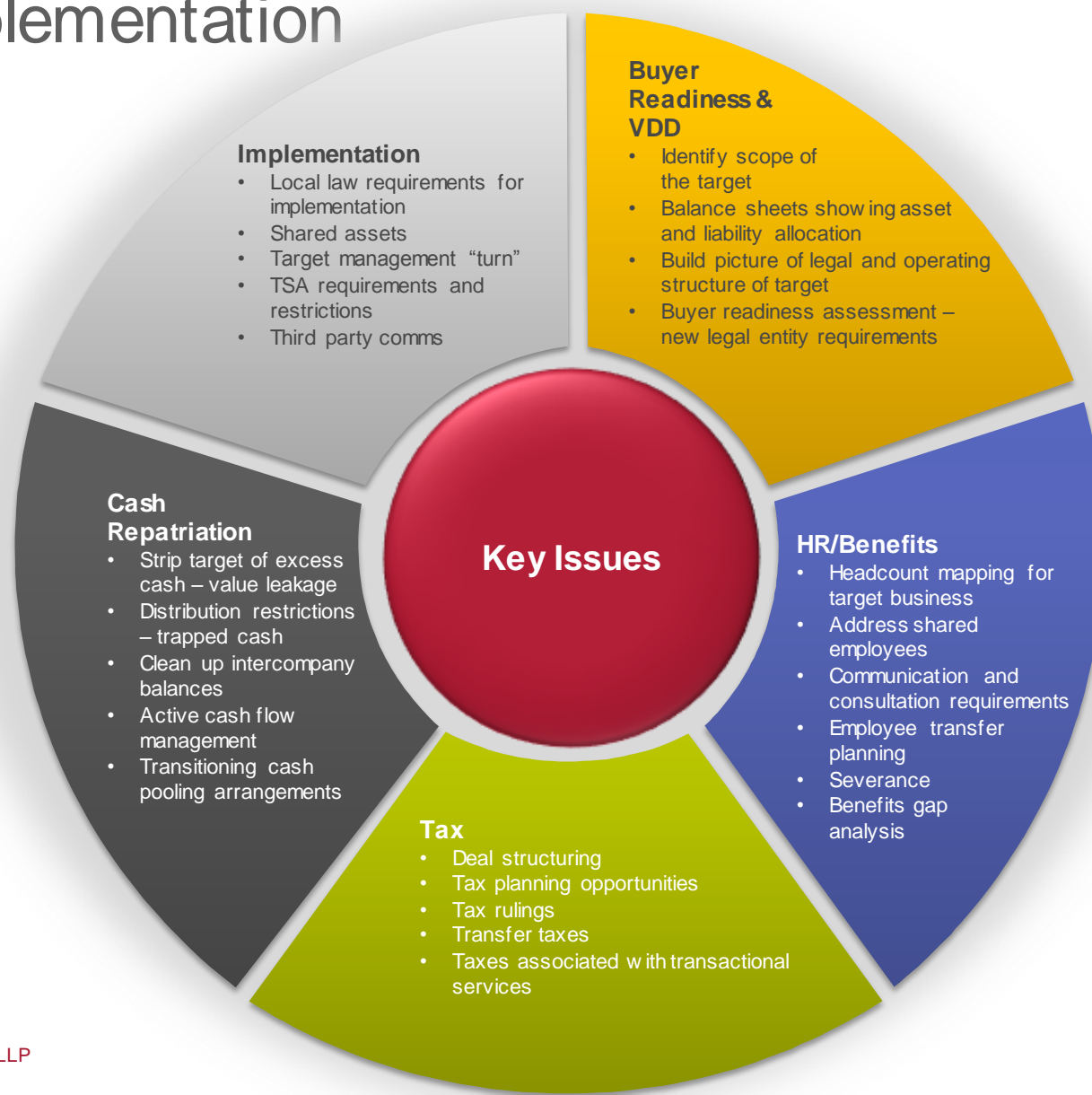
5

Plan a communication strategy

- Protect valuable relationships with planned communications
- Protect valuable business relationships for the target business, and the retained business.
- Be mindful of employee relations – plan careful and considered communications
- Maintain trust in the target business

Complex Disposals |

Key Implementation Issues



Questions

