

No Better Time for the Right Outsourcing Series



pillsbury

M&A – Transition Services

At the Forefront of Business Continuity and Cost Savings

July 14, 2009

No Better Time

About the Presenter



Mario F. Dottori - Partner
Pillsbury Winthrop Shaw Pittman LLP

Tel: 202.663.8467
2300 N Street, N.W. | Washington, DC 20037
Email: mario.dottori@pillsburylaw.com
Bio: www.pillsburylaw.com/mario.dottori
www.pillsburylaw.com

Mr. Dottori, a partner in Pillsbury's Global Sourcing group, focuses on domestic and multi-national information technology and business process outsourcings. Mr. Dottori's sourcing experience includes IT infrastructure outsourcings, onshore and offshore application development & maintenance transactions, shared service arrangements, transition services, systems integration and software licensing, as well as human resources, finance & accounting, procurement and real estate outsourcings.

He counsels clients throughout the sourcing life-cycle, including sourcing strategy, RFP development, evaluation criteria, supplier selection, transaction architecture, contract development, negotiations and contract management.

Mr. Dottori was ranked among the top tier of Technology and IT Outsourcing lawyers by **Chambers USA** in 2007 and 2008.

About Pillsbury Global Sourcing

The most experienced firm in the business – architecting the largest service delivery projects and strategic alliances

Over **500 transactions** across a premier customer base

Over **20 years'** experience in structuring and implementing complex delivery arrangements

More than **US \$450 billion** in completed transactions

The **only** sourcing advisory firm offering **integrated professional services** (legal, sourcing, domain, financial & change management)

- Guiding clients through the **full sourcing lifecycle**
- Using **straight-through processing** for speed-to-value
- Deploying a unique **visual sourcing** technique using our patented **ValueChain** method

No Better Time

In the current economic climate (and the new economy we're all hearing about), mergers, acquisitions, spin-offs, divestitures and other corporate initiatives must:

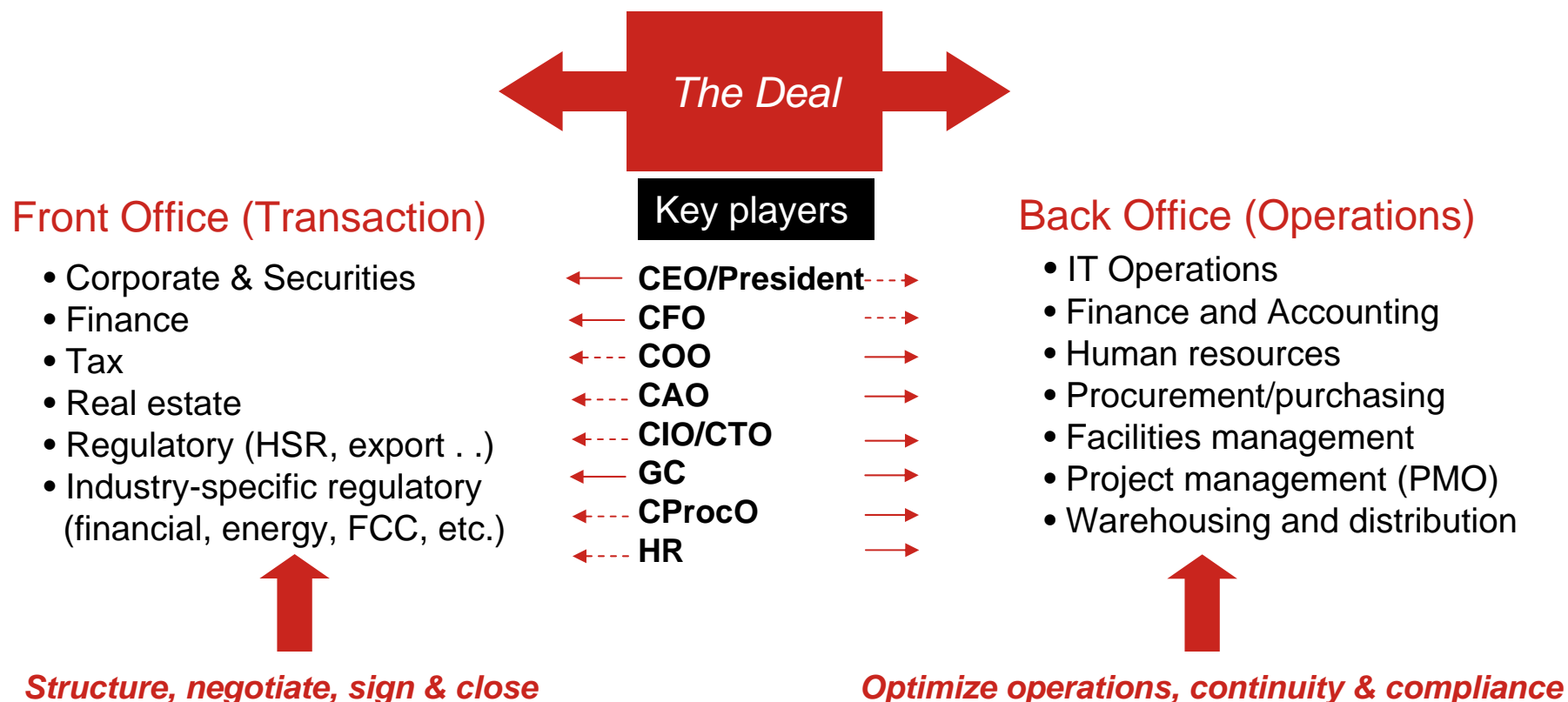
- Reduce the risk (and cost) of execution
- Preserve or enhance valuations
- Position the post-transaction enterprises to be even more competitive in the new economy
- Enable those enterprises to better exploit the target synergies
- Assure day one (and ongoing) business continuity



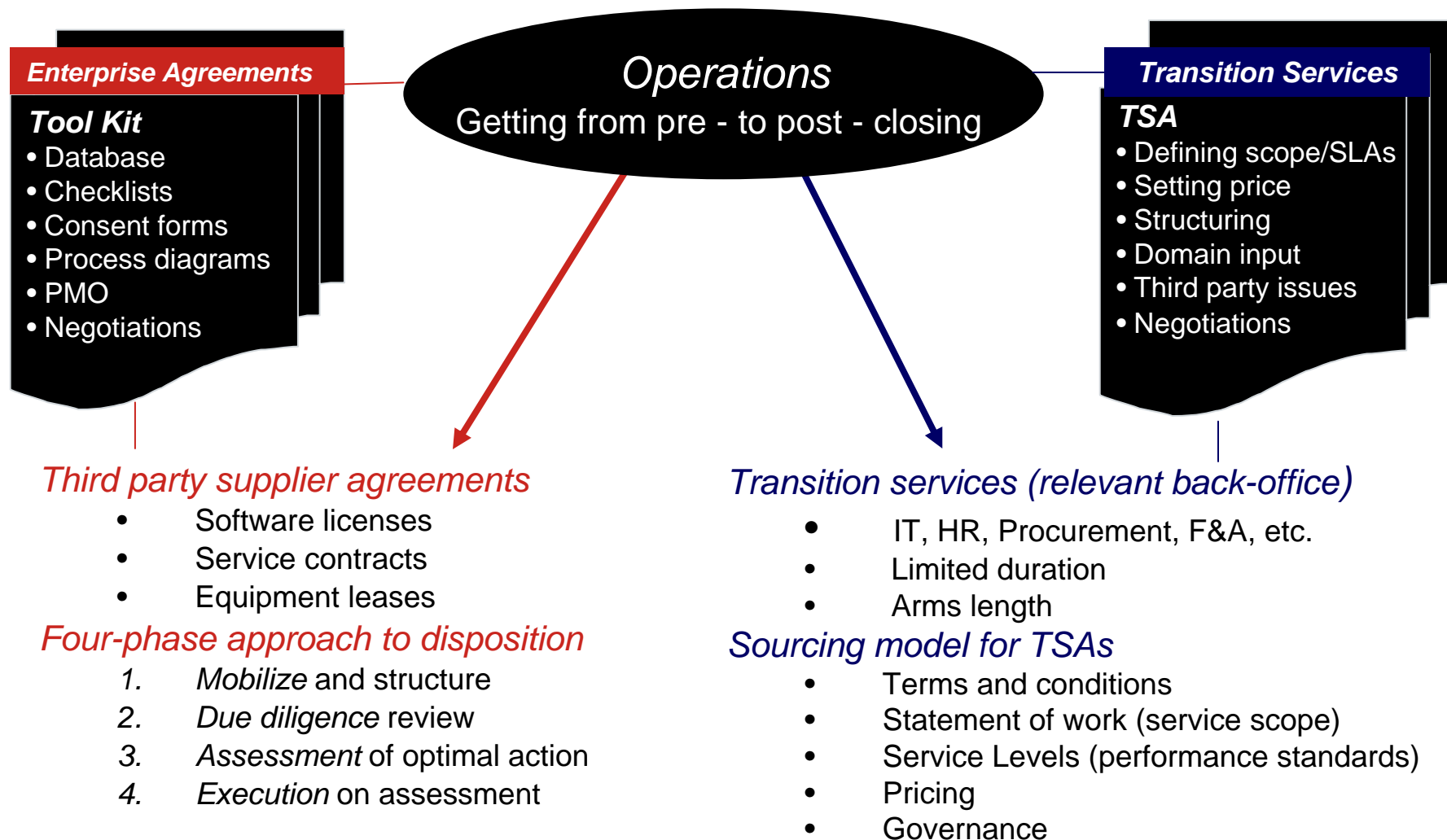
Whether a transaction results from a distressed sale, a market-driven, opportunistic acquisition or as part of a strategic play, what your management (and investors) really care about is exploiting the intended synergies and positioning the business for value creation

Two dimensions of the deal

- Whether a spin-off, sale, merger or other disposition of an enterprise, we look at the deal from two general dimensions



Moving the back office to the forefront



Optimal disposition of enterprise agreements



Drivers for treatment of third party agreements

- **Disentanglement of agreements and operations**

- Which enterprise is contractually entitled to the product (e.g., software license) or service?
- Which enterprise requires ongoing use or operation of the product or service after the divestiture/merger (both? neither? only one? for how long?)
- Which products or services are required, if any, to provide transition services?

- **Optimal disposition of agreements**

- Based on answers to above:
 - What is the strategy for approaching the suppliers?
 - What are the optimal tactics for obtaining approvals, assignments, etc. from suppliers at the *lowest cost and best terms*?
 - Potential new business to a supplier?

Consider this approach . . .

■ Objectives

- Organize data (including contracts) to ensure access and efficiency
- Align on and document key commercial principles (guiding principles)
 - *Apportionment* between parties of additional or incremental costs (e.g. for new contracts or consents from third party suppliers)
 - Possibly handled under the Transition Services Agreement
 - *Allocation* between parties of use of the product or service (e.g. volumes, number of software licenses or “seats”)
- Promote uniformity and repeatability
 - Process flows, templates, rules, escalation protocols
- Position your business to anticipate and effectively respond to supplier positions and requirements

■ Four phased delivery

- Certain activities will run in parallel and span across phases



Phases I & II

Phase I – Build Process

- Identify impacted contracts and suppliers
- Organize, centralize, access to contracts
- Form PMO (roles & responsibilities)
- Prioritize - by contract, by vendor . . .
- Align on business principles
 - Contract assignment, splitting & termination, cost allocation, ongoing use & apportionment
- Build Tool Kit (data base)
 - Guiding principles (business principles)
 - Process Flows
 - Due diligence checklist
 - Use rights, assignment rights
 - Fully tailored list of pertinent questions
 - Templates (consents, “clone and go”, assignments, etc.)
- Training – User guide on I - IV

Phase II – Due Diligence

- Review contracts and fill out due diligence checklist
- Trouble shooting and remediation
 - Missing contracts, schedules
 - Address in-flight initiatives and issues
- Quality assurance
- Validate, refine business principles
 - **TSA implications**
- Adopt tool kit refinements, as needed
- Develop and implement reporting protocols
 - Status
 - Issues
- Go to Phase III

Phases III & IV

Phase III – Access Required Action

- Determine actions to be taken based on aligned principles and tools
 - Follow process flows
 - Select template consent form
 - **Identify TSA impacts**
- Escalate in-house issues (no alignment on action to be taken)
- Populate consent forms or draft documents to go to supplier
- Supplier preparation
 - Reach out to key suppliers (grease the skids)
- Document agreed action (or issue)
 - Populate designated data base field
- Execute distribution (Mass mailing, other)

Phase IV – Execute Action

- *Early engagement by supplier relationship leads may accelerate negotiations*
- Leverage Action process flow
- Implement supplier engagement
 - Relationship leads
 - Supporting cast
- Monitoring
 - Tickler process for non-response
 - Tracking signed, returned documents
 - Tracking issues
- Supplier negotiations
 - Escalate, resolve, sign
- Identify required post-close actions

Leveraging the right tools . . .

. . . Just a couple of examples

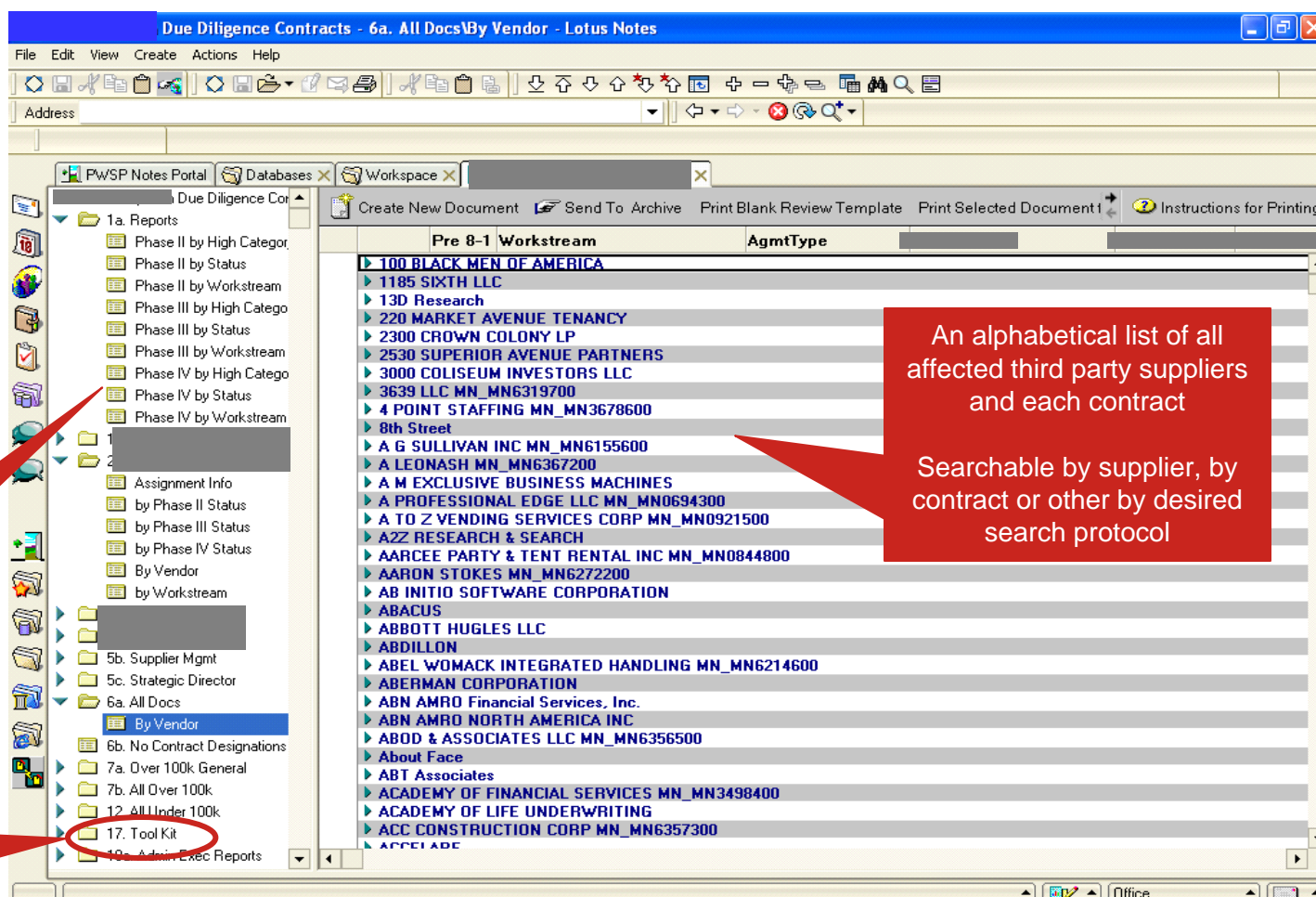


Example 1 - Central repository for transaction data, information & tools

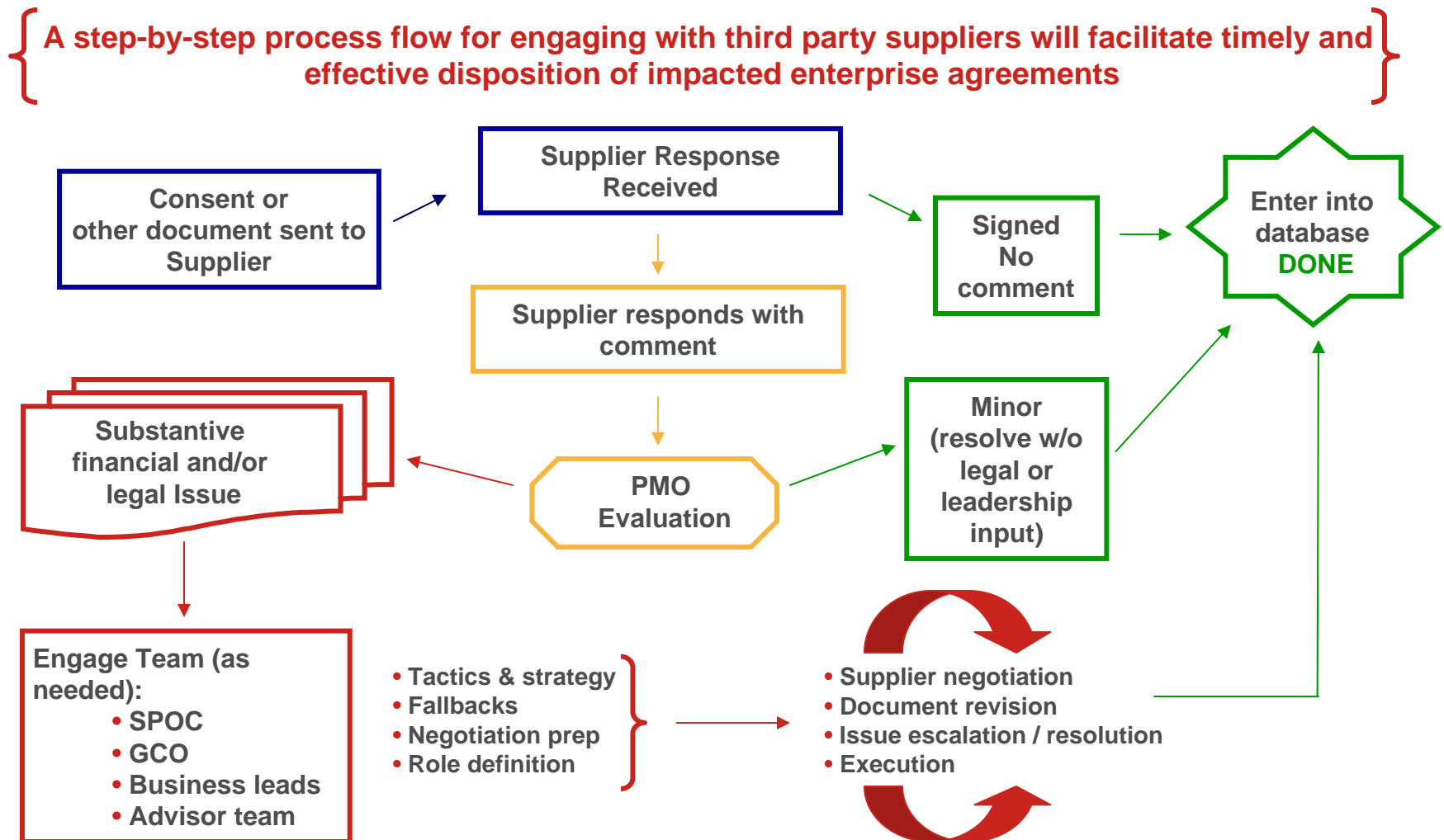
Use of a centralized, uniform and scalable contact repository will (1) **accelerate** the process of addressing all enterprise agreements, (2) **save time**, (3) **reduce cost** and (4) facilitate identifying **Transition Service** requirements

Various **reporting** views (by status, by type of service or license, by work stream)

A **Tool Kit** field which houses document templates, lists, process work flows, etc.



Example 2 - Process flow diagram (Phase IV)



Transition services – getting it right



Transition services - overview

- Transition Service Agreements (TSAs) essentially are *temporary* outsourcing or shared service arrangements
 - Between formerly affiliated companies, or
 - Between buyer (service recipient) and seller (service provider)
 - General attributes of transition services
 - To provide continuity in operations
 - While sold business is being transferred to buyer
 - While newly independent company (e.g. spinco) establishes or supplements its own capabilities
 - For a limited duration
 - At arms length
 - Preferably, with carefully defined service scope and performance standards (Service Levels)
 - At agreed charges
 - Skills and domain expertise required
 - Structuring and negotiating outsourcing arrangements
 - Both legal (contracting) and domain expertise
 - **Broad domain knowledge:** IT (including software and outsourced functions, Finance & Accounting, Human Resources, Procurement, Facilities Management)
 - **Cross-disciplined expertise:** Legal, commercial, pricing, project management, governance modeling
-

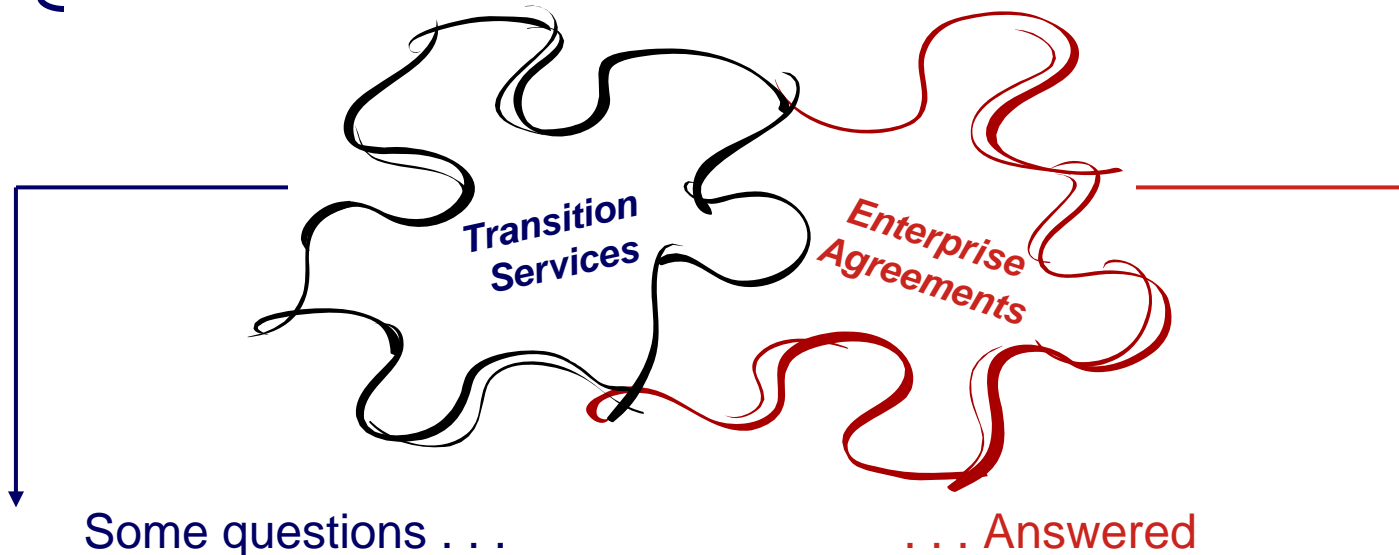
Transition service drivers

Nature and scope of the transition services will depend on:

- **Type of Transaction**
 - **Spin-off or sale:** Premium on continuity (ongoing operations without interruption, diminution in performance at spinco)
 - **Mergers:** More emphasis on integration of back-office functions to optimize efficiencies of combined enterprises
- **Competing interests**
 - Will have heightened interest in robust transition services from the seller (breath of scope, **Acquirer:** focus on Service Levels, lowest cost)
 - **Seller:** Objective typically will be to transfer all aspects of the divested business to the acquirer as quickly as possible with minimal ongoing commitments (short term TSA, if any, narrow service scope, little or no Service Level commitments)
- **Common principles regardless of transaction or party**
 - **Fast** - Because detailed planning often occurs after announced effective date or closing deadline
 - **Efficient** - Streamlined, disciplined and repeatable to reduce strain on resources and control transaction costs
 - **Reducing Risk** - Minimize legal and commercial exposure to affected enterprises

Convergence of enterprise agreements and TSAs

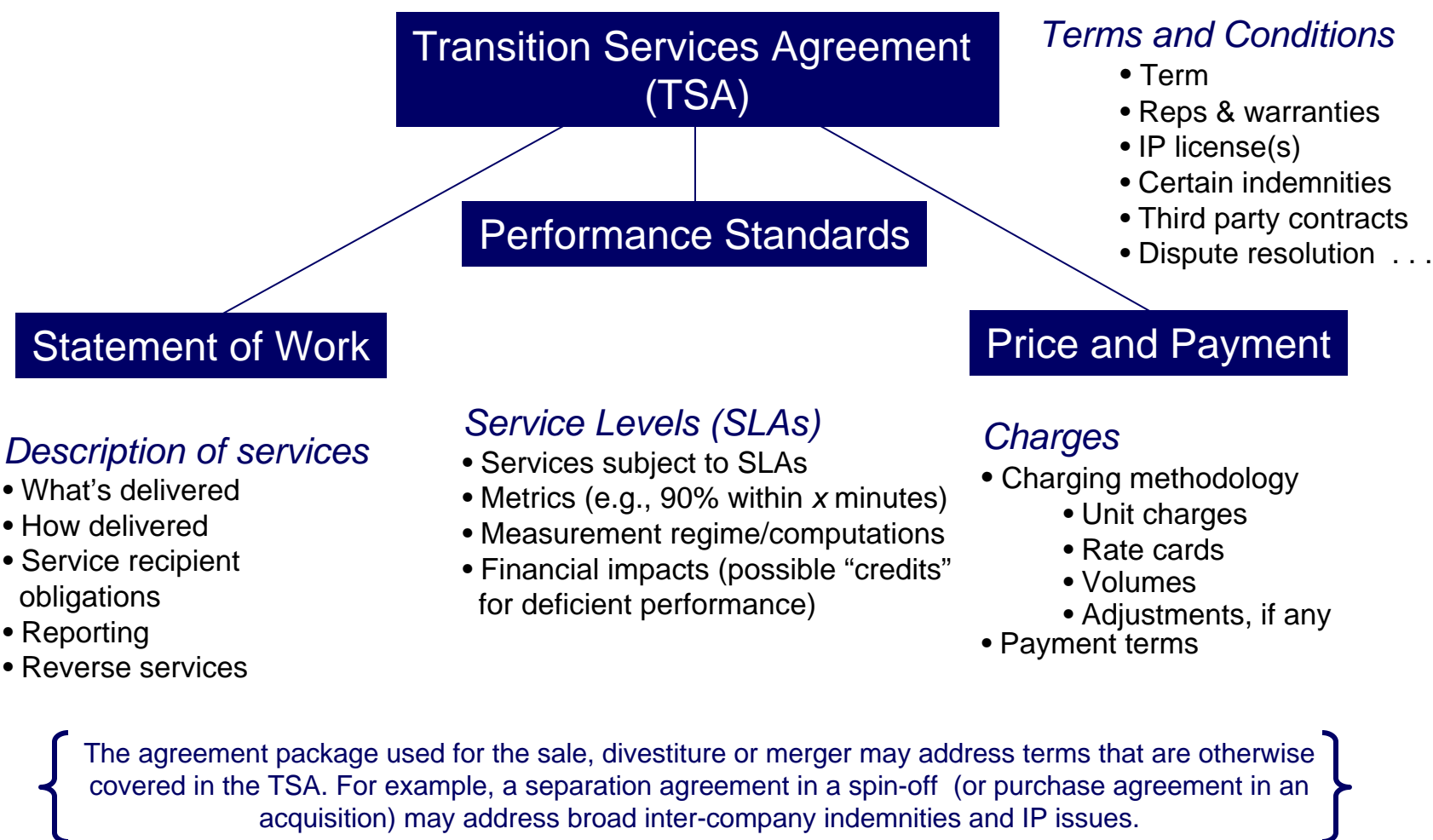
{ The due diligence, operational assessments, contract reviews and related efforts associated with the third party enterprise agreements will inform and expedite development of the Transition Services Agreement }



- What are the services?
- What third party contracts are involved?
- Is third party consent required?
- What is the cost and how is service priced?
- What are the performance standards?
- Who is responsible for the service?

- ✓ Identified by work stream in data base (repository)
- ✓ Searchable in the data base / reports
- ✓ Yes, no (if so, use template consent form per "Tool Kit")
- ✓ Annual/quarterly/monthly expenses tracked in data base
- ✓ SLAs or other performance standards also in data base
- ✓ Domain and/or relationship leads identified in data base

The *right* transition services contract package



If outsourcing is the next step . . .

- Once transition services expire or following a “settling in” period, the recipient of the services may elect to:
 - Outsource certain operations
 - Restructure certain legacy outsourcing arrangements
- Why?
 - Operations of the new enterprise require new service delivery models
 - To reduce operating expenses
 - To address strategic needs (scale, expanded or different geographies, etc.)
- If so . . .
 - The planning, due diligence and documentation associated with the TSA effort will facilitate the next steps
 - Your in-house resources will have a deeper understanding of the impacted operating domains
 - Many of the third party enterprise contract implications will have been considered and catalogued in the data base

Q&A



Please visit our website where you will find all of our
No Better Time presentations

www.pillsburylaw.com

<http://www.pillsburylaw.com/index.cfm?pageid=45&itemid=13>