

Exit Strategies M&A or IPO?

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Melia Hanoi Hotel, Hanoi

28 June 2017

Park Hyatt Hotel, Ho Chi Minh City

29 June 2017



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Source: Top 15 law firm, *National Law Journal* 350 survey, 2015

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Why Reed Smith?

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"They're very capable, consummate lawyers. Would I work with them again? Absolutely."

Chambers & Partners 2016

Asian IPOs to London



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GEONG



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Selected M&A Deals



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PIPING SYSTEMS



STEPPE
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vanke 万科
赞美生命 共筑城市



Overview

An aerial photograph of terraced rice fields in a mountainous region. The terraces are arranged in a series of concentric, wavy patterns, creating a unique landscape. The fields are lush green, and the surrounding mountains are covered in dense vegetation. The sky is clear and blue.

- **General considerations**

- Think – Plan – Act
- Objectives
- Have a plan
- Sale and exit options
- Advantages & disadvantages
- Investor expectations
- Due diligence
- Deal drivers
- A word on structure

- **M&A**

- Optimal process
- Illustrative process
- Common pitfalls

- **IPO**

- Pros & cons of listing
- Illustrative IPO timetable
- IPO marketing process
- Choosing the right bourse
- Common mistakes

General considerations



Think – Plan - Act

- What do you want to achieve?
- What is your plan for the business?
- What are your options?
- How can you avoid the most common mistakes?
- How can you get the best from your advisers?



Objectives: key questions to ask yourself

Your objectives

- Do you see this as your main business now and in the future?
- Do you want to keep control of the business or are you willing to give up majority control?
- Are you willing to give up some control over key decisions even if you remain the majority shareholder?
- Do you have a value at which you would definitely sell?

Other shareholders/stakeholders

- Are there other shareholders or stake holders whose objectives need to be considered?
- Are shareholdings becoming more dispersed?
- Are all shareholders involved in the business?
- Do other shareholders need liquidity?

The business

- Will the business grow significantly in the next 2-3 years?
- Does the business need to raise capital?
- Can the business survive and grow without you?
- What is your business profile and culture?

Have a plan

Analysis of the current business

- History and key milestones
- Products, markets, customers, suppliers, competitors
- Key assets – plant, distribution, points of sale, real estate, brands, IP
- Market positioning and competitive advantage
- Management and employees-key people, background, strengths and weaknesses, incentivisation
- Profit & loss, balance sheet, cash flow, current and past performance, key trends

Vision

- Where do you want the business to be in 5 years – size, range of products and services, geographical scope, profile
- What is needed to achieve this – key strategic initiatives and milestones, what investment in plant, systems, other capex and management is required
- Financial projections

Risks

- What are the key risks to the business and how can they be mitigated

Sale and exit options

- **Minority growth capital investment by a private equity firm**
 - PE firm takes <50% stake by injecting new equity, you continue to run the business, you work together to grow it
 - In 3-5 years PE firm exits through an IPO, M&A deal or secondary sale
- **Minority strategy stake**
 - Strategic partner takes <50% stake and works with you to grow business
- **IPO**
 - You list on a stock exchange
- **Sale of majority stake to private equity firm**
 - PE firm takes >50% stake, you retain an equity stake and probably a management role, in 3-5 years you jointly sell through an IPO or M&A deal
- **Sale of 100% to a private equity firm or strategic buyer**
 - You exit the business completely as a shareholder, you may be required to stay on as a manager for a transition period

Advantages and disadvantages

	Advantages	Disadvantages
Minority growth Investment by PE	<ul style="list-style-type: none"> • Raises money for company • Can accelerate growth • Capture value of growth • PE committed to exit 	<ul style="list-style-type: none"> • Exit delayed • Need to share control • No control premium • Limited cash out now
Minority strategic	<ul style="list-style-type: none"> • Some cash out now • Add value to business 	<ul style="list-style-type: none"> • No control premium • Restricts future exit options
IPO	<ul style="list-style-type: none"> • Raises money for company • Establishes value • Participate in future growth • May stimulate M&A buyers to approach 	<ul style="list-style-type: none"> • Long process • Full exit likely to take time • Selling by you may cap share price • You are exposed to market risk • Disclosure requirements
Majority stake sale	<ul style="list-style-type: none"> • Participate in growth • PE committed to exit 	<ul style="list-style-type: none"> • Not full control premium • Need to give up control
100% M&A sale	<ul style="list-style-type: none"> • Complete exit • Get a control premium • May get strategic premium 	<ul style="list-style-type: none"> • No exposure to future growth • Maximising value requires enough buyers to run a competitive process

Investor expectations

	Stock market investors	Financial sponsors	Strategic partners
Key Drivers	Purely financial/market drivers	Purely financial drivers	Financial & strategic drivers
Involvement	No involvement in decisions	Fast decisions by small group meeting frequently	Formal, often time consuming decision making processes
Information requirements	Expect quarterly updates/occasional meetings	Expect at least monthly updates/regular meetings	Expect extensive involvement in operational issues
Value add	No involvement in company	Good financial and deal skills – some operational value add	Deep operational capabilities and skills – real strategic value
Management impact	Accept existing management	Mostly work with existing managers – may want to appoint finance roles	May also want to use own managers
Business model	Accept the company model	Flexibles on business model	May have their own standard approach for company to follow
Level of equity	Only minority investors	Can be minority or majority investors – but want rights	Can be minority or majority investors – but want operational input
Speed of action	Take rapid and frequent investment decisions	Buying or selling companies is a core competence – 2-3 months for a deal	May not be used to mergers and acquisitions – may be long process
Time horizon	Short term (<1 year) view	Medium term (3-5 year) view	Longer term view

Due Diligence

- General company information
- Accounts
- Real property and other material assets
- Indebtedness and financing documents
- Creditors and debtors
- Other material contracts and arrangements
- Employees, pensions and benefits
- IP, marketing, sales and operations
- Insurance
- Regulatory matters
- Litigation and disputes
- Environmental and health



Deal drivers

What drives the success of a deal?

- **Key success factors**

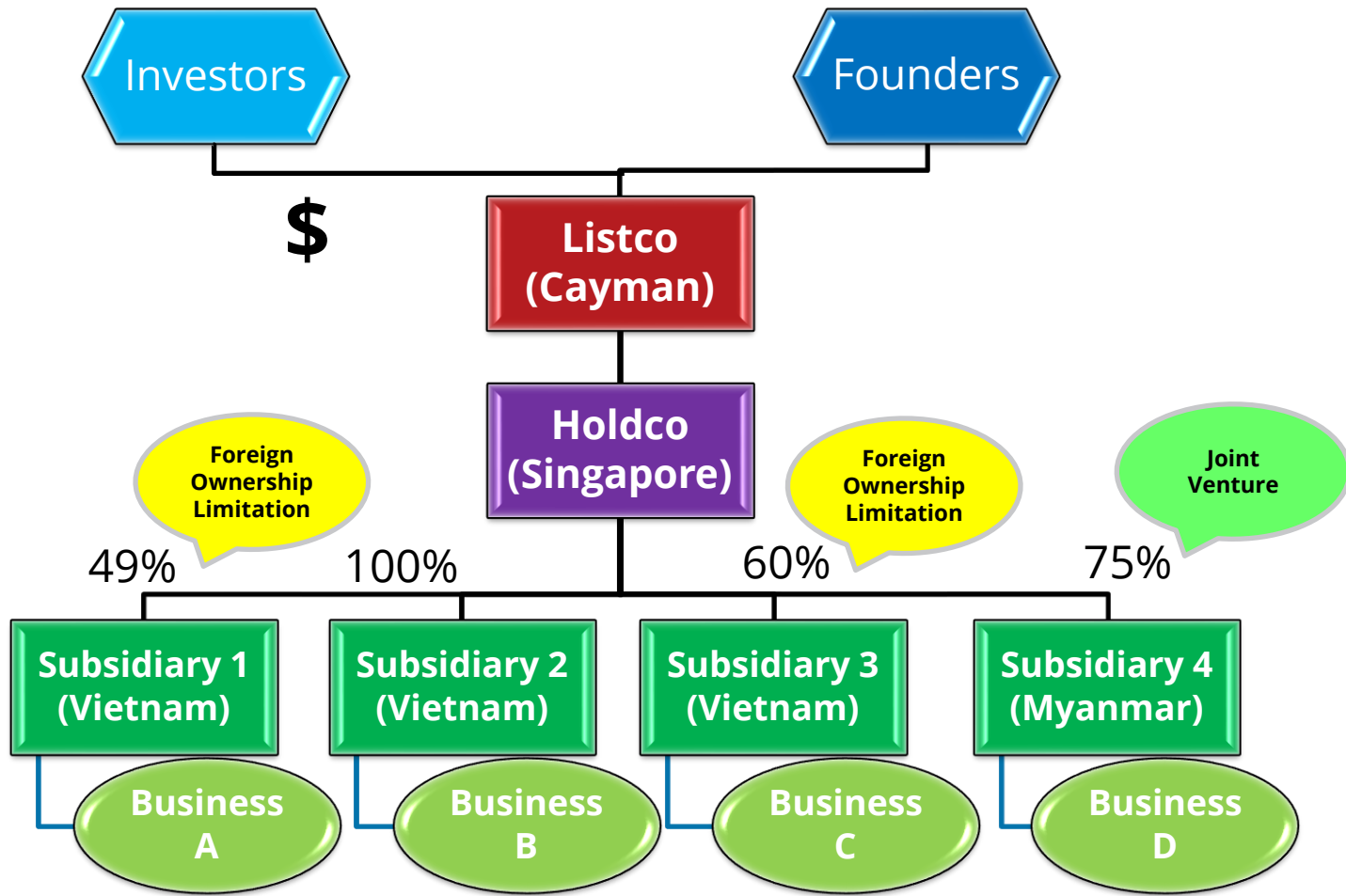
- Growth
- Quality of earnings
- Quality of business/competitive advantage
- Governance
- Scale (for IPO)
- Transfer of control (for M&)

What determines how long it takes?

- **Key timing factors**

- Structural readiness
- Financial readiness
- Management bandwidth
- Issues to be resolved
- Freedom of action

A word on structure



M&A



Designing the optimal M&A process

Structuring a competitive process around the key objectives of the seller:

Key objectives

- Maximisation of value and terms
- Certainty
- Speed
- Confidentiality

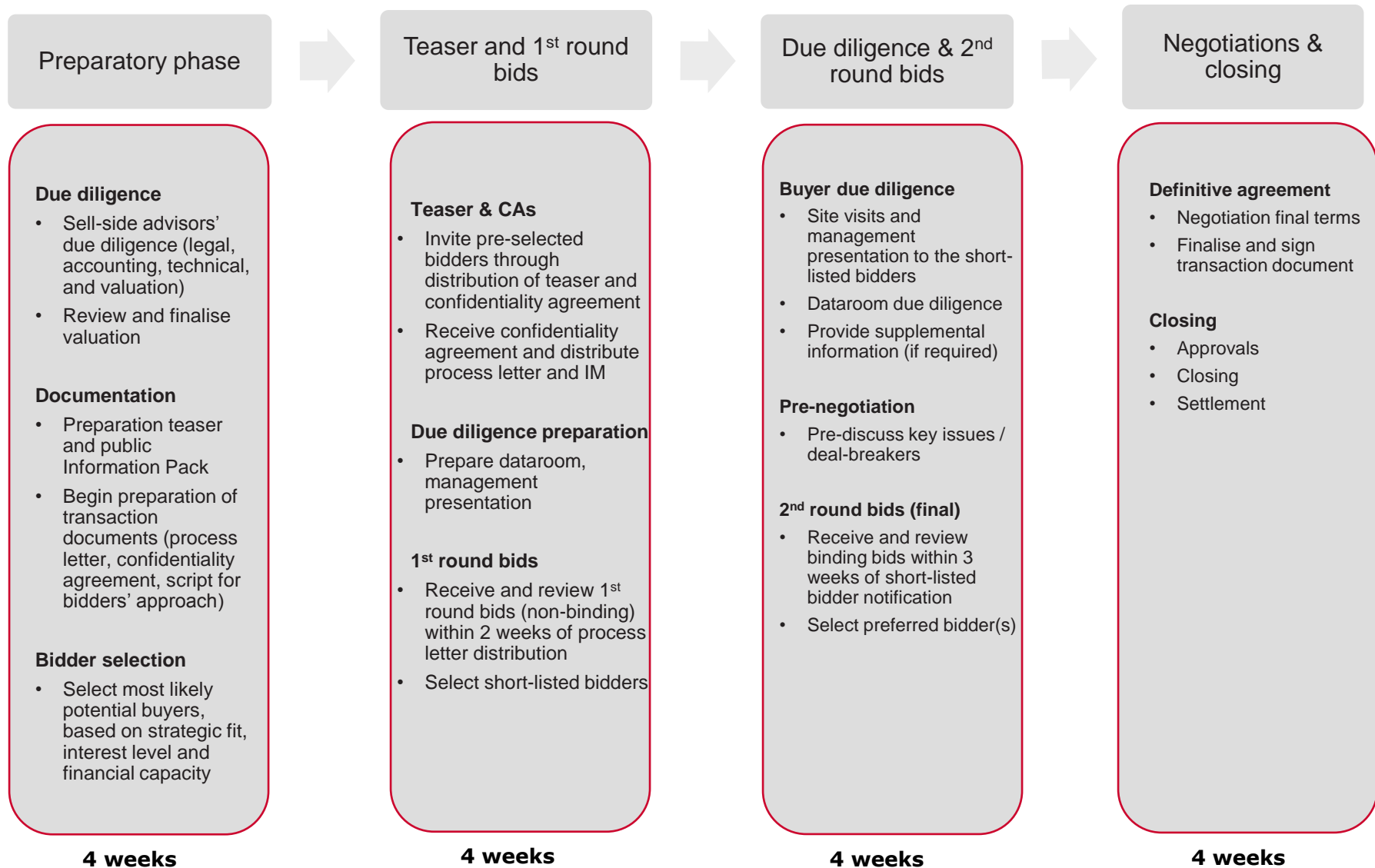
Key process variables

- Number of participants
- Composition of participants
- Sale process structure
- Bidding mechanisms
- Timetable
- Extent of documentation

Bid process

- How to identify the right set of bidders?
- How to get bidders to engage?
- How to handle consortium bids?
- How to avoid tactical bidding?
- Is price guidance appropriate?
- How to minimise disruption to management and business?
- How to handle sensitive information and competition issues?
- How to maintain/enforce confidentiality?
- How to handle pre-emptive offers?

Illustrative M&A process



M&A: common mistakes

- Trying to do a friendly bi-lateral deal
- Not being committed to the process
- Not knowing your own bottom line
- Not recognising your own strengths and weaknesses
- Under estimating the impact of running a failed sale
- Not getting help
- Getting emotional



#Mistake

Legal considerations

- Change of control
- Consents / renewals
- Fit and proper tests
- Regulated industries
- Triggers
- Pre-emption rights
- Foreign ownership



#Mistake

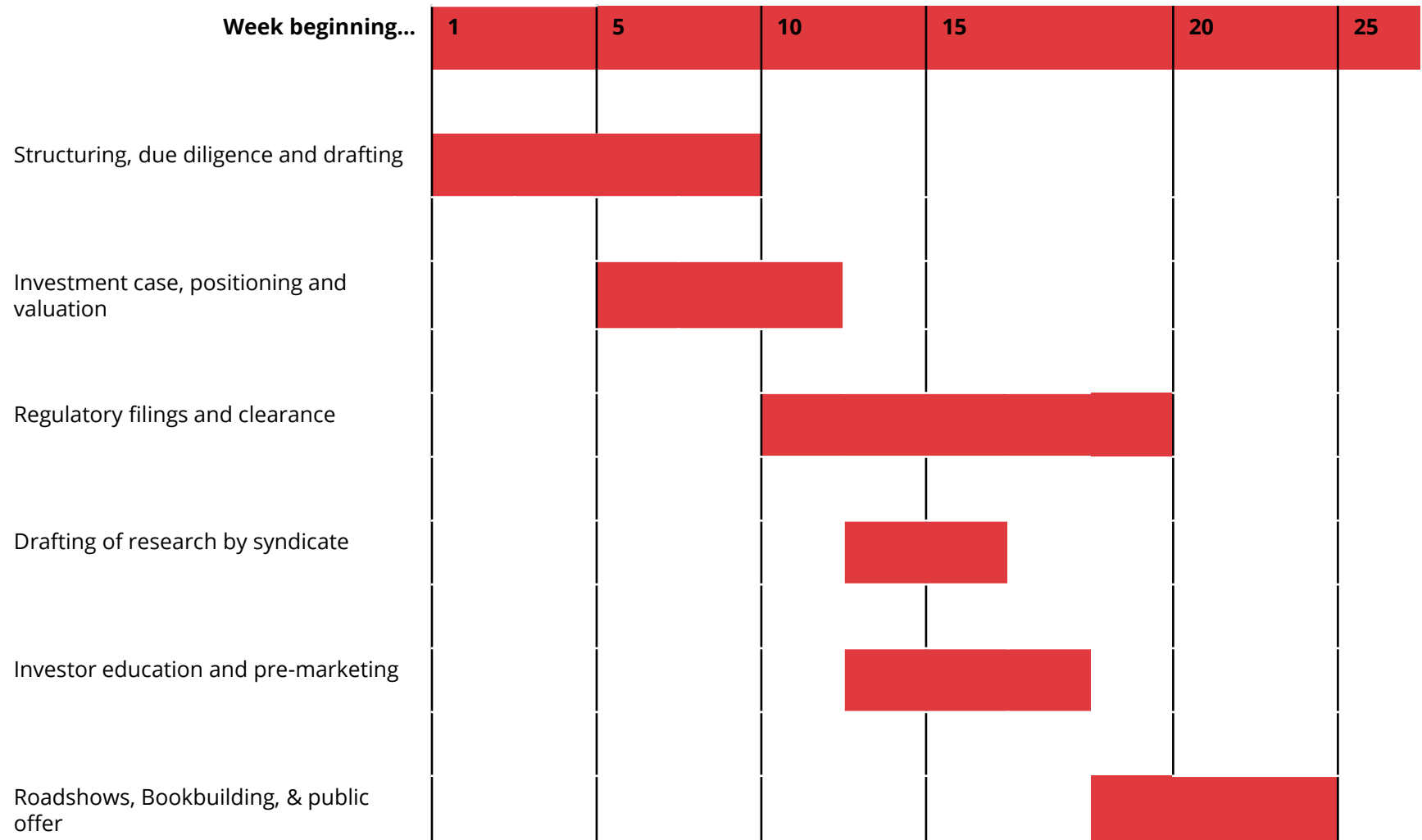
IPO



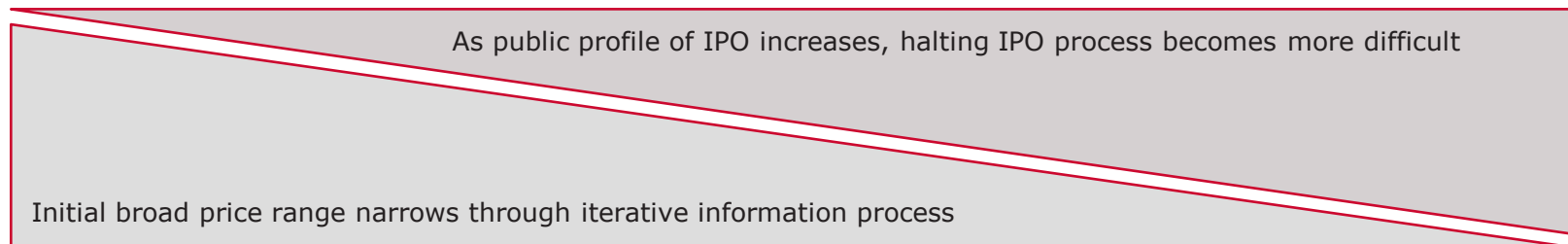
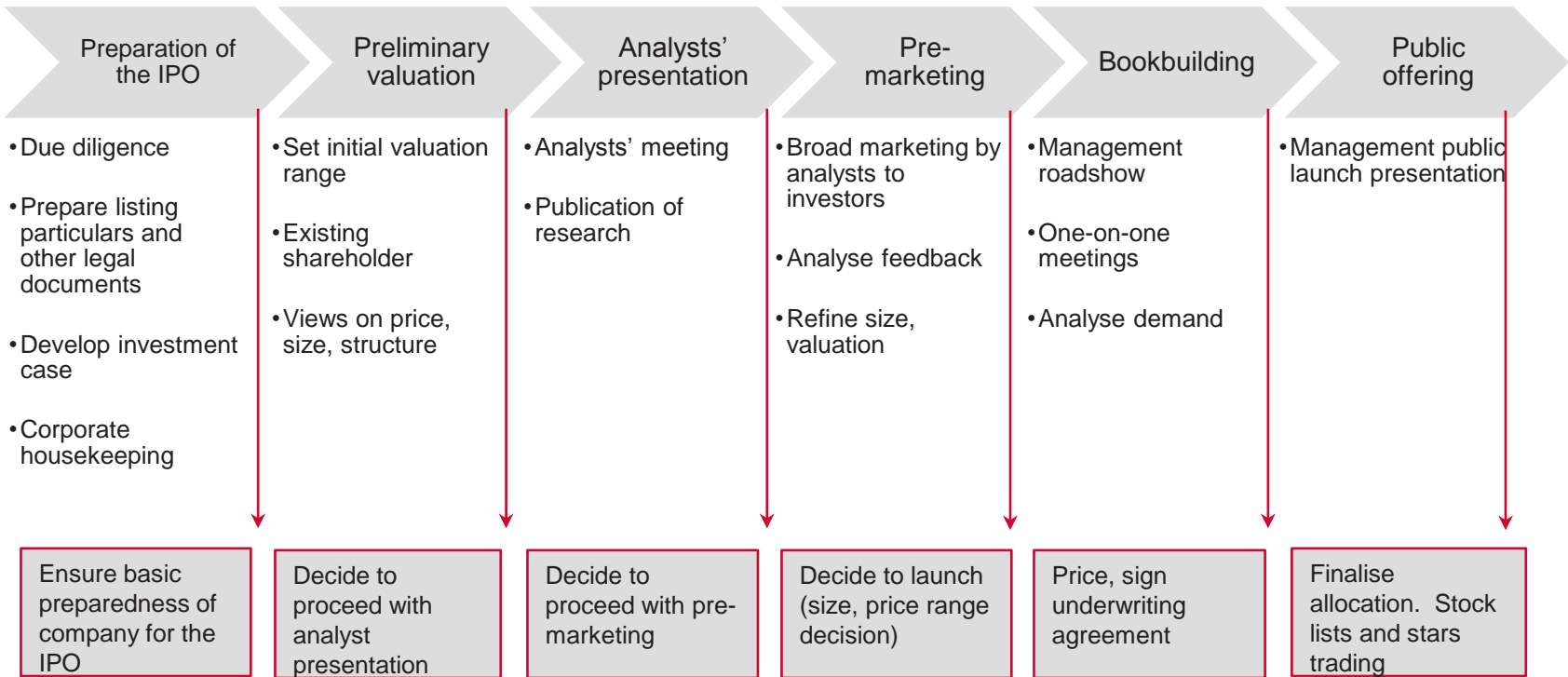
Pros & Cons of listing

Pros	Cons
<ul style="list-style-type: none">• Access to capital• Profile/reputation• Exit route• Motivation/incentive (ESOS)	<ul style="list-style-type: none">• Loss of control• Ongoing obligations• Disclosure / accountability• Costs• Transparency• Loss of privacy• Management distraction• Increased litigation risk

Illustrative IPO timetable



Typical IPO marketing process overview



Choosing the right bourse

- **Consider:**

- Type of business
 - Active/operating
 - Passive/investment holding
- Stage of development
 - Exploration/development
 - Production
- Location
 - Assets
 - Customers
 - Management
- Required speed/timing to market
- Management/technical resources
- Market conditions
- Costs



HANOI STOCK EXCHANGE
SỞ GIAO DỊCH CHỨNG KHOÁN HÀ NỘI



London
Stock Exchange



Common pitfalls for IPOs

- Going to the market too soon...or too late
- Thinking too much about process not strategy
- Seeing the IPO as the end of the journey
- Under-estimating the commitment
- Not embracing the consequences of an IPO
- Not trusting your advisers
- Not being flexible



#Mistake

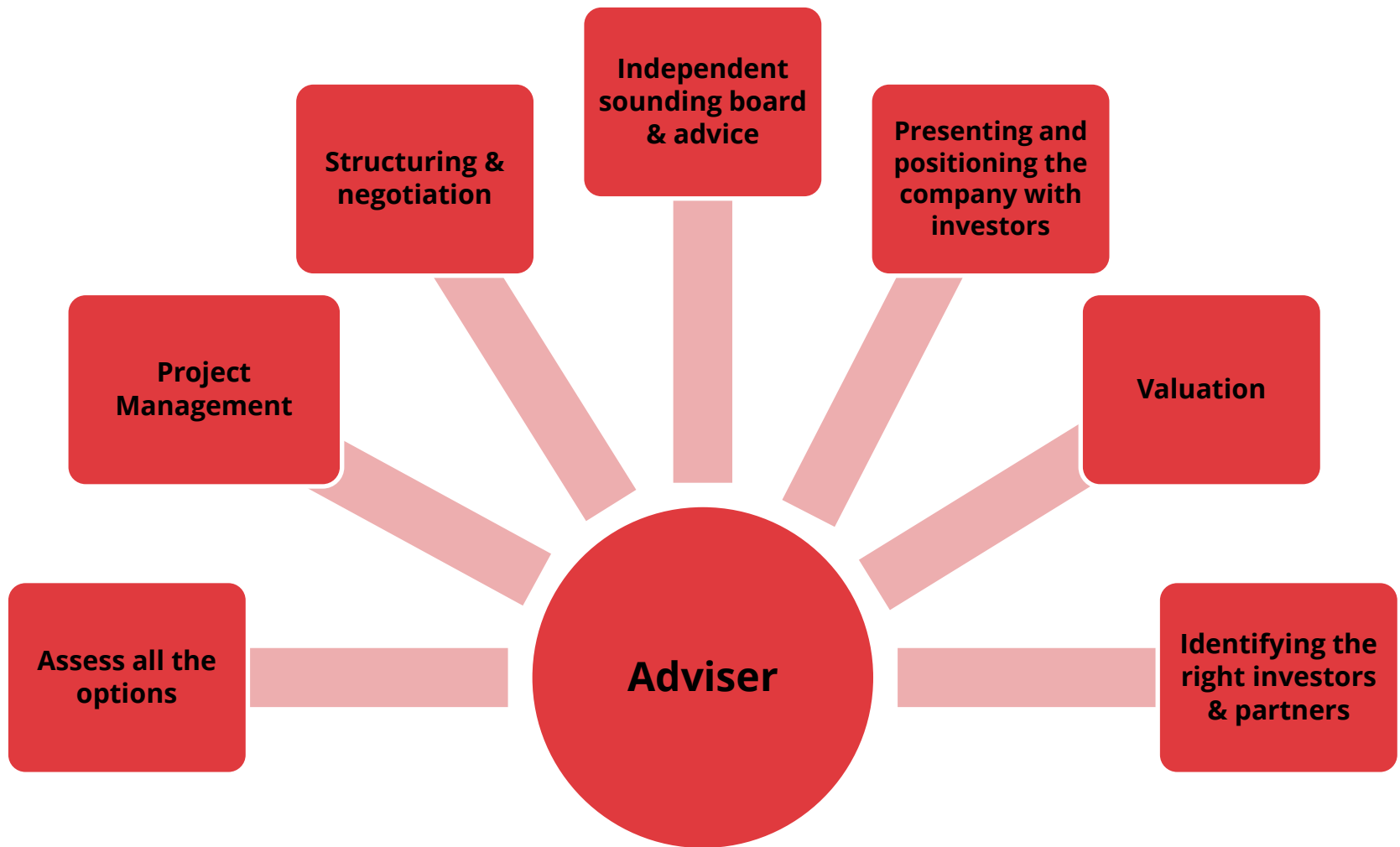
Legal considerations

- **Class tests**
- **Disclosure requirements**
- **Takeover Code**
- **Lock-ins**
- **Financial services regulations**
- **Depository receipts**

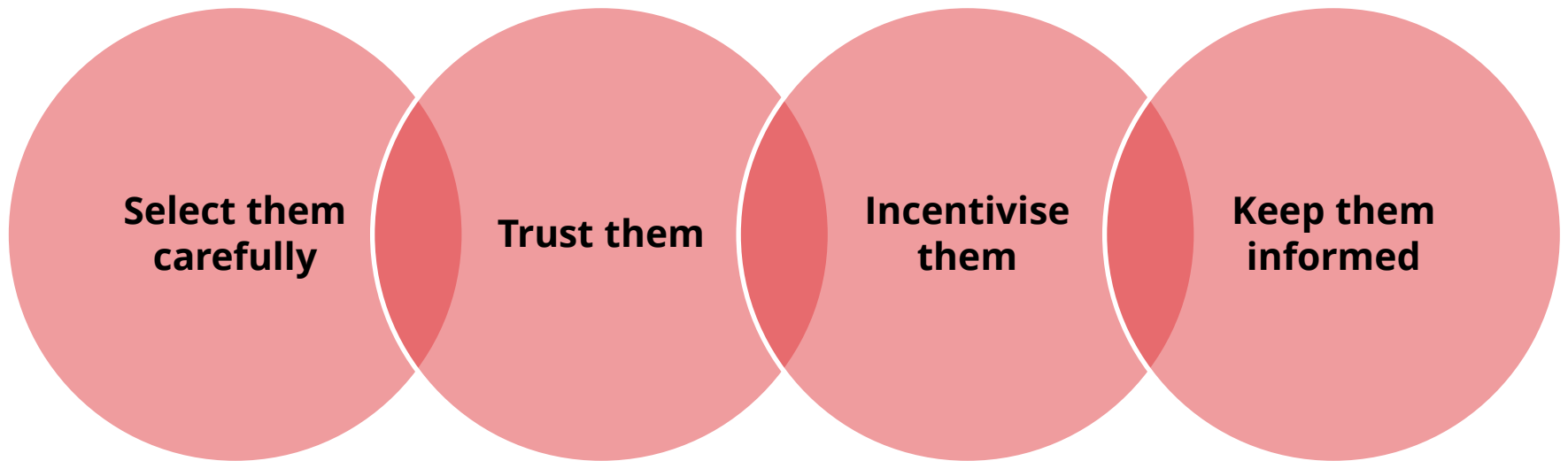
Closing thoughts




How can an adviser assist you?




Getting the most from your advisers




Conclusions



- There no “right” answers - only the right answer for you




- Take time to think and plan



- Know what you want to achieve



- In particular think beyond the deal



- Whatever you do – commit to it

Appendix

Key features: Sponsor / Nomads

Premium Listing

- Sponsor required for listing
- And thereafter for certain transactions

Standard Listing

- Not required
- But sponsor often acts as financial adviser on listing

AIM

- Nomad required for listing
- And on ongoing basis

Key features: Minimum public float

Premium Listing

- 25%
- In EEA

Standard Listing

- 25%
- In EEA

AIM

- None stipulated
- 15% in practice

Key features: Market capitalisation

Premium Listing

- GBP 700k
- Ideal size? FTSE 350

Standard Listing

- GBP 700k
- Ideal size?

AIM

- None stipulated
- Ideally GBP 40-100m

Key features: Trading history

Premium Listing

- 3 years for 75% of business
- Independent business

Standard Listing

- None stipulated
- Up to 3 years if they exist

AIM

- None stipulated
- Up to 3 years if they exist

Key features: Financial reporting

Premium Listing

- Annual report - 4 months
- Half-year report - 2 months
- Quarterly summary - 45 days

Standard Listing

- Annual report - 4 months
- Half-year report - 2 months
- Quarterly summary - 45 days

AIM

- Annual report - 6 months
- Half-year report - 3 months

Key features: Post-listing compliance

Premium Listing

- Announce price sensitive information
- Class 1 transaction requires shareholder approval and sponsor opinion
- RTO treated as new listing

Standard Listing

- Announce price sensitive information
- Class tests by voluntary adoption
- RTO treated as new listing

AIM

- Announce price sensitive information
- Disclose significant and related party transactions
- RTO requires shareholder approval and treated as new listing

Key features: Corporate governance

Premium Listing

- NEDs – ½ the Board (usually at least 3)
- CG Regime: Combined Code

Standard Listing

- NEDs – None stipulated (usually 2 by voluntary adoption)
- CG Regime: None specified (usually Combined Code or QCA Guidelines)

AIM

- NEDs – None stipulated (usually 2 by agreement with Nomad)
- CG Regime: None specified (usually QCA Guidelines)

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Matthew is a corporate partner with extensive transactional experience across a range of corporate and commercial disciplines including mergers and acquisitions, joint ventures, equity capital markets and private equity and venture capital.

Matthew provides strategic advice to both private and public companies and his knowledge of complex financing issues and his experience in understanding clients' objectives makes him a skilled advisor in sectors spanning, energy and resources, transportation and logistics, media, real estate and financial services.

Having worked in London for over 10 years before moving to Asia, Matthew has built up particular expertise in advising companies, financial institutions and intermediaries on transactions on the London Stock Exchange and its AIM market in particular. He also brings to any fund-raising transaction his thorough knowledge of the investment process and his understanding of Asian markets, cultures and corporate business styles.

Matthew's extensive cross-border experience covers a wide range of jurisdictions throughout Asia and beyond - including Singapore, Malaysia, China, Vietnam, Myanmar, Indonesia, Oman and Georgia.

Matthew is recognised by Chambers Asia 2016 as a Leading Individual in the Corporate/M&A and Capital Markets categories. Clients have commented that:

"Matt impressed us with his hands-on commercial approach which, combined with his experience of cross-border M&A deals and an ability to work well with local counsel, meant that he was able to focus our attention on the critical issues."

"Matt has considerable experience of doing deals in Asia and always combines his expertise and experience with a measured and commercial approach to the transactions on which he advises."

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Gerald is a corporate lawyer based in Singapore whose practice is focused on the frontier and emerging markets of the CIS and Asia. He advises on a broad range of international securities, mergers and acquisitions, joint ventures, corporate finance and corporate restructuring transactions.

He has extensive experience acting as international counsel for family offices, asset managers and private investment groups on their public and private equity investments into the following industry sectors: metals and mining, oil and gas, power generation, infrastructure, commodities, hospitality, real estate, retail and aviation (including private aviation and aircraft).

Gerald's practice encompasses all aspects of the investment life-cycle with an emphasis on international business and investment structuring. He also handles commercial contracts, corporate governance, company law and regulatory compliance and investigations matters.

Gerald currently serves as co-chair of Reed Smith's Indonesia Business Team.

Prior to re-joining Reed Smith, Gerald was Group General Counsel at a Singapore based private investment group and single family office.

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