The Portuguese Experience on Banking Resolution – Challenges and Lessons Learned

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Agenda

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Financial sector supervision and resolution are performed by three different authorities and the central bank is the relevant authority in the banking sector.

ASF Autoridade de Supervisão de Seguros e Fundos de Pensões

- Responsible for the prudential and conduct regulation and supervision of the insurance and reinsurance business, as well as of pension funds.

BANCO DE PORTUGAL EUROSISTEMA

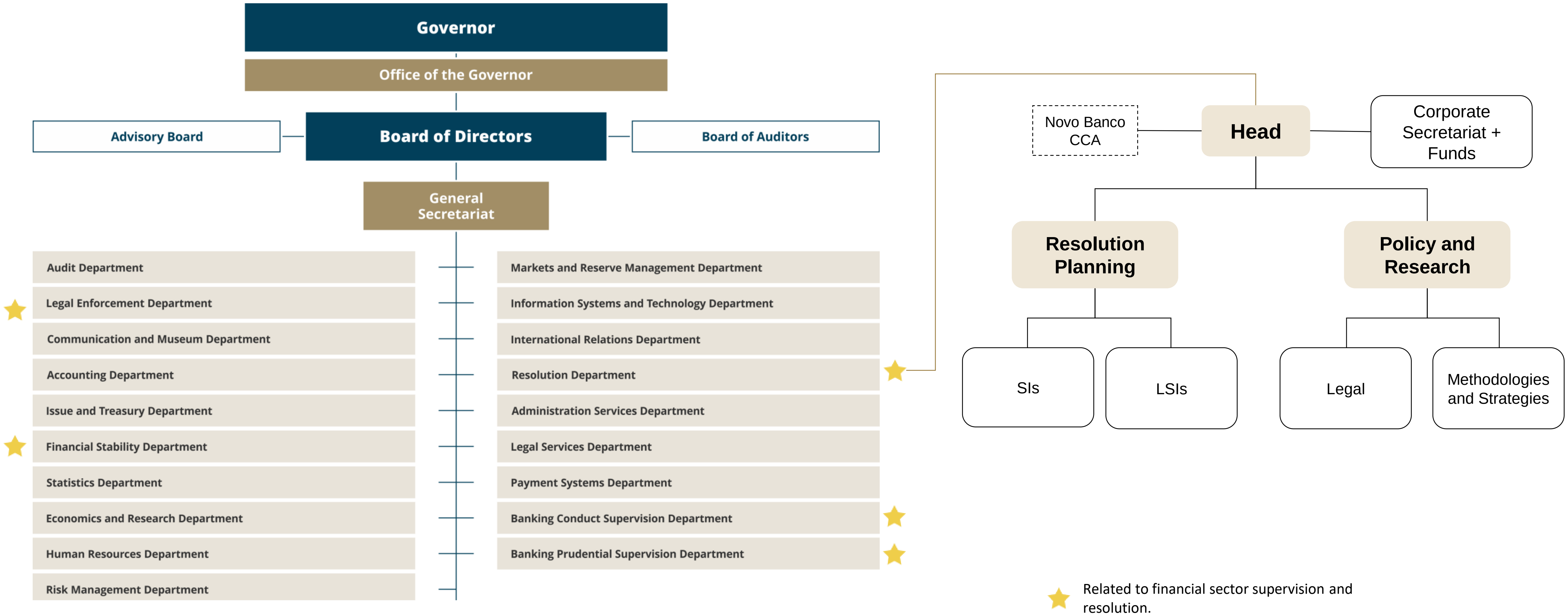
- **Central bank**
- Macroprudential authority
- Responsible for regulating, overseeing and promoting the smooth operation of payment systems
- SSM: Responsible for the prudential regulation and supervision of credit institutions, financial companies and payment institutions
- Responsible for regulating and supervising the conduct of credit institutions, financial companies, payment institutions and electronic money institutions offering retail banking products and services
- SRM: National resolution authority for credit institutions and financial companies

CMVM

- Responsible for supervising and regulating markets for securities and other financial instruments, as well as the activity of all those who operate within those markets.

Conselho Nacional de Supervisores Financeiros

As Banco de Portugal concentrates multiple roles and responsibilities, different functions are appropriately segregated and subject to separate reporting lines to the governing body.



★ Related to financial sector supervision and resolution.

Portugal was one of the first EU Member States having adopted a full-fledged resolution legal framework in 2012. Banco de Portugal is the Portuguese resolution authority since then.

The resolution regime was introduced into the Portuguese legal framework

February 2012

August 2014

Transposition of BRRD

March 2015

December 2015

SRM entered into force

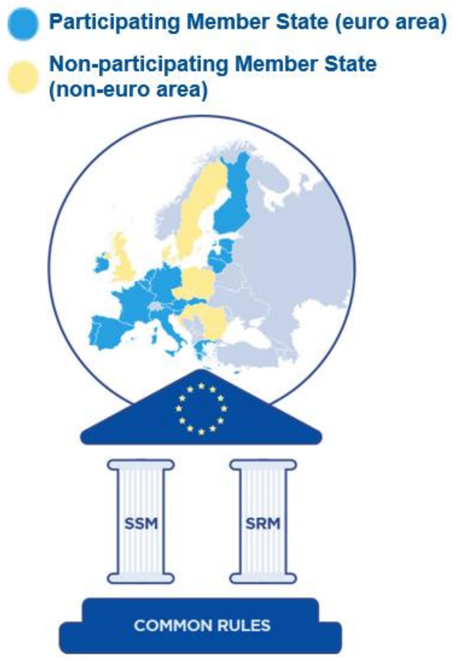
January 2016

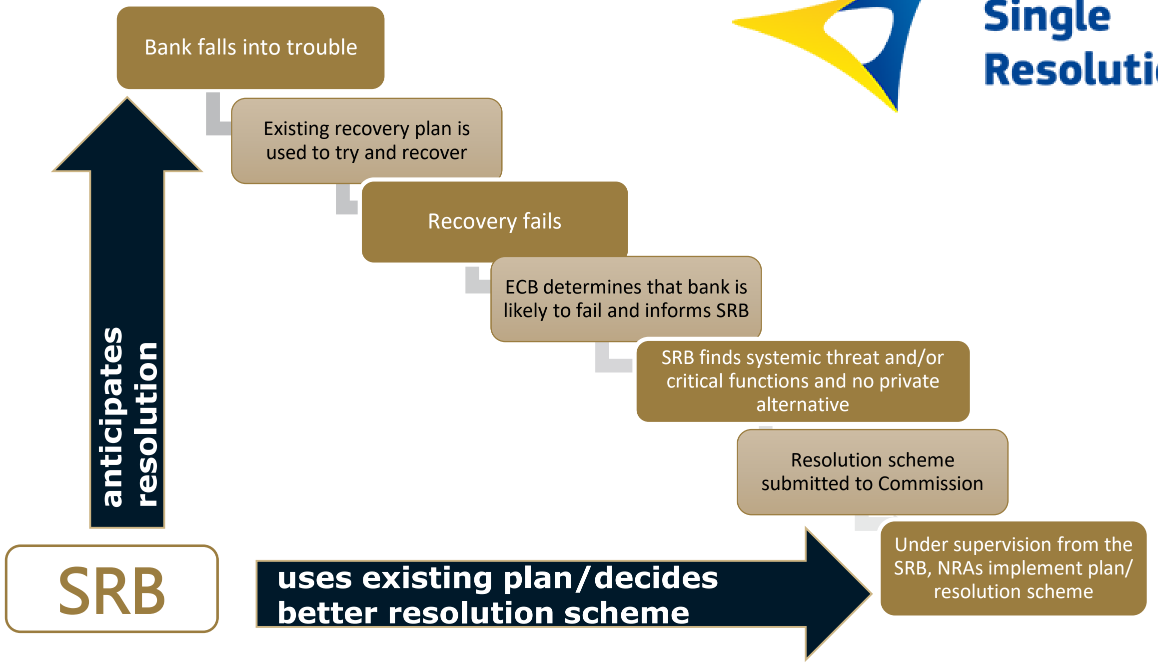
June 2017

Popular

Since January 2016, the Single Resolution Board (SRB) became the resolution authority within the Banking Union (BU).

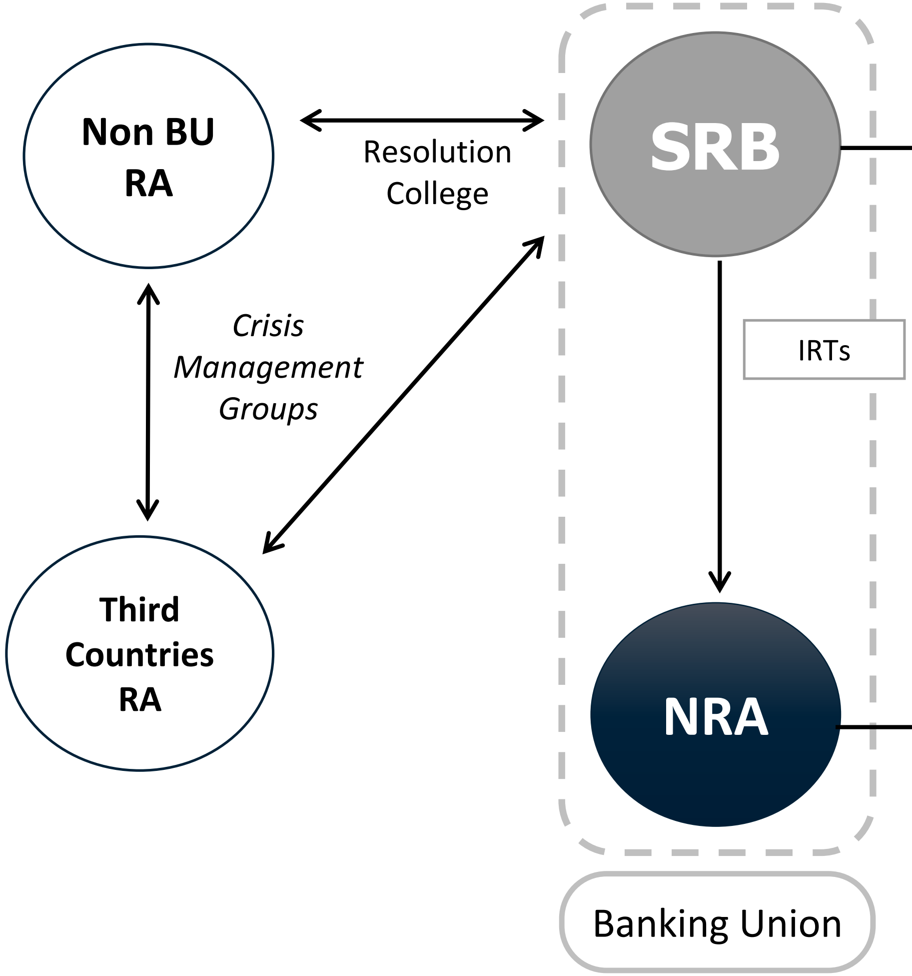
- Mission of the SRB: to ensure an orderly resolution of failing banks with minimum impact on the real economy and public finances of the participating Member States and beyond.





Single Resolution Board

Within the Single Resolution Mechanism, the division of tasks between the SRB and the National Resolution Authorities (NRAs) is as follows:



In charge of **1) resolution planning**, **2) resolution decisions** and **3) monitoring & execution** of resolution decisions for :

- Significant institutions (SI) under the direct supervision of the ECB
- Less significant institutions with cross-border activities

In charge of **1) resolution planning, 2) decisions and 3) execution** of resolution measures for **LSIs.**

Also in charge of **executing** resolution decisions of the SRB in their jurisdictions.

SRB Coordination

SRB Monitoring

Two deposit guarantee schemes pre-funded at a level surpassing 1.2% of covered deposits and one mechanism to protect investors. The national resolution fund posts negative equity exceeding EUR 5 billion.

FUNDO DE GARANTIA DE DEPÓSITOS

- Main DGS in Portugal, created in 1992;
- Covers all banks except institutions participating in the Mutual Agricultural Credit System;
- Coverage level: up to EUR 100,000;
- Covered deposits: EUR 128 bn (Dec-17);
- Available financial means: EUR 1.5bn (Dec-17);

  Of which IPCs: EUR 0.44bn;
- Ratio: 1.2%

  [compares to the 0.8% target to be reached in 2024 pursuant to DGSD].

FUNDO DE GARANTIA DO CRÉDITO AGRÍCOLA MÚTUO

- DGS covering only institutions participating in the Mutual Agricultural Credit System;
- Created in 1987;
- Coverage level: up to EUR 100,000;
- Covered deposits: EUR 10 bn (Dec-17);
- Available financial means: EUR 0.26bn (Dec-17);
- Ratio: 2,6%

  [compares to the 0.8% target to be reached in 2024 pursuant to DGSD].

FUNDO DE RESOLUÇÃO

- National resolution fund, created in 2012;
- Used on two ocasions:
  - Resolution of BES, in 2014;
  - Resolution of BANIF, in 2015.
- Equity: -5.1bn (Dec-17).

SISTEMA DE INDEMNIZAÇÃO DOS INVESTIDORES

- Created in 1999 as a mechanism to reimburse investors when a financial intermediary is not able to repay or deliver the amounts entrusted to it by investors;
- Coverage level: up to EUR 25,000.

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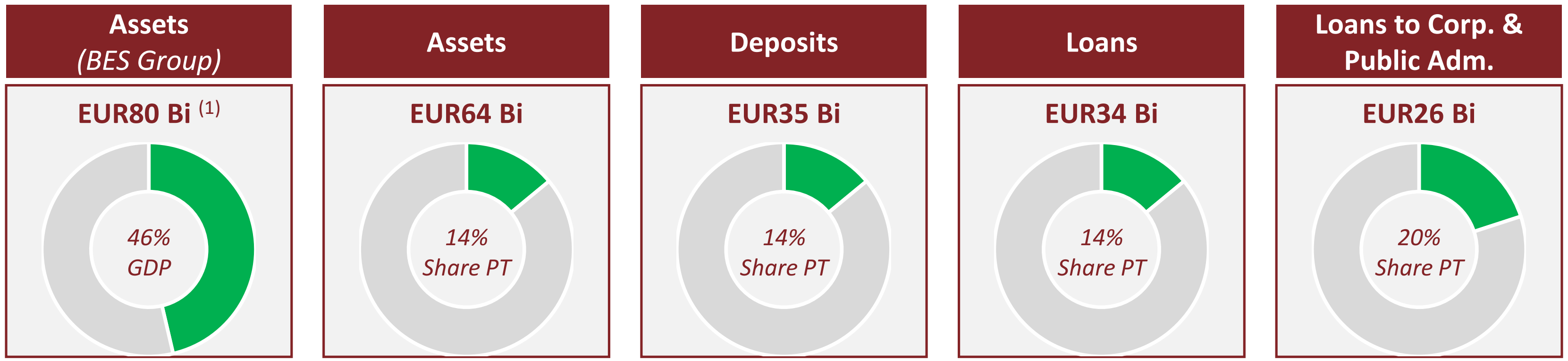
The Portuguese experience – the resolution of BES

Banco Espírito Santo (BES) was the 3rd largest banking group in PT and had a leading role in SME lending.

- Universal financial institution covering all relevant financial services for retail, corporate and institutional clients;
- Long-standing institution and brand in Portugal (originated in 1869, became a bank in 1920);
- Around 2 million depositors;
- Pivotal role in financing the Portuguese economy;
- ~ 700 agencies in Portugal alone.



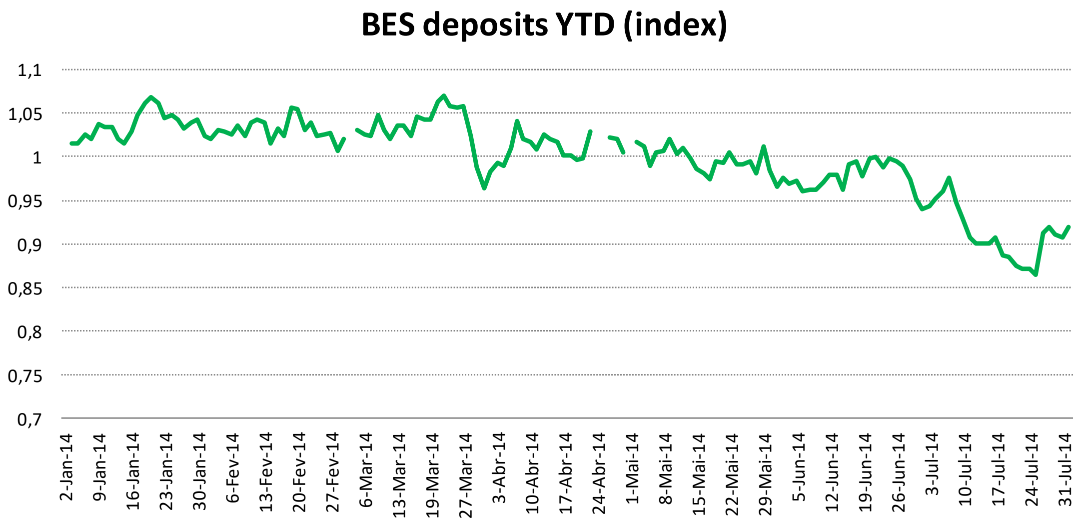
(1) Consolidated data as of 30 Jun 2014; remaining data on an individual basis as of 30 Jun 2014

BES Group was highly complex and had global reach, as it was present in 4 continents and 25 countries.

- BES had 99 subsidiaries, 52 of which abroad;
- BES Group was part of Espírito Santo Group (GES) which operated in sectors as diversified as Energy, Real Estate, Healthcare, Tourism and Agriculture.

BES had been facing significant liquidity constraints following the downfall of the non-financial arm of Grupo Espírito Santo (GES).

- Uncertainty regarding exposures to GES and the recovery of exposures to BES Angola (BESA) had triggered material outflows of funds and the shutdown of certain financing arrangements, namely credit lines, especially after downgrades by both Moody's and S&P.



- As a consequence, BES had to resort to Emergency Liquidity Assistance (ELA), which had been approved by the ECB Governing Council on certain conditions (among which reassurance on compliance with the solvency requirements and on a solution for BESA).

Unexpected losses unveiled in late July triggered a breach in solvency ratios which further and irreparably aggravated the liquidity shortfall.

- Initial expectations of BES, its external auditor and of Banco de Portugal were that even the worst-case scenario regarding exposures to GES could be absorbed by the existing capital buffer and that losses stemming from BESA would be small.
- However, on 30 July BES announced losses highly above the expected figures. Total losses for 1H14 amounted to € 3.6 bn. on a consolidated basis.
- Part of those losses reflected acts of willful mismanagement and the violation of previous determinations of Banco de Portugal. Acts committed when the replacement of the former management had already been announced led to an additional loss of around € 1.5 bn. compared with the losses that were to be expected.

The losses announced on 30 July brought the CET1 ratio (consolidated) down to 5.1% [1].

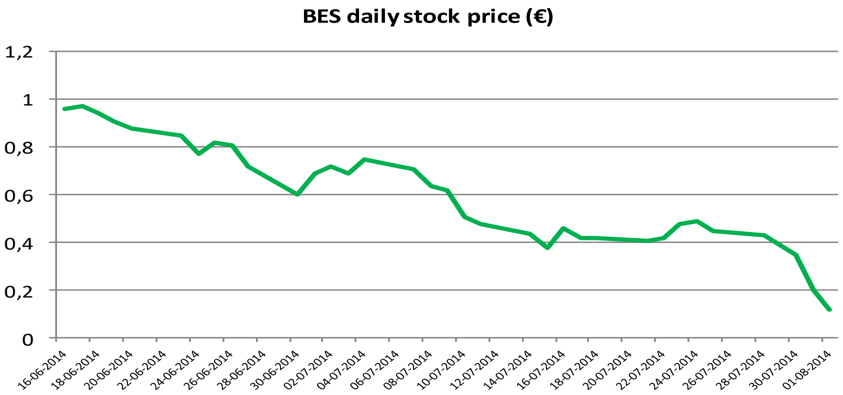
[1] At the time, the minimum CET1 capital ratio was 4,5%.

BES had been on the headlines for some weeks, both in Portugal and globally. The announcement of 30 July on the unexpected losses created a 'perfect storm'.

Access to MPO was suspended and ELA access was at risk	Nature of losses and aggravated uncertainty made a private capitalisation solution unfeasible in the short run	Public perception deteriorated further

As of 1 August, it was highly likely that BES would not be able to meet its obligations as they fell due.

- Stock performance provided a clear indication of the damage on confidence on the bank.



Preferred way out was to have BES announce a credible private solution immediately after the release of 1H results but an alternative scenario had to be prepared by Banco de Portugal.

- BES had hired Deutsche Bank as financial advisor to work out possible private solutions. Banco de Portugal had required BES to design and implement a credible solution to shore up solvency ratios, including through a capital increase in which case strategic investors had to be found in the short run. This solution had to be announced immediately after the release of 1H results.
- However, Banco de Portugal started preparation of a contingency plan to intervene immediately if the preferred solution was not feasible or credible.

ALTERNATIVES:

PUBLIC CAPITALISATION	× Not effective in segregating exposure to GES. × Not effective in containing legal/compliance risks. × Required some time to implement.
RESOLUTION	× Untested in Portugal and even in Europe for banks as large and complex as BES. × Legal, operational and communication challenge. ✓ Effective in segregating exposure to GES and containing legal risk. ✓ Possible to implement immediately. ✓ Possible to clean balance sheet and to share the losses accordingly.
LIQUIDATION	× High risk of triggering a meltdown of PT financial system with contagion to the rest of the Euro area. × Very high impact on the real economy. × Would destroy value and increase the costs of the operation. × Very large financing requirements due to activation of deposit guarantee scheme.
NATIONALISATION	× Not effective in segregating exposure to GES. × Not effective in containing legal/compliance risks. × Politically unacceptable. ✓ Possible to implement immediately.

RESOLUTION WAS THE ONLY REASONABLE OPTION, DESPITE THE INEVITABLE RISKS AND DIFFICULTIES.

PT resolution regime was, at the time, broadly in line with the BRRD but not all the resolution tools were available. Sale of business or bridge bank were the only options.

- Banco de Portugal considered the possibility of doing an outright sale of business but soon concluded that it would not be feasible over the weekend as no investor would be willing to step in without proper assessment.

ALTERNATIVES:

OUTRIGHT SALE OF BUSINESS	✓ Definite solution with much less uncertainty; ✓ More effective in preserving confidence; ✓ Lower operational risk; ✓ Best in preserving value as the bank is immediately managed as a 'going concern'; × **Requires a buyer to be found in a very short term;** × Timing constraints would be detrimental to bidding power of Resolution Fund thereby implying higher cost.
BRIDGE BANK	✓ **Not dependent on appetite in the immediate term, decision rests on Banco de Portugal only;** ✓ Provides more time to sell, improving bidding power; × Temporary solution, which implies longer time to exit; × Temporary nature is also negative to value preservation; × Higher uncertainty to clients likely to be a challenge from a liquidity standpoint; × Higher operational risk considering that a new legal entity is being created.

If pricing would have been appropriate an outright sale would have been the preferred solution.
Considering that a sale over the weekend was not possible, <u>creation of bridge bank was the only viable option</u>.

- **On 3 August 2014, Banco de Portugal created “Novo Banco”, a Bridge Bank with an initial term of 2 years, and transferred thereto most of the business of BES. BES was left as a “bad bank” meant to be liquidated in the future.**

<u>Overarching objectives:</u>

- To ensure continuity of financial services provided by BES;
- To safeguard financial stability;
- To safeguard taxpayers’ money;
- To protect depositors;
- To ensure that costs were borne by shareholders and creditors, as applicable.

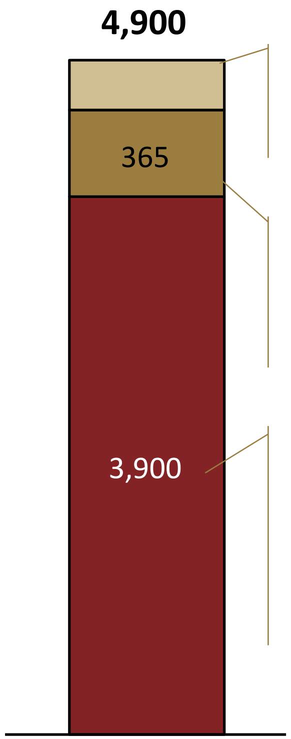
<u>Specific objectives:</u>

- To protect Novo Banco from risks stemming from exposure to GES and Angola;
- To minimise exposure of Novo Banco to legal and compliance risks from past action.

Assets and liabilities left behind at BES	
Assets	▪ Loan exposures of BES to GES; ▪ Equity holdings of BES at Angola, Libya and USA (Miami); ▪ Cash for minimum funding of BES.
Liabilities	▪ Equity; ▪ Subordinated debt; ▪ Claims from related parties (shareholders > 2%, entities controlling BES in the past, Board members, etc.).

The Portuguese experience – the resolution of BES

Capital requirements of Novo Banco were estimated at € 4.9 bn, after prudent adjustments and targeting a CET1 ratio of 8.5% on a consolidated basis.



Own funds of the Resolution Fund, from contributions paid in 2013 and 2014.

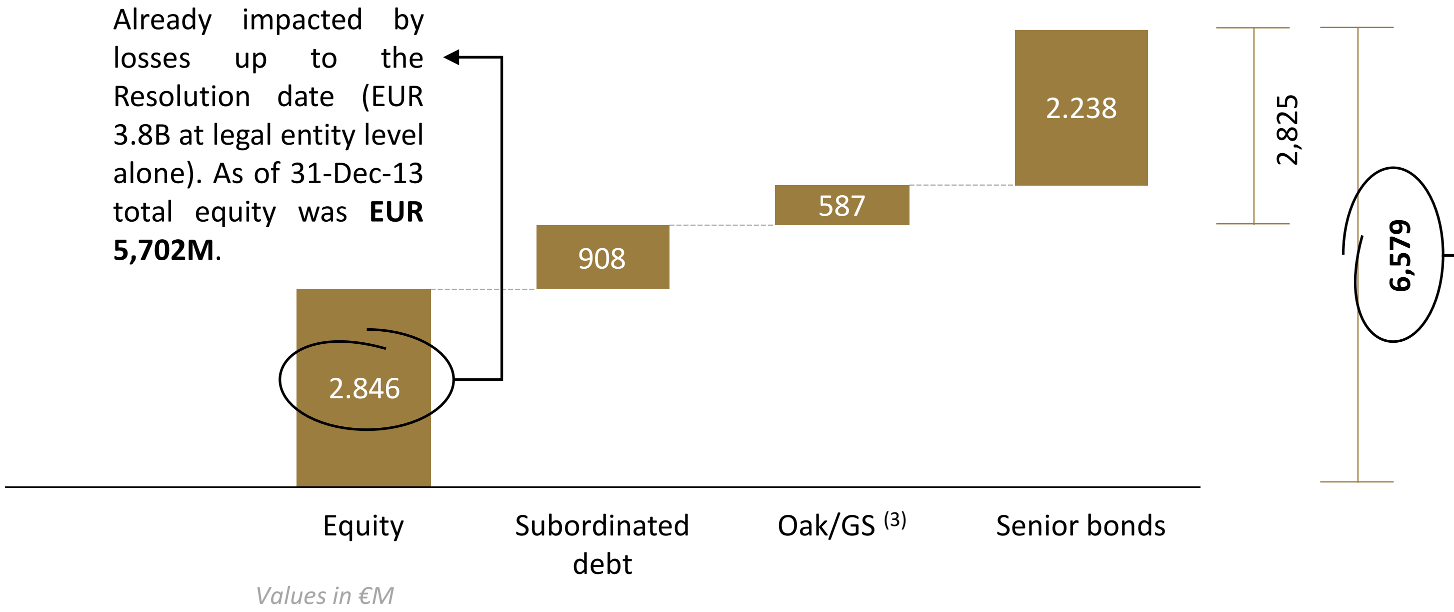
Loan provided to the Resolution Fund by 8 participating banks. Total amount of loan was € 700 M, of which € 65 M to pay interest to the State.

Loan provided to the Resolution Fund by the Portuguese State.

Banks contibute with almost > €1 bn.

State exposure represents ~80%

The resolution of BES implied significant loss absorption by shareholders and creditors, both subordinated and senior. This was achieved by leaving these liabilities with BES (and not through their write-down).



Circa **11% of total assets** as of Resolution date.
Does not include any claim from clients related to misseling or contingent liabilities. If confirmed, these would be additional liabilities left behind with BES. The bank had booked provisions of € 1.5 Bn.

Does not include other liabilities also left behind in BES, such as claims from related parties and claims from the pensions' fund of board members

(3) Refers to USD 835M.

Agenda

BANIF Group was the 7th largest Portuguese banking group in Portugal and was the lead bank in the Portuguese Islands (Azores and Madeira), with a market share of around 30%

- BANIF was mainly focused in commercial banking activities in the domestic market (retail and corporate clients), with total assets of €12 bn and €6 bn in deposits.

- BANIF played a key role in the financing of the economy of the Portuguese Islands (Azores and Madeira), and had a strong commercial footprint amongst the Portuguese emigrant communities.

- Despite BANIF's small balance sheet size, the bank was a relevant regional player and had a strong international presence.

- BANIF qualifiied as Other Systemically Important Institution (O-SII); as such, a potential disruption in the provision of the critical functions provided by BANIF was considered likely to generate systemic risks and jeopardize financial stability in Portugal.

BANIF's public recapitalization was followed by the unsuccessful submission of a set of restructuring plans to DG-COMP

State Aid

In January 2013, BANIF was recapitalized by the Portuguese State with the injection of € 1.1 billion (€700 million in special shares and €400 million in CoCos), to be able to comply with minimum regulatory capital requirements. From that moment on, Portuguese State representatives were appointed to the board (non-executive).

BANIF's Restructure

The European Commission did not approve the Restructuring Plan, in its successive versions, on grounds of insufficiency and lack of reliability of the information, as well as of BANIF's inability to demonstrate its long term viability or its financial capacity to repay and remunerate the public investment.

On 24 July 2015, DG-COMP initiated an in-depth investigation process on the compatibility of the State aid granted to BANIF. This decision implied a high likelihood that the State aid would be deemed incompatible with the internal market rules and that it would have to be paid back by the bank, which would cause the bank to become insolvent.

BANIF's Voluntary Sale

In September 2015, BANIF submitted a new version of the Restructuring Plan that included the voluntary sale of the bank (with the carve-out of some assets), in a process led by its Board of Directors in liaison with the Portuguese State.

The voluntary sale process was widely reported in the Portuguese media and the sale became perceived by the public as crucial for BANIF's survival.

BANIF's failure was the result of a set of factors that impaired the bank's recovery as expected following its recapitalization by the Portuguese State in 2013

Absence of an approved Restructuring Plan

BANIF's management inability to implement corrective measures

Challenging economic environment

BANIF suffered larger losses than those projected in the Recapitalisation Plan, leading to a significant deterioration of its solvency position, especially after 2014.

Banco de Portugal determined the implementation of several prudential adjustments that, overall, would reduce the 9,5% consolidated total capital ratio published by BANIF as of September 2015 to levels below the regulatory minimum, and identified several material risks to the bank's capital position.

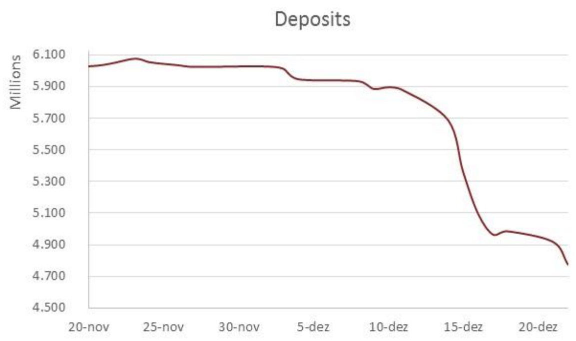
In November 2015, Banco de Portugal determined BANIF to present a new capital raising plan and a viability and sustainability assessment.

BANIF was unable to present a set of credible measures in order to demonstrate its ability to correct the situation.

BANIF's liquidity position rapidly deteriorated following the publication of news about the bank's future

End of 2014: BANIF's liquidity situation was gradually being eroded.

Week before resolution: Situation deteriorated rapidly when national media reported that BANIF was about to be "shut down" and deposits were at risk. BANIF lost a substantial amount of deposits (ca. € 1 billion in a week).



During the last week, BANIF had to resort to Emergency Liquidity Assistance from Banco de Portugal.

ECB decided to freeze outstanding Eurosystem refinancing

Serious risk of BANIF, in a very short time horizon, not being able to comply with its obligations towards customers and to maintain regular payment flows.

The resolution weekend at glance:

18 December 2015

- The European Commission informed Banco de Portugal and the Ministry of Finance that **the ongoing voluntary sale process could not proceed with State aid**, which was a condition required by the two bidders (Santander and Popular) in that process. This was confirmed by the Ministry of Finance in its interaction with BANIF's Board.
- **Failure of the voluntary sale process.**

Friday

19 December 2015

- **Banco de Portugal declared that BANIF was failing or likely to fail**.
- Banco de Portugal began the resolution program using the **sale of business tool**.
- Banco de Portugal invited the two credit institutions that had participated in the voluntary sale process to submit offers by reference to the requirements agreed with DG-COMP regarding the profile of the acquiring institution.
- Intense negotiation during the weekend. Requirement to submit offers until 20 December.

Saturday

20 December 2015

- The two credit institutions had already carried out a due diligence during the voluntary sale process.
- **Only Banco Santander Totta submitted a binding offer**.
- Banco de Portugal decided to apply the following resolution measures to BANIF:
  - **Sale of the business tool**
  - **Asset separation tool.**

Sunday

On 20 December 2015, Banco de Portugal sold the majority of BANIF's activity to Banco Santander Totta and transferred a set of BANIF's assets to Oitante, an asset management vehicle created by Banco de Portugal

BANIF

- The assets and liabilities that were not transferred to Banco Santander Totta and Oitante were left behind at BANIF;
- Those assets and liabilities were managed by the members of the Board of Directors of BANIF, appointed by Banco de Portugal, and are now part of its insolvency estate in the respective judicial liquidation proceeding.

OITANTE

- Transfer of a set of assets to an asset management vehicle set up for this purpose;
- The consideration paid by Oitante for the transfer of the assets was in the form of debt issued by the vehicle;
- Those bonds are guaranteed by the Resolution Fund and counter-guaranteed by the Portuguese State and were later transferred to Banco Santander Totta;
- The share capital of Oitante (€50.000) is fully owned by the Portuguese Resolution Fund.

Santander Totta

- Sale of business of BANIF and of the vast majority of its assets and liabilities to Banco Santander Totta;
- Payment of 150 M€;
- Ensuring full continuity of the institution's activity, with no impact on its customers, transferred employees or suppliers.

The Portuguese experience – the resolution of BANIF

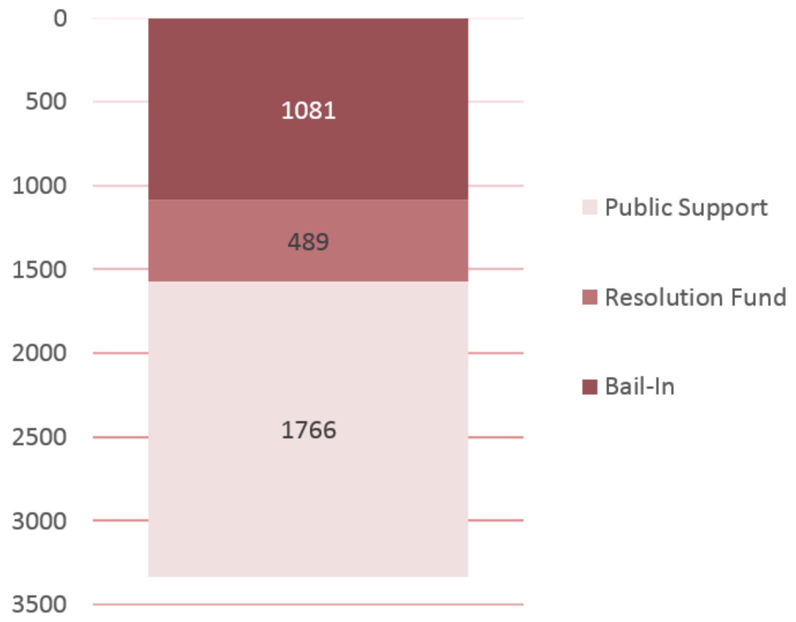
~ 1.613 M€
Losses stemming from the Santander Totta proposals

~ 1.448 M€
Losses related with the transfer to Oitante

~ 275 M€
Assets that were left behind at BANIF

~ 3.336 M€
Total Losses

Loss Absorption Detail



- **BANIF's equity and liabilities such as hybrid instruments, subordinated debt and claims from related parties (1.081M€) remained at BANIF**, thus ensuring adequate burden sharing in compliance with the guiding principles of resolution.
- **489M€ were provided by the Resolution Fund**, which was compliant with the 5% limit of the total liabilities, including own funds, of the institution under resolution imposed on the contribution of the Resolution Fund by the BRRD. The contribution of the Resolution Fund was financed with a loan from the State.
- **The remaining 1,766M€ were directly provided by the Portuguese State.**

A resolution sale process must be carefully prepared in advance in order to maximize the chances of closing the sale in the resolution weekend

Preparation

- Selection of external advisors (i.e. legal and financial);
- Asset perimeter valuation by an external entity;
- Defining the perimeter of the transaction in resolution;
- Drafting all the necessary legal documentation (i.e. process letter, carve-out).

Start of the Sale

- Upon the decision that an institution is failing or likely to fail it is important to be operationally ready to immediately start the sale process;
- Invitation of potential buyers;
- Opening of the virtual data room.

Negotiations

- Technical teams ready to provide all the information and clarifications required by the potential buyers (Q&A);
- Negotiation with external authorities (DG-COMP, ECB; Ministry of Finance);
- Negotiation with different potential buyers in separate.

Offers & Closing

- Non-binding offer reception and comparison;
- Negotiation to increase comparability of perimeters, exclusions, guarantees, state aid, etc;
- Move to binding offer stage, while trying to maintain competitive pressure.

After Sale

- Offers made during the weekend, even binding, will always need to be finalized once final financial statements are available;
- Perimeter fine-tuning in light of new information not available during resolution;
- Potential compensations to buyers.

Agenda

There are two main issues facing cross-border resolutions:

- **Cooperation with foreign authorities (resolution authorities, supervisors, market authorities, courts…);**
- **Recognition and enforcement of resolution proceedings.**

Directive 2001/24/EC and the BRRD provide a set of mechanisms that deal with these issues within the EU:

- Resolution authorities are required to establish **resolution colleges**, which ensure the participation of host authorities in resolution planning and decision making, due consideration of the interest of host Member States and information exchange (in the context of the SRM, this is not necessary when the group is entirely located within the Banking Union);
- Member States are required to **recognise and enforce** a resolution decision adopted in another Member State.

Outside the EU, problems might arise due to the fact that most countries **have yet to implement swift and transparent mechanisms that ensure the recognition of foreign resolution proceedings**, and in particular the respective courts or administrative authorities might not recognise or give effect to foreign resolution measures due to the legal frameworks not being aligned.

The resolutions of BES and BANIF posed some challenges from a cross-border point of view; these types of challenges must be duly considered when drawing up resolution plans as they tend to constitute impediments to resolution (I/III)

➢ **Efficient cooperation with resolution authorities, supervisors and other relevant authorities (while ensuring confidentiality) can be key in ensuring a successful implementation of the resolution strategy:**

- This might be difficult to achieve when the decision to apply a resolution tool is taken in a very short time frame. In the case of BES, Banco de Portugal was only able to cooperate in advance with the authorities of the countries where BES had significant activity – this helped ensure the successful transfer of BES's branches to Novo Banco;
- The different procedures in place in each country (including within the EU) created some operational difficulties that could have been avoided had we been able to interact beforehand with the relevant authorities, particularly during the resolution planning stage.

The resolutions of BES and BANIF posed some challenges from a cross-border point of view; these types of challenges must be duly considered when drawing up resolution plans as they tend to constitute impediments to resolution (II/III)

➢ **Recognition of the change of ownership of the assets transferred to a purchaser, a bridge bank or an asset management vehicle:**

- BES and Novo Banco signed an agreement confirming the transfer of the assets and liabilities governed by foreign law and/or located abroad (**confirmatory agreement**). This helped to solve some but not all recognition problems, as in some situations BES **had to confirm** that a certain asset had indeed been transferred to Novo Banco.
- When a subsidiary in a third country is not transferred and ends up being wound up: the insolvency law of some countries provides that, when the assets of the debtor are not sufficient to repay its creditors, the assets of related entities (namely, the parent company) can be used for that purpose. If the resolution decision is not recognized in said third country, this can lead to their national courts **seizing assets** of the institution under resolution that had been transferred to a purchaser/bridge bank/AMV under the resolution decision.

The resolutions of BES and BANIF posed some challenges from a cross-border point of view; these types of challenges must be duly considered when drawing up resolution plans as they tend to constitute impediments to resolution (III/III)

- **Inability to transfer equity holdings of subsidiaries located in third countries:**
  - In the cases of BES and BANIF, Banco de Portugal generally **avoided** transferring equity holdings of subsidiaries located in third countries for fear that this decision would not be recognized by courts and supervisors. For the purposes of resolution planning, we are currently assessing the mechanisms available in the relevant third countries that could be used in resolution to ensure the successful transfer of equity holdings.
- **Attempts by counterparties to activate change of control clauses in contracts governed by third country law;**
- **Problems regarding the transfer of debt instruments issued by branches located in third countries.**

Proper planning

- Early identification of institutions that are likely to fail;
- Setting up a dedicated task force with the necessary set of skills and seniority;
- Identification of external consultancy needs (i.e. legal and financial);
- Definition of timelines and triggers for the overall process;
- Deep knowledge of the entity to assess the costs/impacts of last minute decisions.

Managing the process

- High number of stakeholders, both internal and external;
- Ensure cooperation with the Board of directors of the institution under resolution;
- Need to manage the information flow and keep track of the latest versions of documentation;
- Very fast process, subject to sudden changes;
- Need to document and keep track of all meetings, calls, letters, memos for court/parliament.

Depositor confidence

- Evidence suggests that deposits are naturally sensitive to disruptive events;
- If our role is to preserve continuity of critical financial services and safeguard financial stability second-round effects of resolution decisions on depositor confidence must be considered when taking decisions or else resolution can be useless.
- Would a Moratorium tool have helped?

Flexibility

- In a severe case, resolution measures and the sale process require flexibility;
- Combining objectives such as preserving financial stability, ensuring continuity of critical financial services, safeguarding depositor confidence and protecting public funds requires a very careful balance in more severe cases. Flexibility is key and hard limits (such as the 8%-5%) might make it impossible to combine those objectives.
- Aiming at conducting a sale process based on administrative deadlines or rigid contracts is only possible if market conditions are favorable, there is strong appetite and uncertainty is low.

Financial arrangements

- The resolution financing arrangements plays a crucial role in the resolution of a large banking group, where losses are very significant and higher than existing loss absorbing capacity;
- Preserving financial stability and containing impacts to the real economy would have been impossible without resort to the Resolution Fund in the resolution of BES and the sale of Novo Banco.

Competition and financial stability / protection of public funds

- Competition and financial stability/protection of public funds might be conflicting objectives in certain crisis situations and the legal framework currently makes stability and value preservation second to competition;
- Many restrictions applicable to the resolution procedure and to the sale process (deadlines, remedies to limit distortion to competition) might be value destructive and even make return to viability more challenging.

Perimeter definition

- Need to provide certainty to the balance sheet;
- The importance of a sound assessment of losses at the outset: all losses stemming from the resolved entity should be identified and problematic assets segregated;
- Sale during a weekend can only be achieved if there was a recent sale process;
- The for sale perimeter is already identified and is economically viable;
- Avoid excessive tailoring of the sale perimeter to buyers demands;
- Incorporate buffers to deal with after sales perimeter adjustments.

Mitigation of legal risks

- Resolution is inherently subject to high legal risk;
- Even if they are taken to preserve value and minimize damages from a bank failure, resolution decisions will imply that some stakeholders are severely affected. Legal challenge is a natural consequence;
- The legal framework does provide some discretion to Resolution authorities in certain decisions but situations are never clear-cut and some decisions might have to be taken with less legal certainty than would have been preferred;
- Minimization of legal risk is not a resolution objective and in certain cases the discretionary powers provided in the law must be used even if discretion exposes the resolution authority to more risk.

Lessons learned in the resolution of BES and BANIF

- **Practical examples:**

✓ Very important to ensure swift availability of updated data (*the case of the opening balance sheet*);

✓ A thorough valuation is critical and can avoid disruptions in the future (*the case of the re-transfer*);

✓ Organization can indeed hide obstacles to resolution (*the case of subsidiaries issuing both senior and junior debt*);

✓ Beware of administrative or bureaucratic requirements (*the case of assets subject to registry*);

✓ Tax regime needs a proper look as it impacts on value (*the case of how to address transfer of assets and liabilities from a tax perspective or deferred tax assets*);

✓ Never take it for granted: every angle should be thought of (*the case of the name that had been registered a few hours before resolution scheme was adopted*).