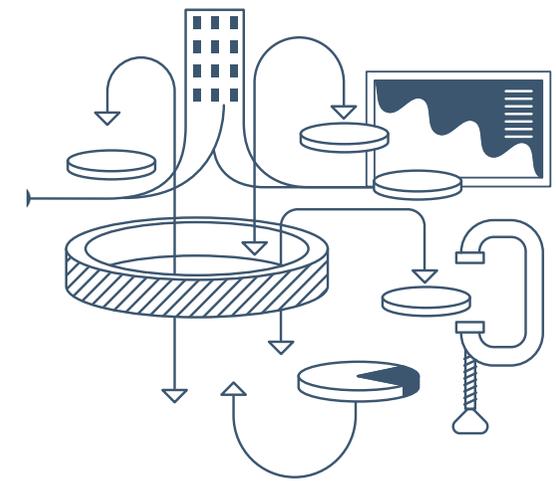
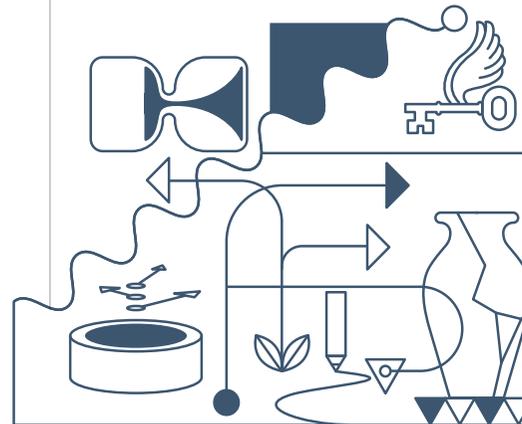


BANK RESCUES: 7 THINGS TO CONSIDER IN ANY PARTIAL PROPERTY TRANSFER UNDER THE BANKING ACT

As banks continue to feel the financial and operational strain from these surreal times, here are 7 key areas for any bank considering a rescue of a failing UK bank, by way of a partial transfer.

1 PREPARATION IS KEY

Any rescue transaction requires swift and efficient engagement as time is limited. Having a playbook prepared to ensure that a rescuing bank is able to engage the necessary internal and external team to deliver the transaction will maximise its competitive position in any auction process and help it more effectively mitigate the transaction's associated risks. Preparation is key.

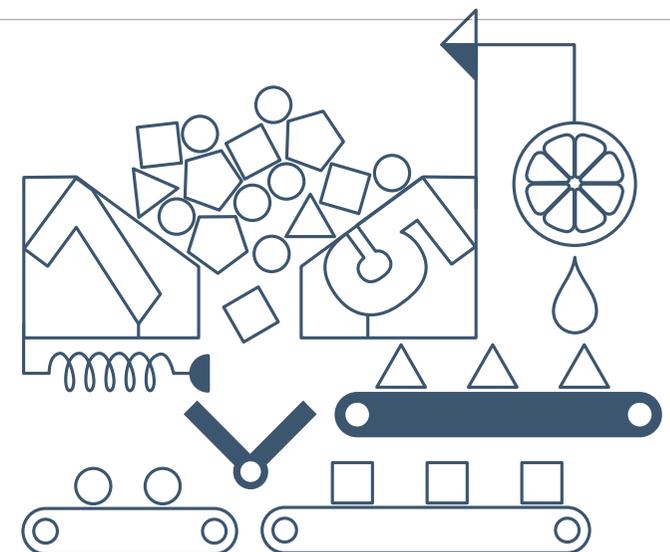


2 CLARITY ON SCOPE OF BUSINESS

The Banking Act and the transfer instrument itself will accommodate an effective split of the in-scope business of the failing bank and its transfer to a rescuing bank. Having a clear internal view of what classes of assets and related liabilities you intend to acquire and exclude will help formulate an offer for the relevant parts of the failing bank and accurately describe the business that is in-scope for transfer.

3 SECTION 75 ORDERS

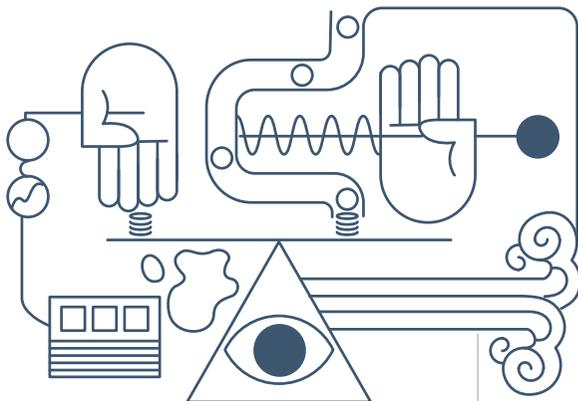
HM Treasury may exercise its power under section 75 of the Act to modify legislation and common law to facilitate a resolution. This is an effective tool but is likely to be used sparingly. Having a clear picture of the business a rescuing bank would be prepared to acquire will allow the bank to focus on whether any modification under section 75 would be required to achieve the split from the failing firm.



4

VALUE ADJUSTMENTS

In the absence of an SPA or BPA, there may be difficulty in testing the price paid for the transferring business. A post-acquisition adjustment would ordinarily be sought but which party would make any required payment to the rescuing bank (the failing firm or HM Treasury)?



5

SWAPS

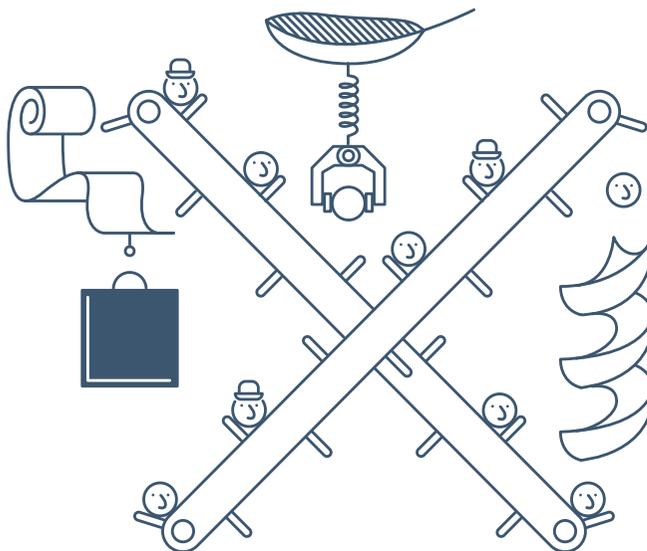
Engage early with your Treasury team to ensure that the application of the Partial Property Safeguards Order to related swaps, engagement with your new swap counterparties and implementation of a swaps close out procedure post acquisition, can each be dealt with smoothly in the immediate aftermath of an acquisition.



6

EMPLOYEE AND PENSION LIABILITIES

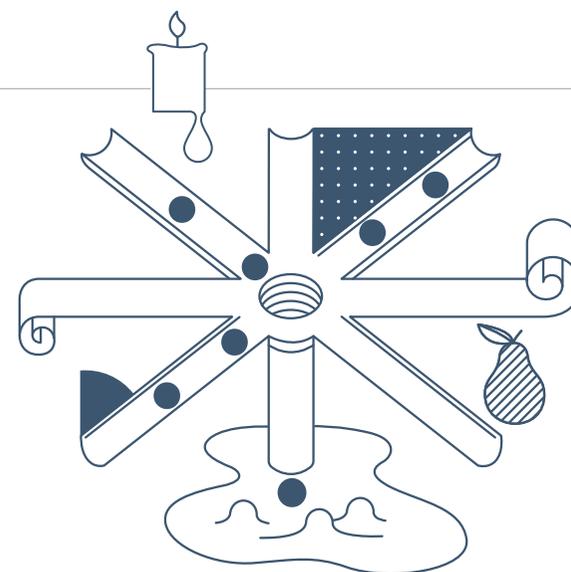
Treatment of the failing bank's staff and any associated pension liabilities is likely to be a key concern for the tripartite authorities. This will include whether the entire body of staff will transfer to the rescuing bank or just those assigned to the transferring business. This will impact how the transferring business and any business placed with a bridge bank or into administration will be serviced following the split.



7

COMPETITION AND STATE AID

Whether a transaction takes place before the end of the Brexit transition period or under the new UK State aid regime, it may involve state aid and require analysis to determine whether there has been any distortion to competition. Will merger control rules apply to the acquisition and will support be required from the tripartite authorities in any failing firm argument? Can the Secretary of State intervene on public interest grounds if the transaction is necessary to ensure the stability of the UK financial system?



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If you would like a more comprehensive view of what we're seeing in the current environment and what steps you should take to maximise your chances of success, please get in touch.

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