

C L I F F O R D  
C H A N C E

**FUNDAMENTALS OF PRIVATE CAPITAL AND M&A TRANSACTIONS**  
SINGAPORE | WEDNESDAY, 4 SEPTEMBER 2024

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## **DUE DILIGENCE AND W&I INSURANCE**

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SINGAPORE | WEDNESDAY, 4 SEPTEMBER 2024



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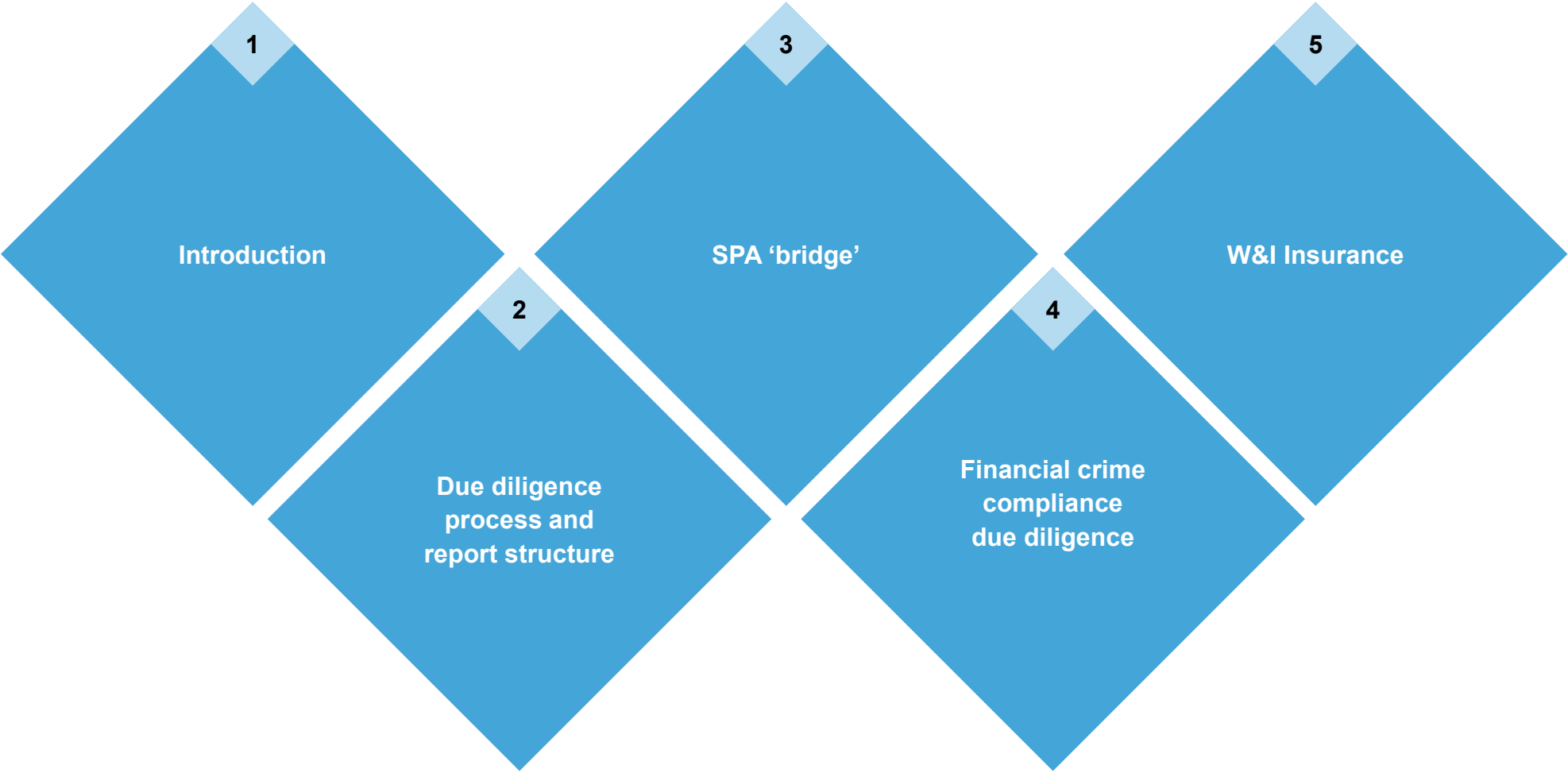
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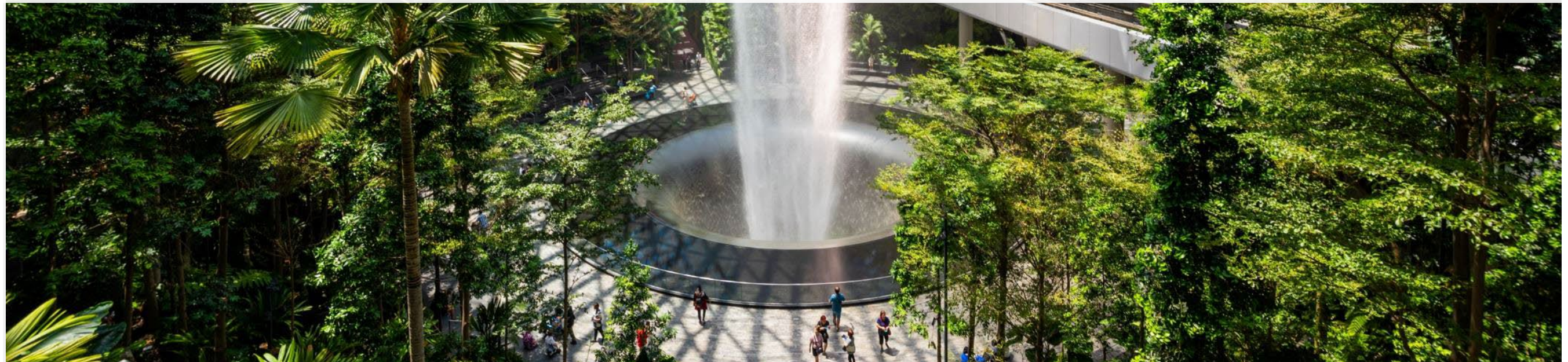
# CONTENTS







## 1. INTRODUCTION





# WHAT IS THE PURPOSE OF LEGAL REVIEW?

## Buyer's perspective

- **Value:** assess the target/business in question (*often industry specific*)
- **Certainty:** verify accuracy of Seller's representations and warranties (*impacts seller's disclosure*)

## Seller's perspective

- **Auction:** facilitates deal timeline
- **Enhance deal value:** Identify issues early and rectify (if possible)





## **2. DUE DILIGENCE PROCESS AND REPORT STRUCTURE**





# WHAT IS THE DEAL?

Ascertain the commercial objectives with respect to the proposed acquisition, e.g.:

would the client acquire 100% of the target?

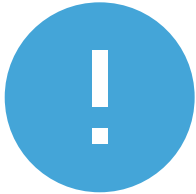
does the client have any existing interest in the target?

would the client rely on the existing management to continue the business operations of the target?

PE investor?



# WHAT SHOULD THE LEGAL REVIEW REVEAL?



In general, we need to identify any (potential) problems/risks before you are contractually committed to proceed:

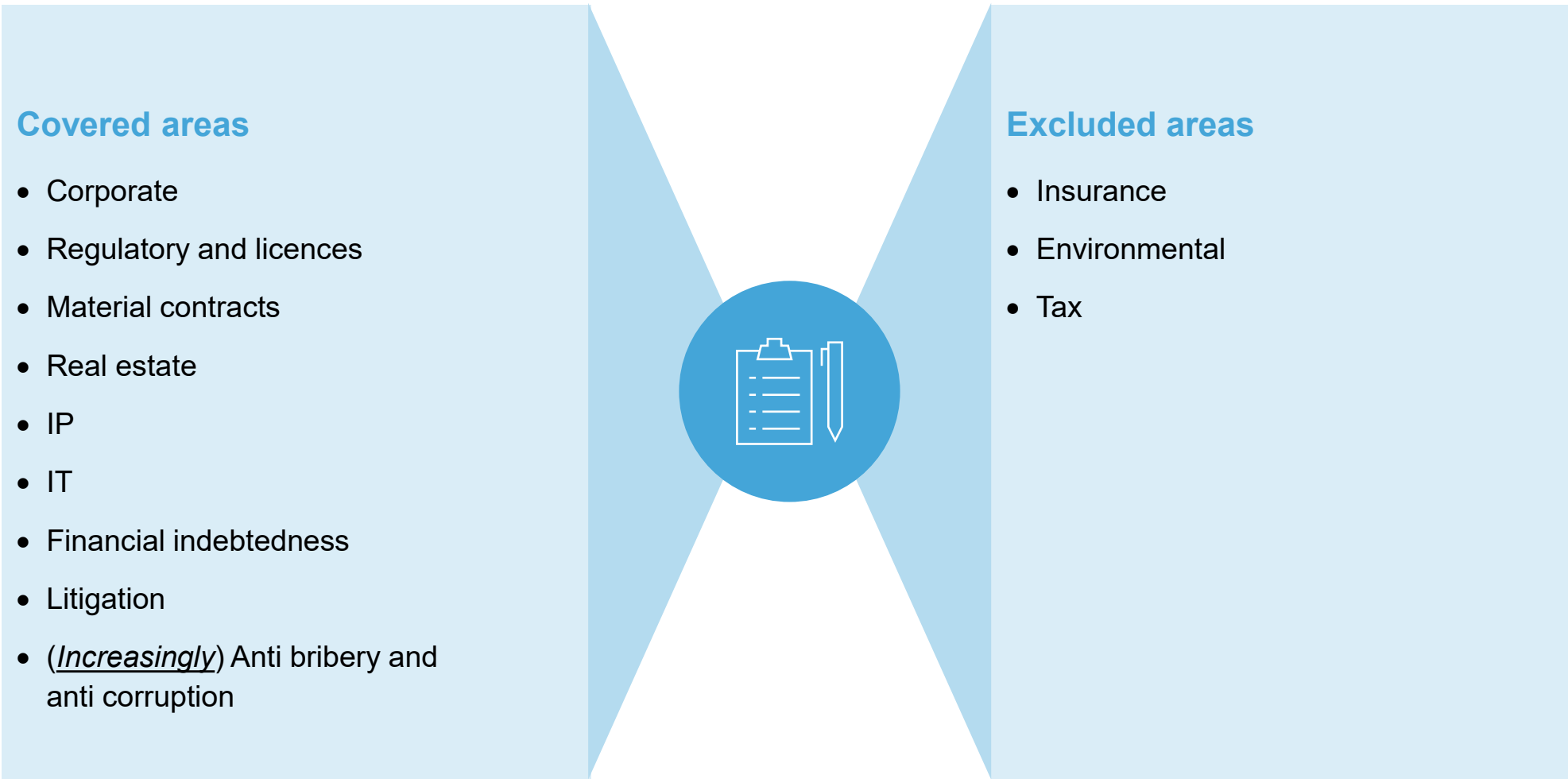
- |   |                                    |   |   |
|---|------------------------------------|---|---|
| any deal breakers?  | any issues affecting pricing?      | any conditions precedent to completion (e.g. regulatory approvals/third party consent)? | any irregularities that need to be rectified, say, before completion? |
| any matters that should be covered by a Seller’s indemnity? | any material or onerous contracts? | any risks pertaining to the acquisition or the post-acquisition operation?              |   |



AND, can the problem/risk be fixed/mitigated?



# TYPICAL SCOPE OF LEGAL REVIEW





# STRUCTURE OF A LEGAL REVIEW REPORT

1

## Framework of a typical M&A legal review report

- overview
- report highlights
- executive summary
- body of report
- scope, exclusions, limitations, assumptions and addressees
- definitions
- schedules/annexures

2

## Body of a legal review report

### Where appropriate:

- identify the issues/risks and explain
- come up with a solution/recommendation
- ideally should prioritize the issues
- scope, exclusions, limitations, assumptions and addressees

### Frequently used recommendations:

- price adjustment
- further due diligence
- indemnity
- specific warranties (note limitations)
- conditions precedent
- undertakings (post-closing)
- completion audit
- commercial/financial issues or deal structure



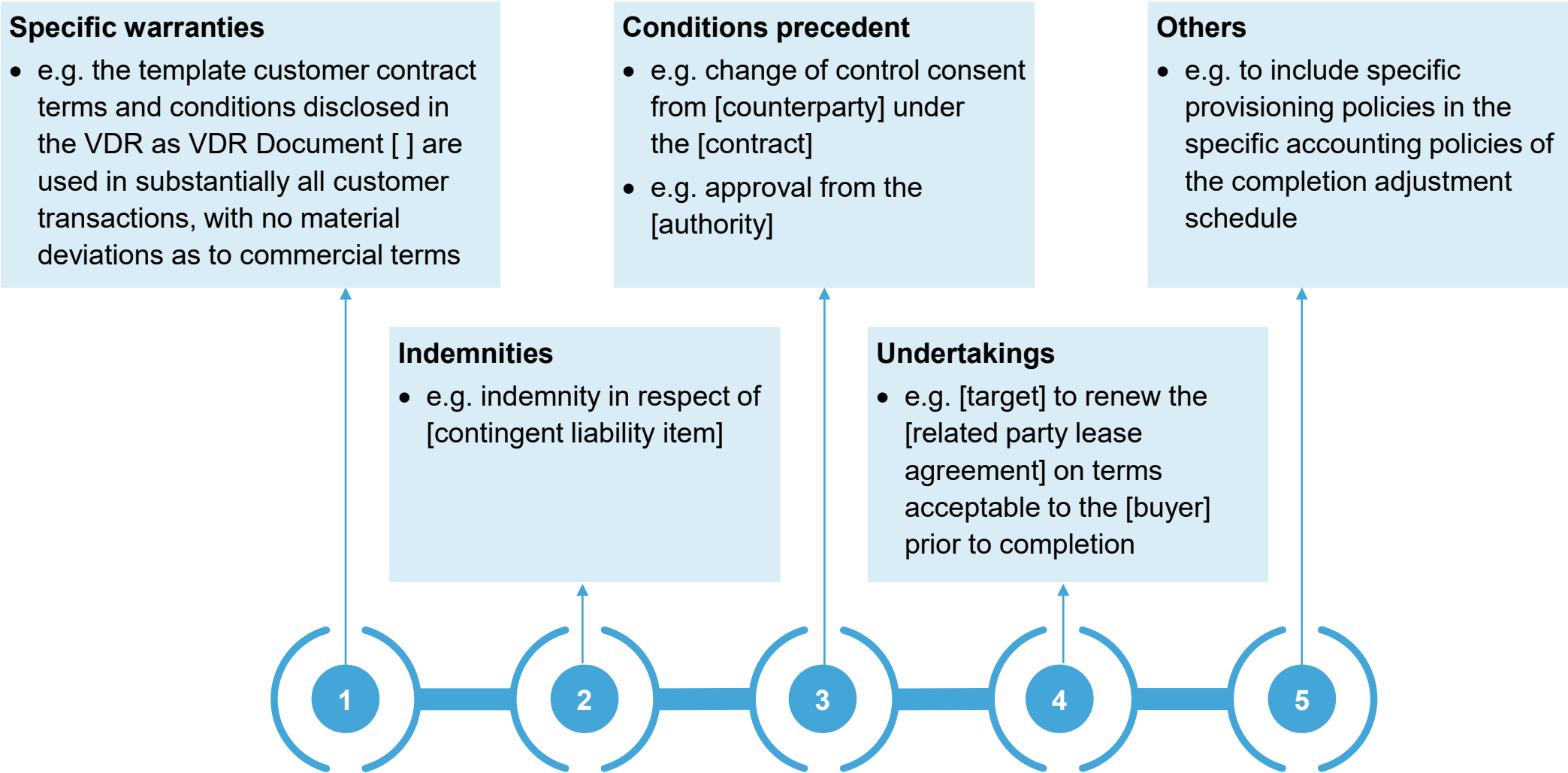


### **3. BRIDGING THE LEGAL REVIEW REPORT TO THE TRANSACTION DOCUMENT AND POST-COMPLETION**



# BRIDGING THE LEGAL REVIEW REPORT TO THE TRANSACTION DOCUMENT AND POST-COMPLETION

## SPA BRIDGE







## **4. FINANCIAL CRIMES COMPLIANCE (FCC) DUE DILIGENCE**





# WHAT IS FCC DD?



## What is FCC DD?

### Financial Crimes Compliance Due Diligence:

- Anti-Bribery and Corruption (“**ABC**”)
- Anti-Money Laundering (“**AML**”)
- Trade and economic sanctions (“**Sanctions**”)



# HOW DO YOU CONDUCT M&A FCC DUE DILIGENCE?

## Information from the Target

- Draft and issue FCC due diligence questionnaires in respect of the Target's (i) compliance practices/culture; (ii) touch points to government officials/authorities; (iii) use of third parties; (iv) connections to higher risk sanctioned countries and parties; and (v) its compliance history.
- Request and review compliance policies and procedures, compliance audit reports and risk assessments, agreements with consultants, agents, or intermediaries.
- Conduct FCC due diligence interviews with compliance, legal and business personnel of the Target.

## Independent Investigative Research

- Engage an investigative firm (such as FTI, S-RM, Control Risks, Mintz, Kroll, Wallbrook, G3) to investigate the Target, its shareholder's and key people (directors)
    - Open-source research (Level 1)
    - Discreet market enquiries (Level 2)
- Client's preferred investigative firm

Engaged by counsel to maximize  
privilege protections

## Forensic Books and Records Review

- Engage a forensic accountant to conduct a forensic review of the Target's books and records:
- Expenses
  - Miscellaneous expenses
  - Gifts, hospitality, donations
  - Office expenses.
- Payments to sanctioned countries or sanctioned targets.
- Payments to third parties.

# HOW TO MITIGATE THE RISKS

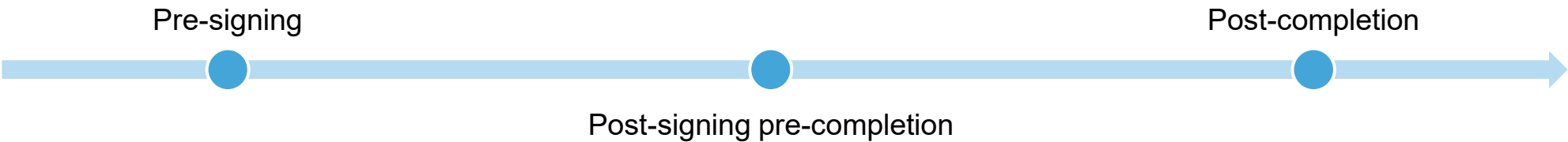
## Additional Diligence

- *Pre-signing*: conduct enhanced FCC due diligence.
- *Post-signing Pre-completion*: conduct confirmatory FCC due diligence.

## Remediation Measures

- Implement a compliance program.
- Post-signing pre-completion obtain access rights and conduct a risk assessment.
- Conduct a risk-based review of third parties and exit problematic relationships.

## Timing is Key and Often Heavily Negotiated



- Carve out problematic assets from the transaction.
- Walk away from the transaction.

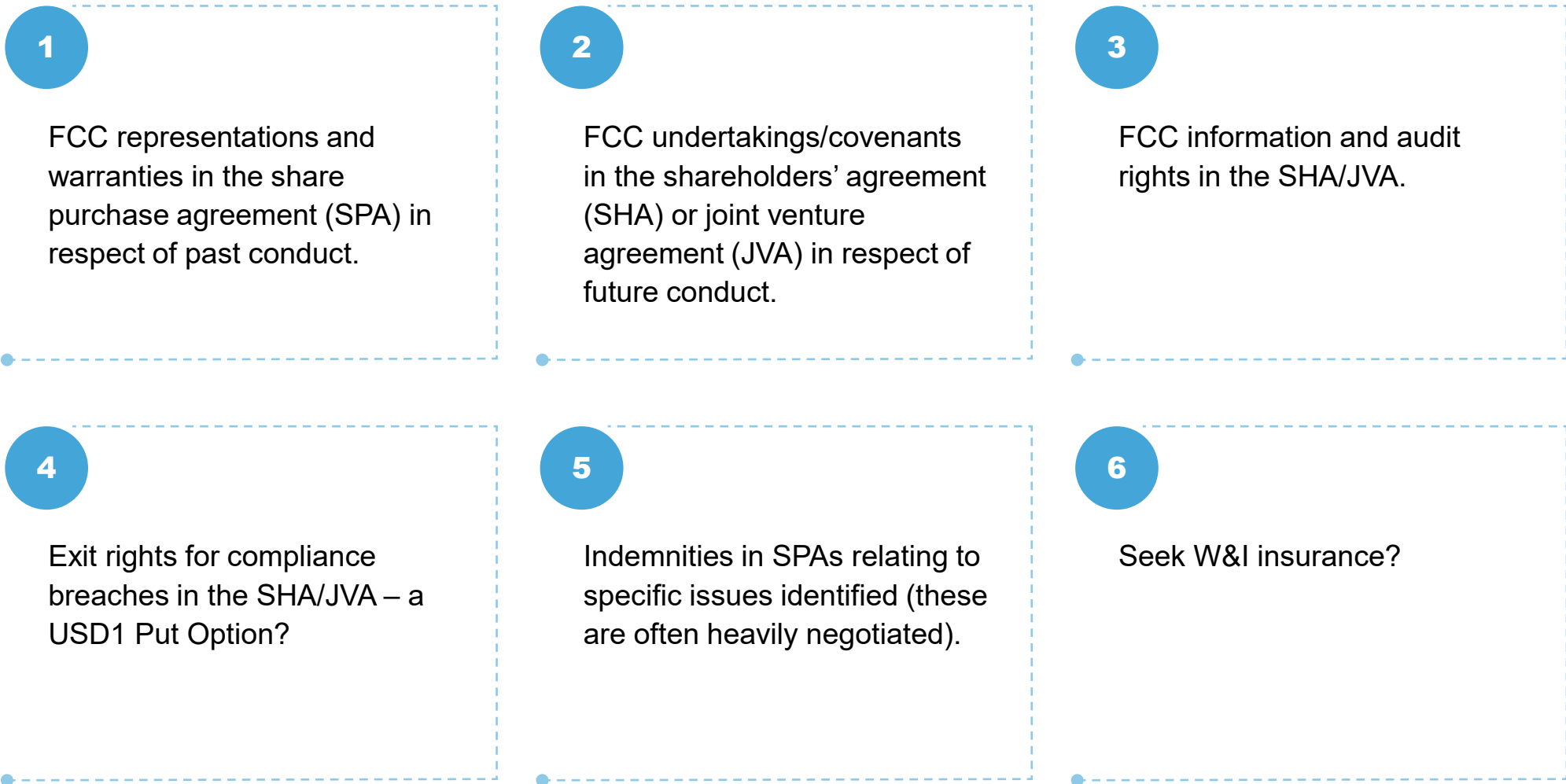


# HOW TO MITIGATE THE RISKS

(CONTINUED)

## Contractual Protections

### Client's Model Clauses







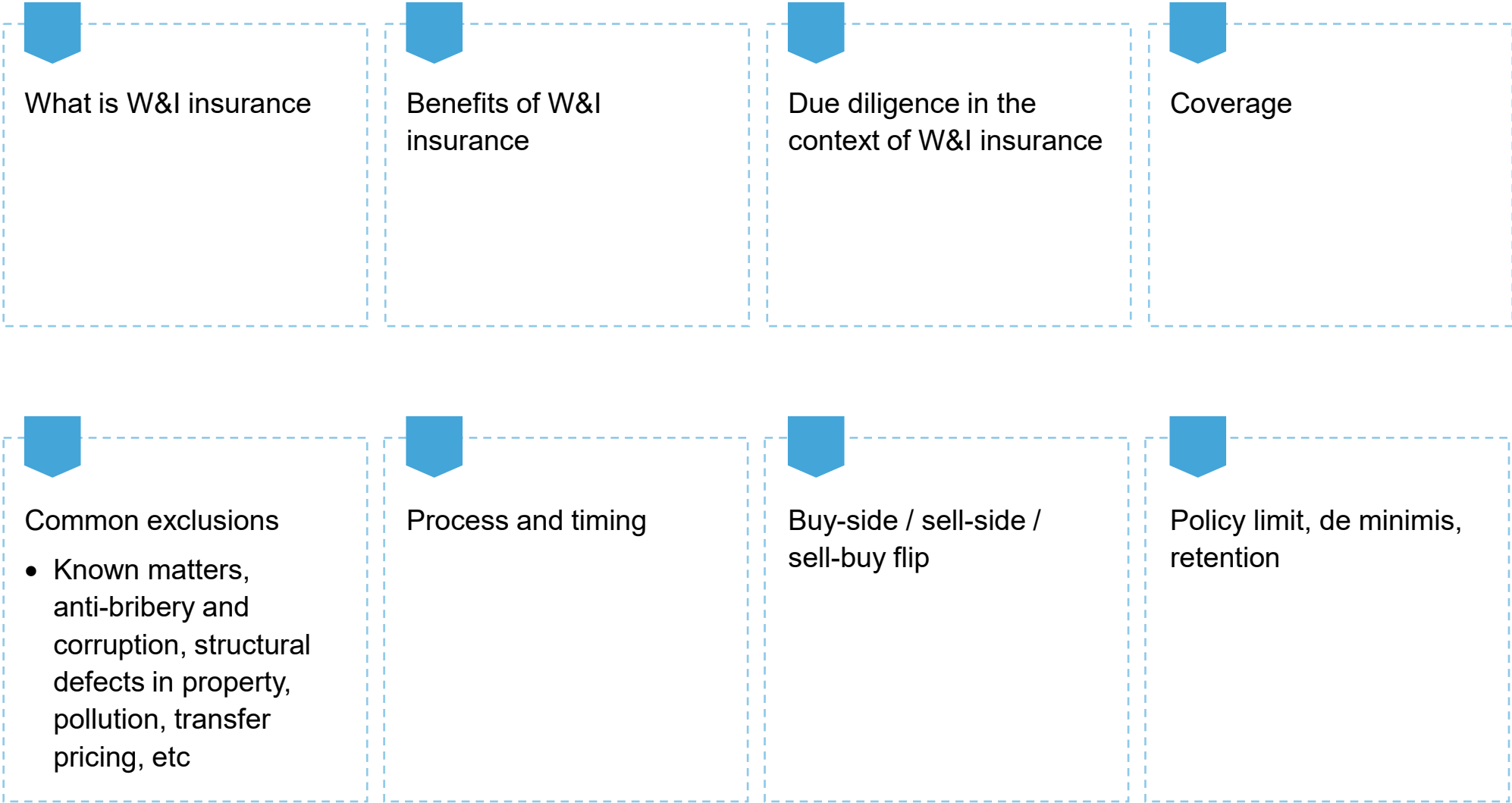
## **5. WARRANTY AND INDEMNITY INSURANCE**





# WARRANTY AND INDEMNITY INSURANCE

## OVERVIEW



**PLEASE GET IN TOUCH AND CONTINUE THE CONVERSATION**

*Feedback Survey*



*Client Portal Subscription*







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