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## AIWM Regulatory Updates

17 Aug 2023

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Partner

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## Introduction

Shook Lin & Bok LLP is one of the leading and full service law firms in Singapore with a strong Asian presence and global reach. We have close to a century of rich legal heritage with a number of partners who are eminent lawyers in their respective areas of expertise.

We believe that our success lies in our team of well-trained and experienced lawyers who are innovative and effective in solving complex and difficult legal issues, and who are able to provide customised and value-added legal services to our clients. Over the years, we have built a strong base of clients comprising both local and international financial institutions, as well as large multinational corporations.



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## Key Regulatory Updates Affecting EAMs

## Relevant Regulatory Updates

- #Compliance Toolkit for Licensed Fund Management Companies, Compliance Toolkit for Registered Fund Management Companies, Compliance Toolkit for Venture Capital Fund Managers - 11 Jan 23
  - guide & facilitate regulated FMCs' compliance with the various MAS approval & reporting requirements & timelines
- Notice On Business Conduct Requirements for Corporate Finance Advisers (SFA 04-N21) - 23 Feb 23
  - Requirements for corporate finance advisers in relation to general business conduct & due diligence work
- #Circular on Money Laundering and Terrorism Financing Risks in the Wealth Management Sector - 3 Mar 23
  - MAS' expectations for FIs to review its existing controls to ensure that they remain adequate to mitigate the ML/TF risks from high growth areas

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## Relevant Regulatory Updates

- #Observations From Inspections of Licensed Venture Capital Fund Managers (Circular No. CMI 02/2023) - 14 Mar 23
  - MAS' observations & expectations from inspections of VCFMCs' compliance, internal controls & business practices
- FAQs on Exempt Persons - 23 Mar 23
  - Guidance on regulatory requirements that an exempt FA, exempt corporate finance adviser, exempt futures broker or exempt OTC derivatives broker is expected to comply with

## Relevant Regulatory Updates

- Compliance Toolkit for Approvals, Notifications and Other Regulatory Submissions to MAS for Financial Advisers - 23 Mar 23
  - Guide & facilitate FAs' compliance with the various MAS approval & reporting requirements and timelines
- #Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies (SFA 04-G05) - 6 Apr 23
  - Minimum licensing criteria for LFMCs, the eligibility criteria for RFMCs & the business conduct requirements for both LFMCs & RFMCs
- Corporate Finance Thematic Inspection - Good Practices and Key Findings - 17 Apr 23
  - Follows from MAS' thematic inspection of eight Issue Managers (“IMs”), which focused on the IMs' controls re due diligence process for IPOs & placements

## Relevant Regulatory Updates

- #Financial Services and Markets Act 2022 - 27 Apr 23
  - Omnibus Act for the sector-wide regulation of financial services & markets; consequential amendments to the SFA, FAA & subsidiary legislations
  - SFA, SF (Licensing & Conduct of Business) Regs, SF (Exemption for Cross-Border Arrangements) (Foreign Offices) Regs, FAA, FA Regs, FA (Exemption for Cross-Border Arrangements) (Foreign Offices) (Amendments) Regs
- #FAQs - Notice on Technology Risk Management - 5 May 23
  - FAQ on the Notice on Technology Risk Management [Notice CMG-N02 (SFA), Notice FAA-N18 (FAA)]

## Relevant Regulatory Updates

- Response to Public Consultation on Proposed Amendments to the Securities & Futures (Reporting of Derivatives Contracts) Regulations (P009-2021) - 16 May 23
  - Response to MAS' proposed approach in relation to the reporting of the Unique Transaction Identifier (“UTI”) & the proposed revised reportable data fields under the SFA & SF (Reporting of Derivatives Contracts) Regulation 2013 to facilitate the international standardisation & harmonisation of data elements reported across international OTC derivatives reporting regimes
- Code on Collective Investment Schemes - 23 May 23
  - Best practices that managers, approved trustees, VCC directors & VCC custodians of collective investment schemes offered to retail public are expected to observe on management, operation & marketing of the schemes.



## Relevant Regulatory Updates

- #Strengthening Financial Institutions’(FIs) Countering the Financing of Terrorism (CFT) Controls - 26 May 23
  - MAS’ key observations, & highlights supervisory expectations that FIs should review against their own CFT-related controls
- #FAQs on the Licensing and Registration of Fund Management Companies - 1 Jun 23
  - Guidance on the requirements & procedures to apply to be a FMC, & to appoint representatives to carry out FM activities
- FAQs on the Notice on Business Conduct Requirements for Corporate Finance Advisers - 21 Jun 23
  - Guidance on the regulatory scope & requirements of the Notice on Business Conduct Requirements for Corporate Finance Advisers

## Relevant Regulatory Updates

- Consultation Paper on Proposed Code of Conduct for Environmental, Social and Governance (“ESG”) Rating and Data Product Providers (P006-2023) - 28 Jun 23
  - Seeks feedback on MAS proposals to elevate standards & disclosures of ESG ratings & data products in Singapore via a phased & proportionate regulatory approach, starting with a voluntary industry code of conduct for ESG rating & data product providers
- Industry Perspectives on Best Practices – Management of Money Laundering, Terrorism Financing and Sanctions Risks from Customer Relationships with a Nexus to Digital Assets - 11 Jul 23
  - Paper by ACIP working group on Digital Assets Risk Management to provide FIs with a foundational framework to advance understanding & management of money laundering (ML), terrorism financing (TF) & sanctions risks arising from customer relationships with nexus to digital assets in the Singapore context

## Relevant Regulatory Updates

- #Consultation Paper on Proposed Framework for Single Family Offices (P009 – July 2023) - 31 Jul 2023
  - Enhanced requirements for SFOs operating in Singapore:-
    - SFO must be a Singapore company
    - SFO must be wholly owned by family members
    - SFO conducts only FM activity for family members (including family trusts and corporations wholly owned by family for sole benefit of family, charitable organisations funded solely by family)
    - Family members are defined
    - SFO can conduct FM for SFO's CEO & EDs who are key employees
    - SFO must maintain a business relationship with a Singapore FI
    - SFO to provide certain information to MAS
    - SFO to file a notice of continuation or notice of commencement with MAS
    - UBOs, CEO & Directors to furnish to MAS signed declarations
    - SFO to furnish to MAS a Singapore legal opinion
    - SFO to file annual returns with MAS
  - 6 months transition period



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## Trends & Observations

## Trends & Developments

- MAS resources are still stretched
  - Processing time for new licence/registration applications, 13O & 13U applications, change of control applications generally doubled
- Continued flow of assets & personnel coming in from North Asia & Europe, albeit some disruptions & pause because of government cooling measures & alternatives are being looked at
  - MAS is more selective
  - MAS is more stringent
- Shift from offshore jurisdictions or tax havens to Singapore
  - Especially PRC, Europeans, Indonesians & South Asians
  - Especially Institutional Investors, SWFs & large family offices
  - More requirements under OECD / G20 BEPS framework
- Consolidation of FMCs continue

## Trends & Developments

- More applications for 13O & 13U
- Many small SFOs, but finding it harder to meet additional & more onerous 13O & 13U criteria imposed by MAS
- Government wants genuine & sizeable SFOs, & wants the AUM to be utilized meaningfully in Singapore
- Healthy growth of VCCs, more acceptances in Asia and Europe
  
- Continuing issues
  - hot money flow
  - AML focus
  - anchoring of senior management
  - opening & maintaining accounts

# Trends & Developments

- VCC Usage & Development
  - As at July 2023, 920 VCCs have been incorporated
  - New MAS VCC grant/subsidy wef 16 Jan 2023 – FM launching 1<sup>st</sup> VCC, capped at 30% & S\$30,000
  - Much preferred structure by clients
    - 13O & 13U tax incentives, DTAs, compliant with substance requirements
  - Usage
    - Fund managers, asset/wealth managers, MFOs, SFOs with tie-ups
    - Singaporeans, Asians (especially PRCs & Indonesians), Europeans, Indians
    - Almost all asset classes, almost all strategies, including hedge funds, PE/RE funds, credit funds
    - Mostly umbrella sub-funds model (like Cayman SPC)
  - Big boys & European clients started using & more are paying attention
  - Traction is healthy & looks good beyond MAS VCC grant/subsidy
  - VCC Act version 2.0 expected in 2023



## Mergers & Acquisitions of EAMs



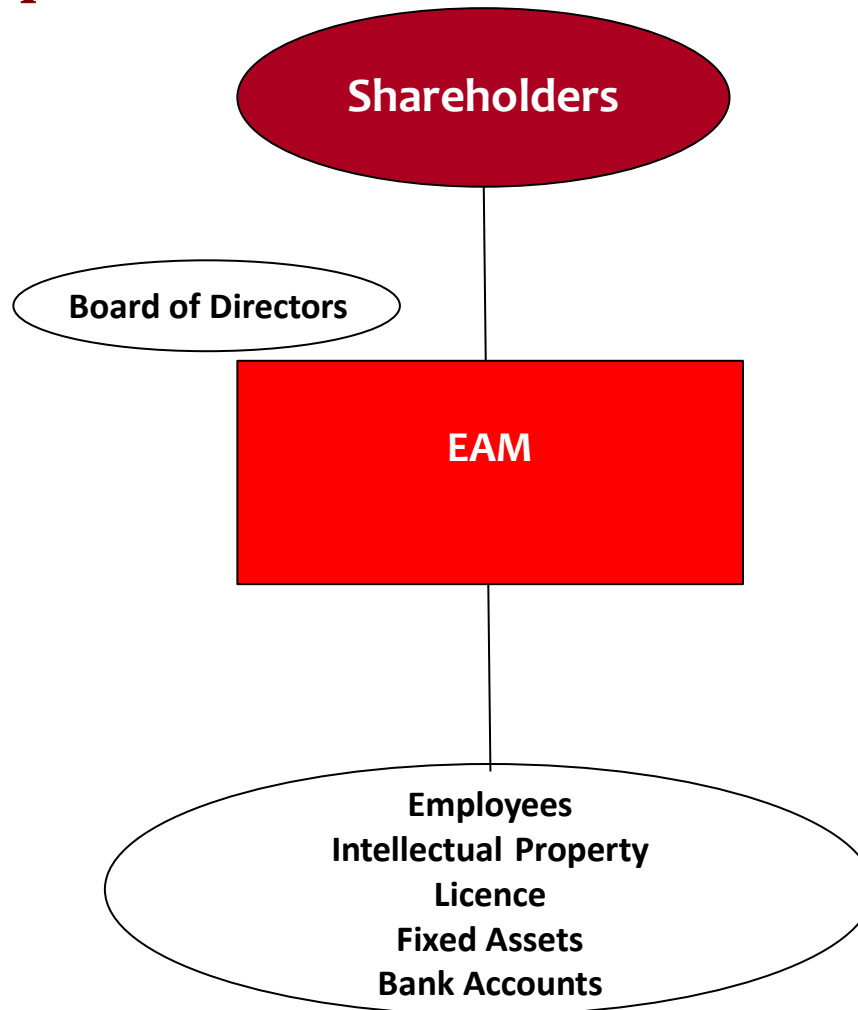
# Mergers & Acquisitions of EAMs

- Rationale
  - Business succession planning (retirement or exit)
  - Economies of scale – to deal with rising costs
  - Scalability – increase AUM, increase talent pool, increase client/prospect pool
  - Taking care of junior partners & rising stars
  - Exit
  - Expansion overseas through foreign ownership
  - Foreigners planting a flag in Singapore

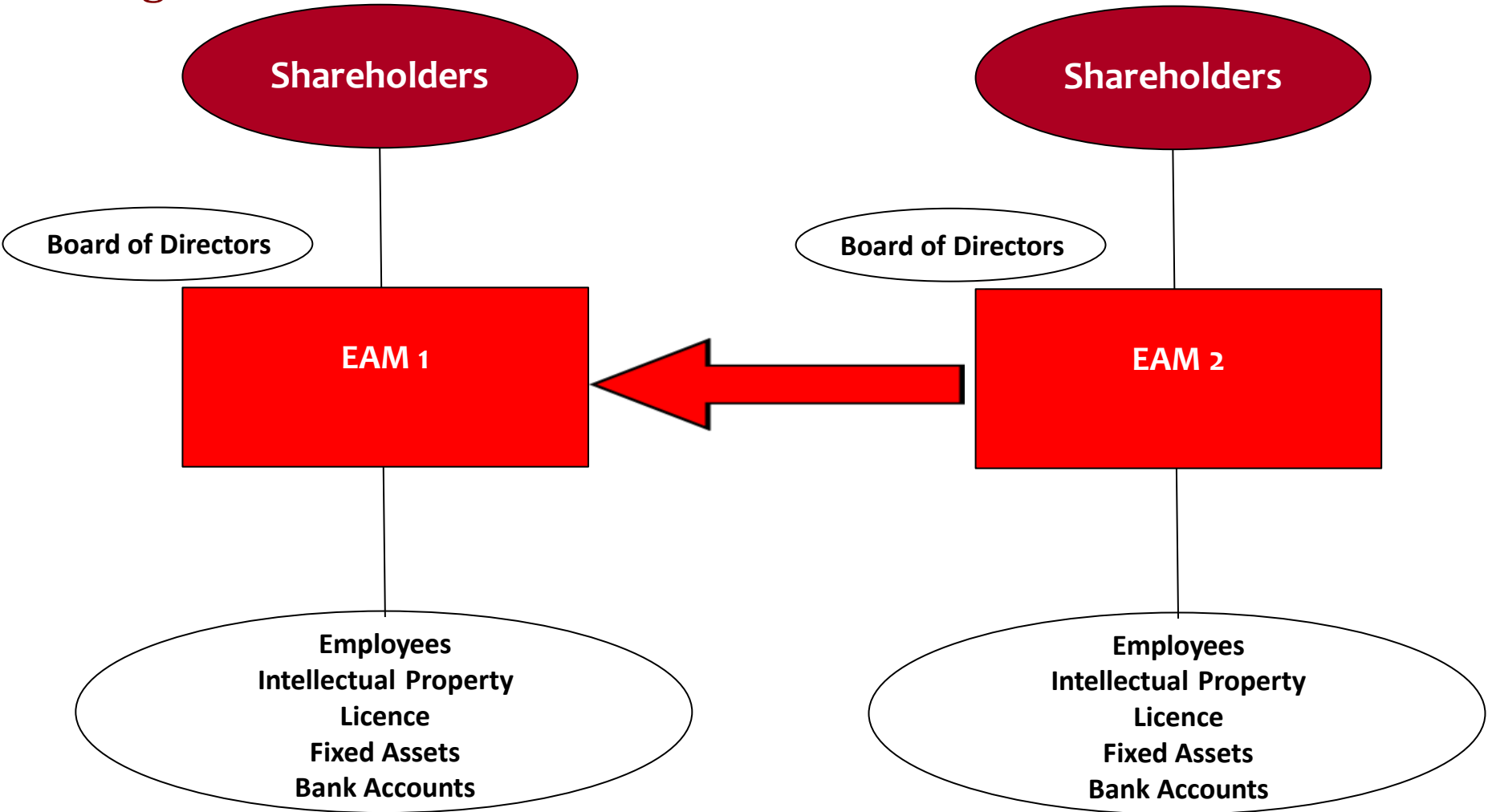
# Mergers & Acquisitions of EAMs

- FMC M&A & Succession Planning
  - Organic
    - Take in new JP or pass onto existing JP
    - Employee share plan
  - Inorganic
    - Merger
    - Sale or acquisition – to local reg FM or foreign owner/FI
  - Private trusts
    - Setting aside some shares & settling into a private trusts for the benefit of shareholders' NOK upon demise
    - No shareholding changes upon demise
    - NOK continue to enjoy economics without control
  - Wills, trusts, buy-sell contracts, shareholders' agreement, insurance policies
    - To ensure surviving partners buy out (partial or all) shares with sufficient funding & ensure continuity of business

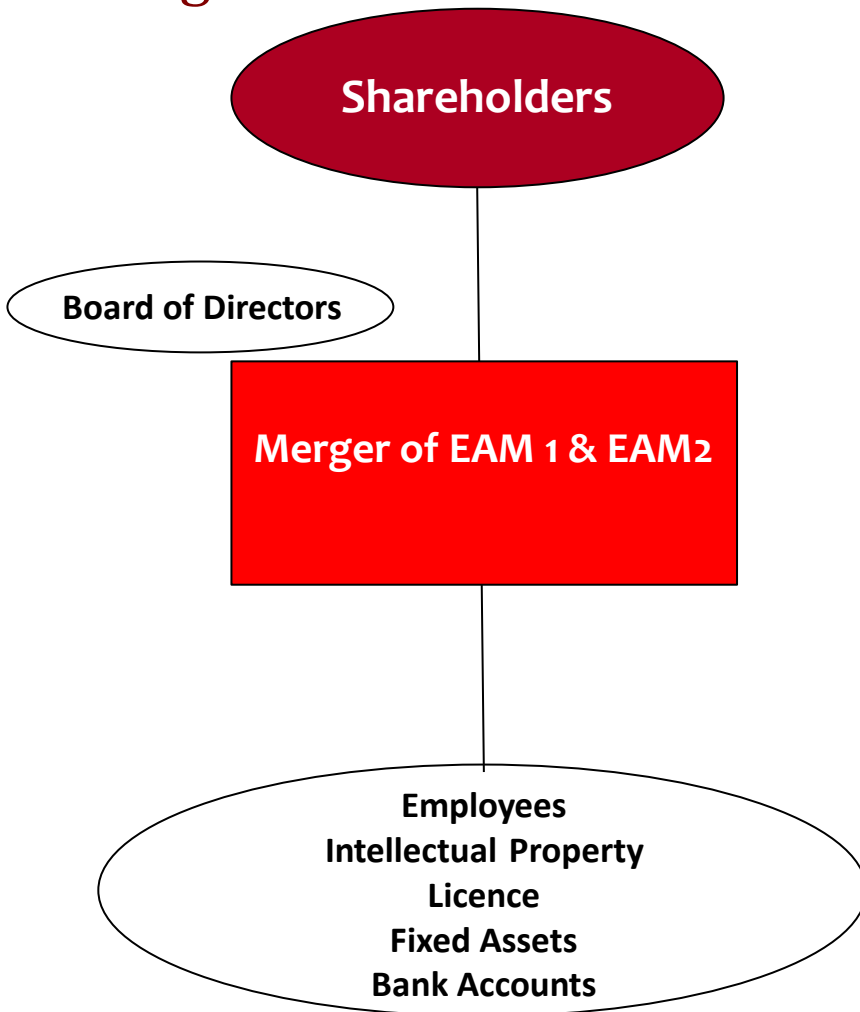
# Typical EAM



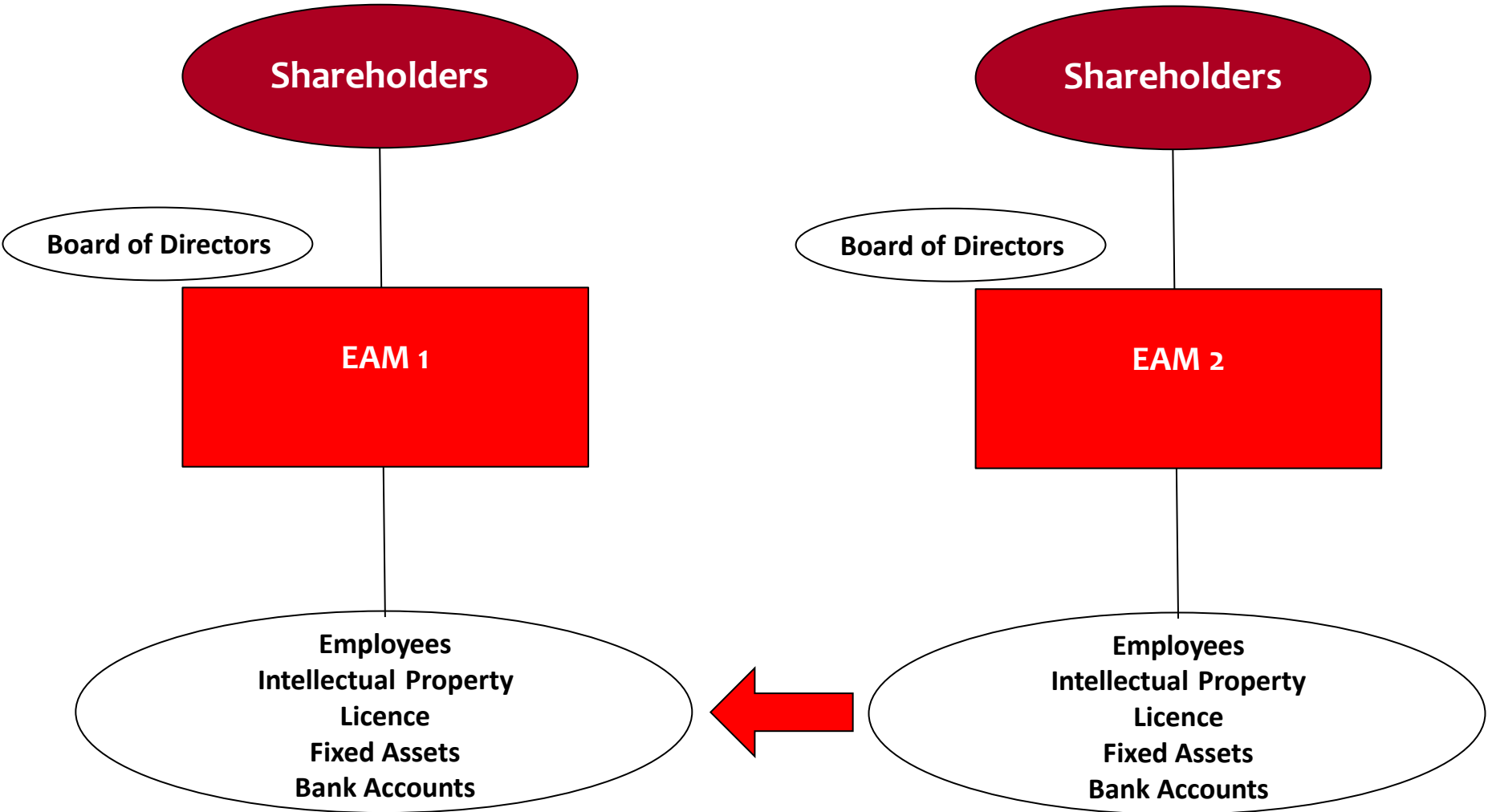
# Merger



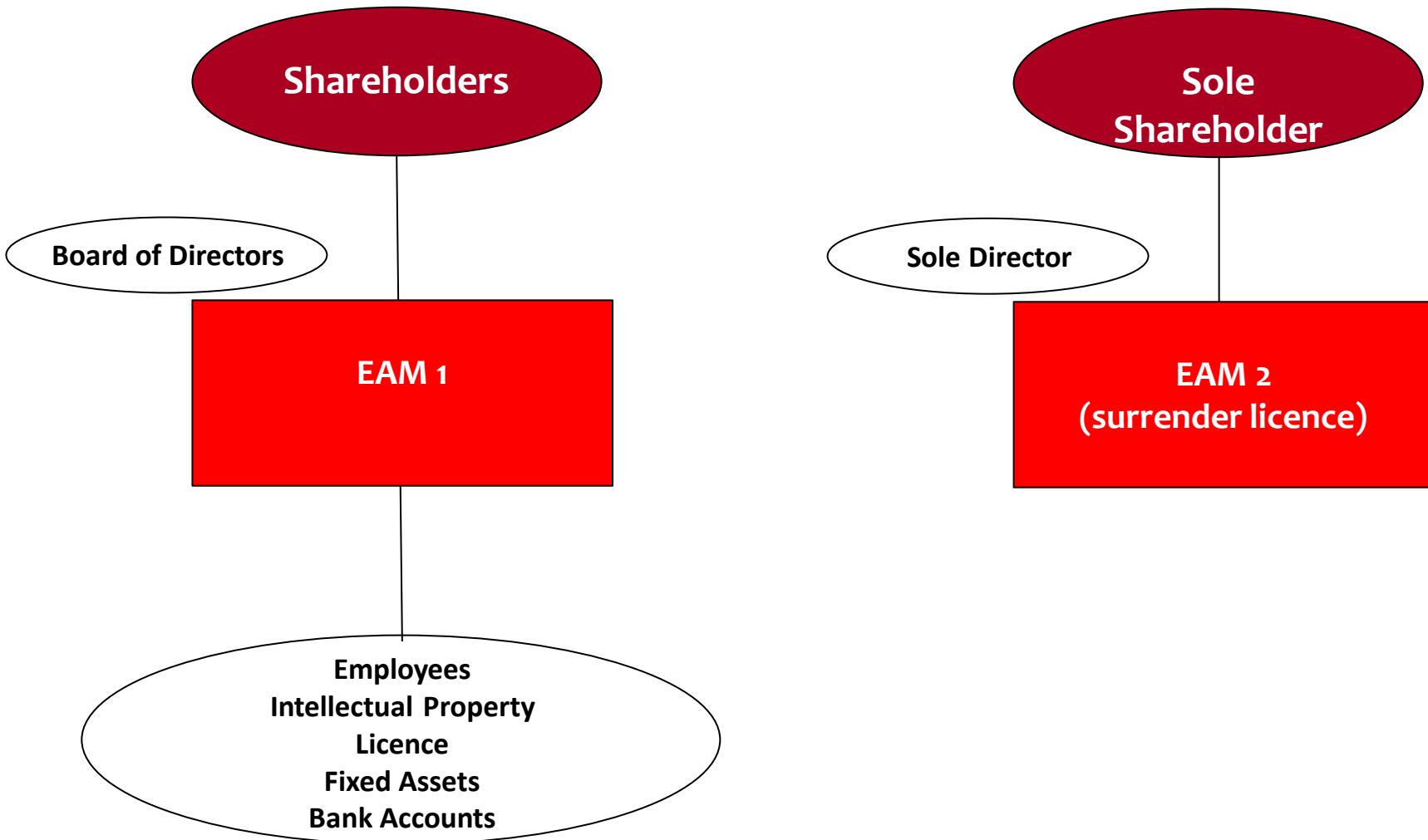
# Merger



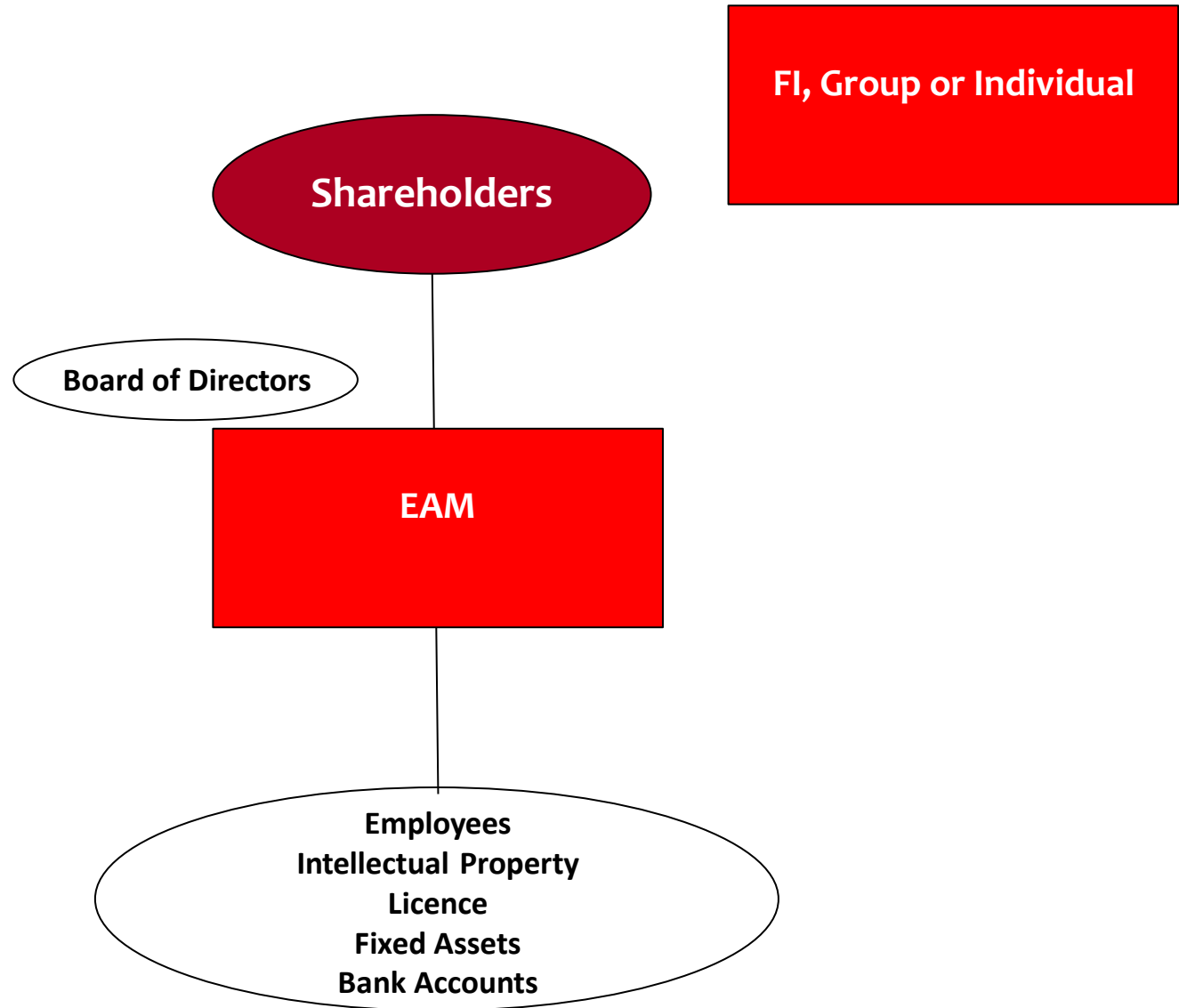
# Asset Sale



## Asset Sale

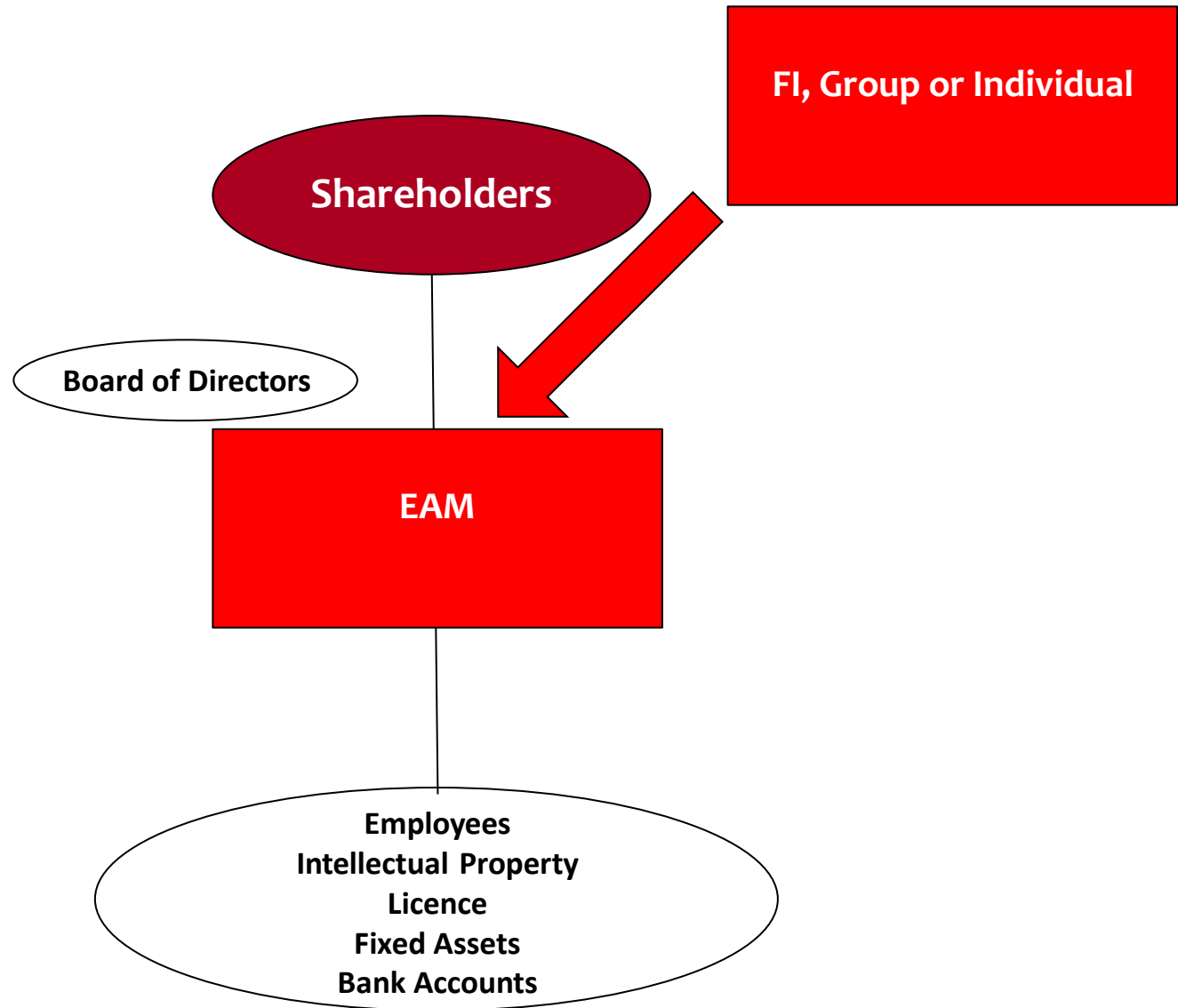


# Shares Sale

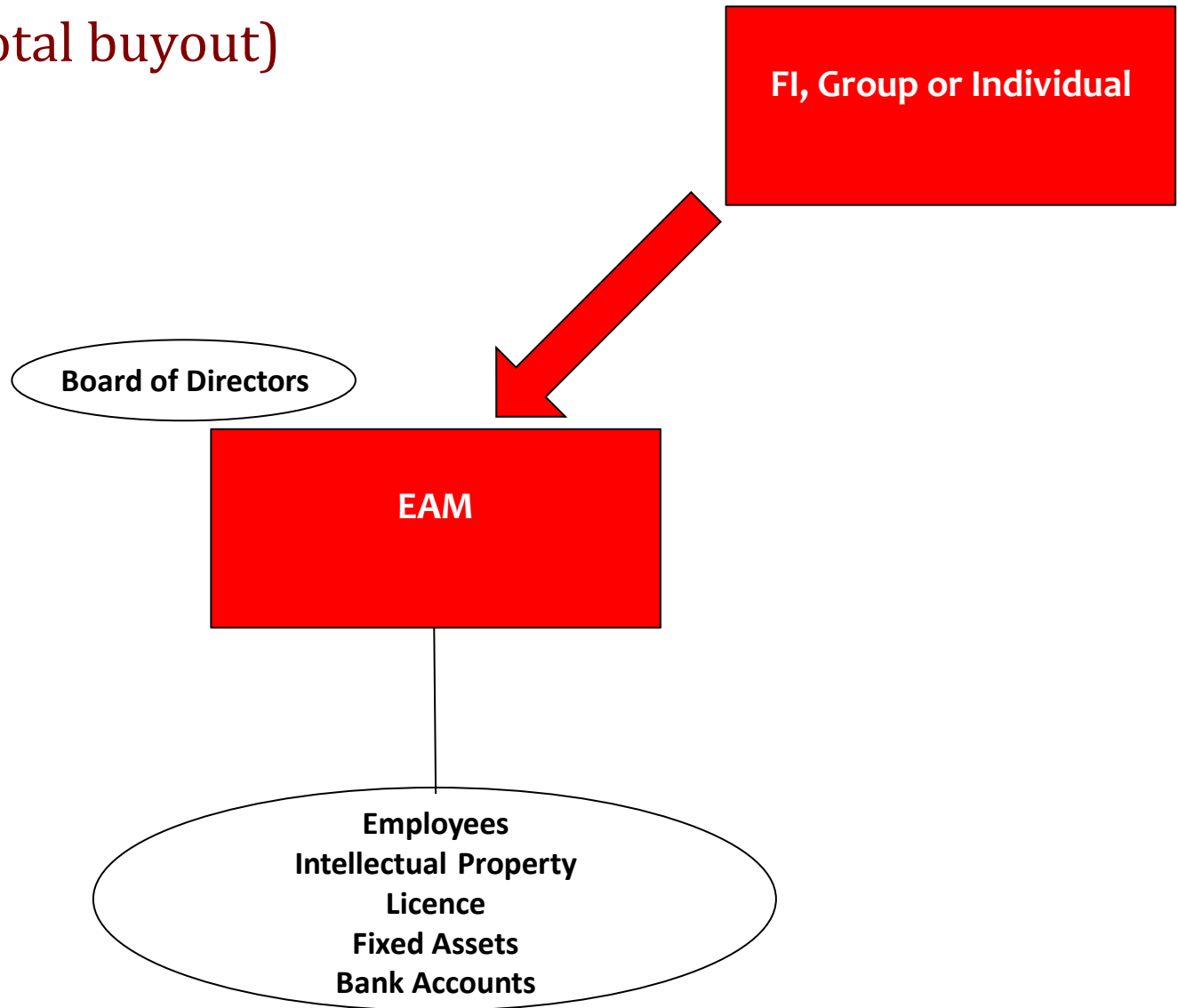




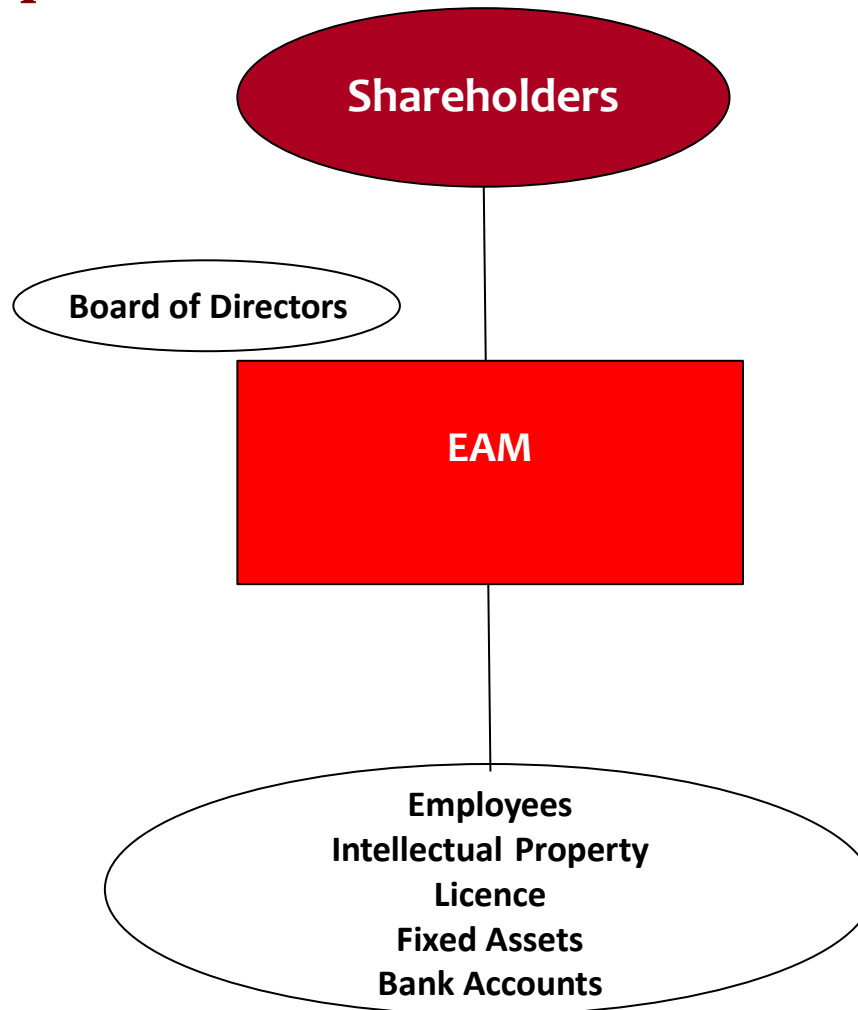
# Shares Sale



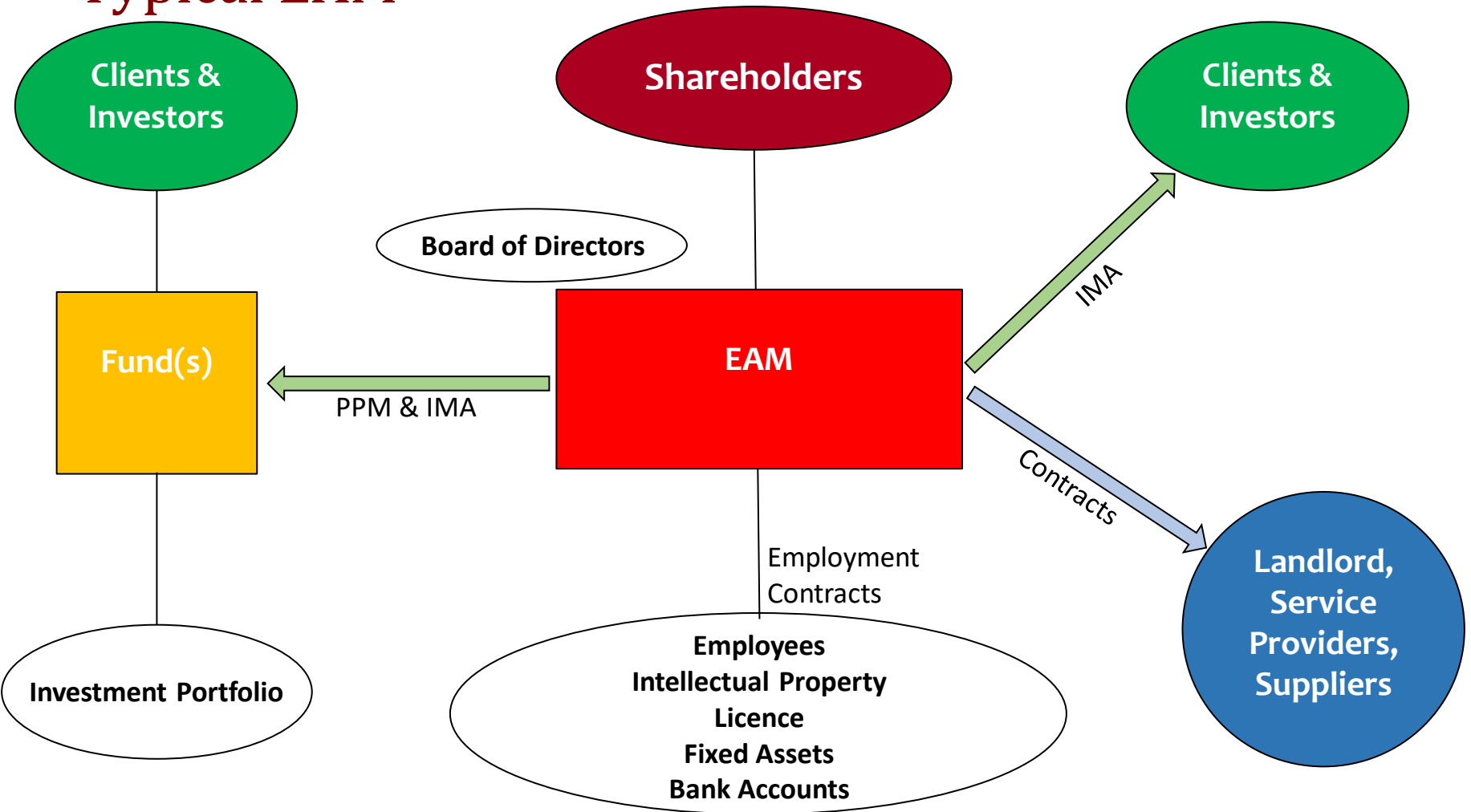
# Shares Sale (total buyout)



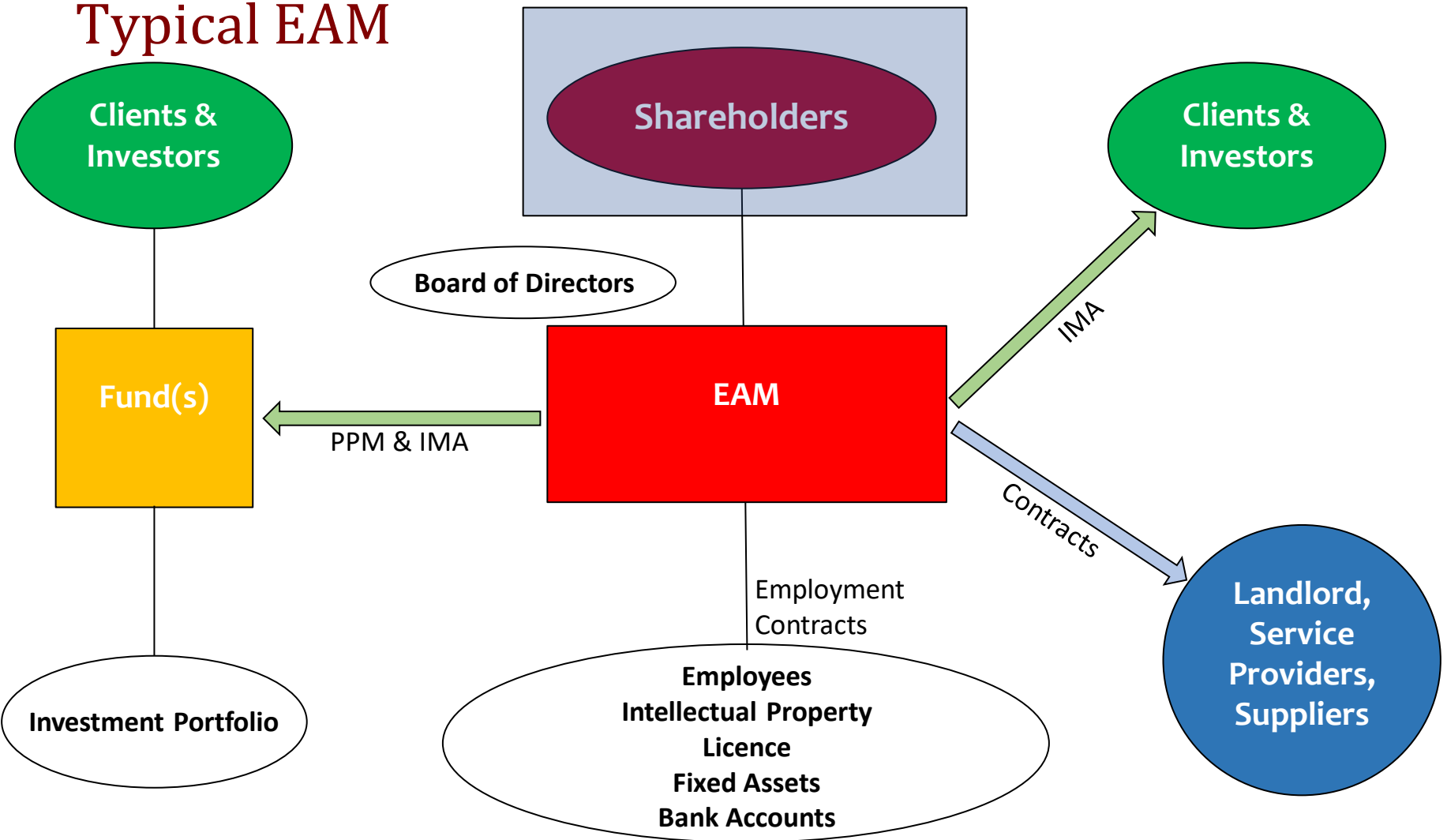
# Typical EAM



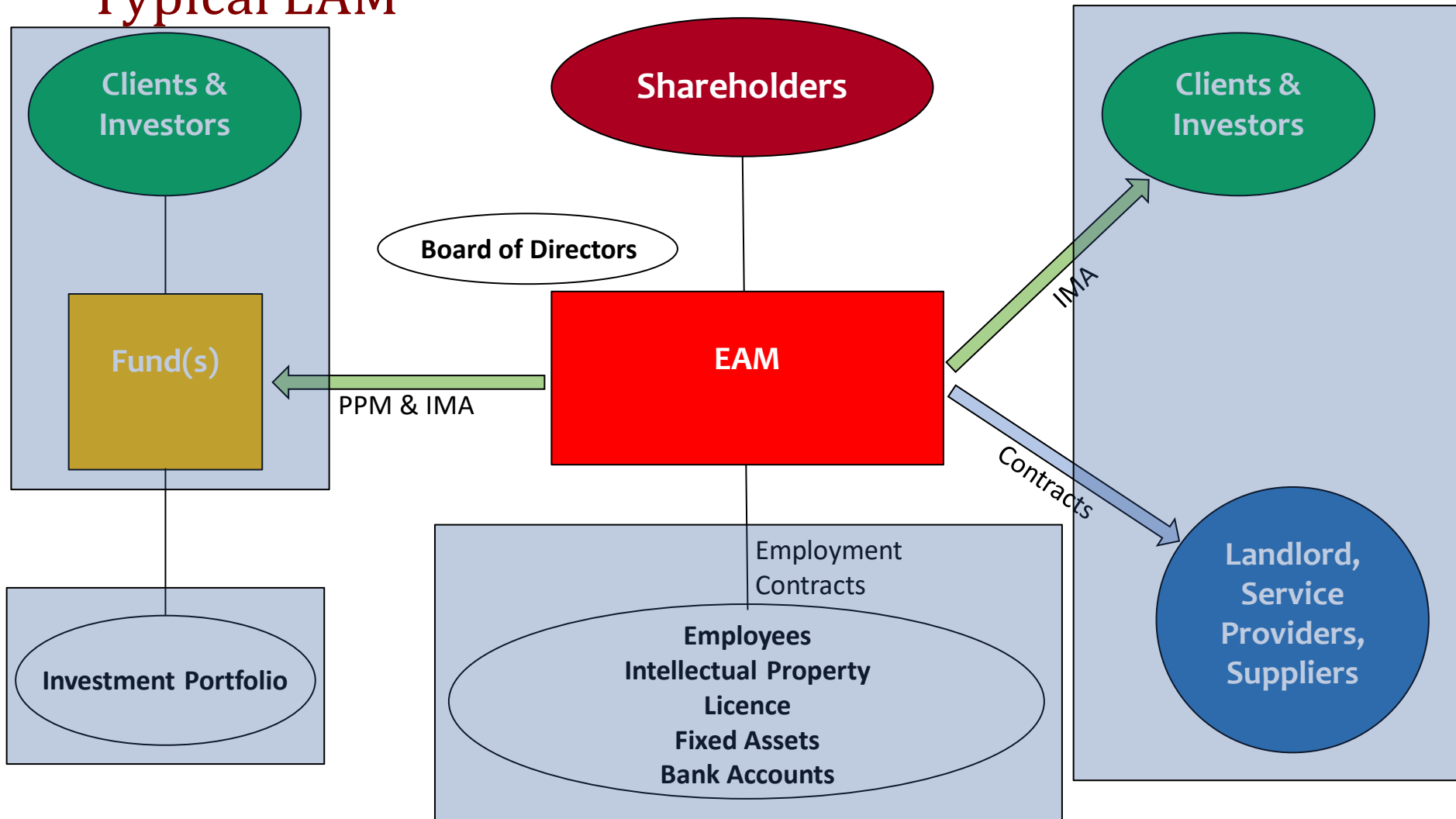
# Typical EAM



# Typical EAM



# Typical EAM



# Mergers & Acquisitions of EAMs

- Legal & other issues
  - Non-disclosure agreement & exclusivity agreement
  - MOU or LOI
  - Due diligence
  - Legal Documents (Subscription Agreement or S&P Agreement, Shareholders Agreement)
  - Valuation
  - Change in control – obtaining consents or notifying clients & contracting parties
  - Managing client expectations & emotions
  - Negotiations, pricing, financing, keeping the team & clients
  - Culture, risk appetite, management style, personalities

# Mergers & Acquisitions of EAMs

- Legal & other issues
  - Service agreements to retain keymen
  - Non-competition & non-solicitation
  - Transfer of employees
  - Novation of contracts (funds, IMAs, service providers, leases etc.)
  - Changes to organisation structure & reporting structure
  - Changes to or termination of accounts (banks, brokers, trusts etc.)
  - Changes to employment passes
  - Stamp duties



# Mergers & Acquisitions of EAMs

- Regulatory issues
  - MAS approval if 20% or more change hands – acquirer & FM
  - MAS can be quite selective, & may impose conditions
  - MAS is concerned about change in business & risks, change in board composition, CEO & senior management, impact to existing clients & staff
  - Business proposal & organisation chart
  - Consider changes to licence & regulated activities
  - Potential conflicts must be identified & resolved or mitigated
  - Orderly transfer / winding down – meeting all regulatory requirements & minimum personnel requirements till cutover date
  - Surrender of licence – for EAM being acquired
  - Timing for approval process is not predictable



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Questions?



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## Why Shook Lin & Bok

## Why Choose Shook Lin & Bok

- 104 years history
- 6<sup>th</sup> largest independent law firm in Singapore, approx 145 lawyers
- Ranked highly for various practices
- Funds practice is highly ranked & regarded by peers & industry
- Works closely with the regulators, excellent pulse reading
- Works closely with clients & industry leaders
- 100% track record for licence/registration applications
- Advised on & launched about 100 VCC funds
  
- Our Funds practice is a top dedicated practice with 13 specialist lawyers, led by a Band 1 senior partner
- Advised numerous EAMs/IAMs, MFOs & SFOs, VCCs
- Our Funds practice has deep & long experience in all types of funds
- Our Funds practice is bilingual

**Disclaimer:**

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# Thank You

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