

MALTA - AN IP HUB

24 – 11 - 2014

Opening Doors for Professional and Economic Development

- 1973 – Shipping registration
- 1984 – Ship finance
- 1988 – Corporate and Trusts (offshore)
- 1993 – Corporate (eliminating offshore)
- 1993 – Financial services (1994-2014 regular enhancements like re-domiciliation, PCCs, captives, securitisation, RSPVs etc.)
- 1998 – Gaming
- 2004 – Trusts (eliminating offshore)
- 2007 – Foundations
- 2010 – Aviation
- 2015/6 – Intellectual Property?

Goals

- Build on Malta's success story in other sectors;
- Use methods already proven to be successful to make Malta an attractive jurisdiction to IP-related commercial activity;
- Take stock of the current scenario - legal and market developments in Europe and beyond;
- Aim to adopt cutting edge ideas, forward looking solutions and out of the box thinking.

Approach

- Adopt a holistic approach to:
 - Revise laws and practices to bring them up to speed with today's needs and methods;
 - Review Malta's international agreements and positions where possible;
 - Boost the levels of IP protection;
 - Open up to securitisation and other forms of commercialisation;
 - Develop ideas to use IP as collateral for financing.

Recognise the world we operate in

- Many IP laws were conceived in a different world;
- Globalisation and cross border realities;
- The emergence of strong economic powerhouses based on IP;
- Economic assets becoming more intangible, including through wrappers;
- Massive digitisation creating massive accessibility to information.

The Opportunity for Malta

- Let's see all this as an opportunity, hopefully we are not too late;
- Opportunity to showcase our country as sensitive to the environment around us – a globalised and electronic age;
- Commercial activity attracted to our island;
- Legal, accounting and tax services:
 - ownership and its protection
 - transfers of IP
 - using IP as security
- Administration services;
- Pure registration facilities.

Let's recognise limitations but not let them draw our focus!

- It is clear that this is an area of law which is quite developed and has been developing for many years;
- It is clear this is an area which is subject to harmonisation conventions and treaties, already making the sector less flexible than a blank page;
- It is clear that the EU has issued different sets of legislation and is centralising registrations;
- Evidently, in the area of PROTECTION it can only work if IP rights are recognised outside our shores or on a cross border basis.

What can we add to a developed world?

- Recognising that it is a different and changing world:
 - We can add solutions to today's problems which other countries have not yet addressed and many areas are not yet harmonised anyway;
 - We can regulate activities which are not the subject of other laws or dealt with weakly in other laws;
 - We can design rules for transactions which are happening all the time in this specialised sector on the basis of general interpretations which are creative *but not necessarily legally certain*;
 - We can facilitate business lines which are supportive of this industry where no other countries have started to identify them as the focus of support;
 - **SO ENHANCING LEGAL CERTAINTY (WHERE IT IS ABSENT) AND ADDRESSING INTERMEDIATION SERVICES COULD BE THE NEXT STEP.**

Sources of Inspiration

- Various countries are already forging ahead in order to give their jurisdiction that added value to attract entrepreneurs and investment:
 - UK: the Copyright Hub to ensure greater copyright certainty;
 - Australia: development of electronic searching capabilities for IPR;
 - China: launch of an online ceramic art design copyright trading platform;
 - Singapore: seeking to become the Global IP Hub in Asia and has set up the IP Competency Framework (IPCF);
 - Malaysia: introducing amendments to promote the use of intangible assets as security.

The Proposal

- A national IP project – *LET'S CALL IT AN IP CODE*;
- New legislation:
 - To rationalise and consolidate all the laws and policies we have;
 - To update laws and policies;
 - To clarify grey areas and to create certainty;
 - To join the dots in this sector to promote a consistent offering;
 - To open new doors by focused incentives (in addition to what we have and within national and EU limitations).
- A proposal from the services sector - maximum collaboration necessary for such a large task;
- Support from the Government to facilitate research, development and innovation.

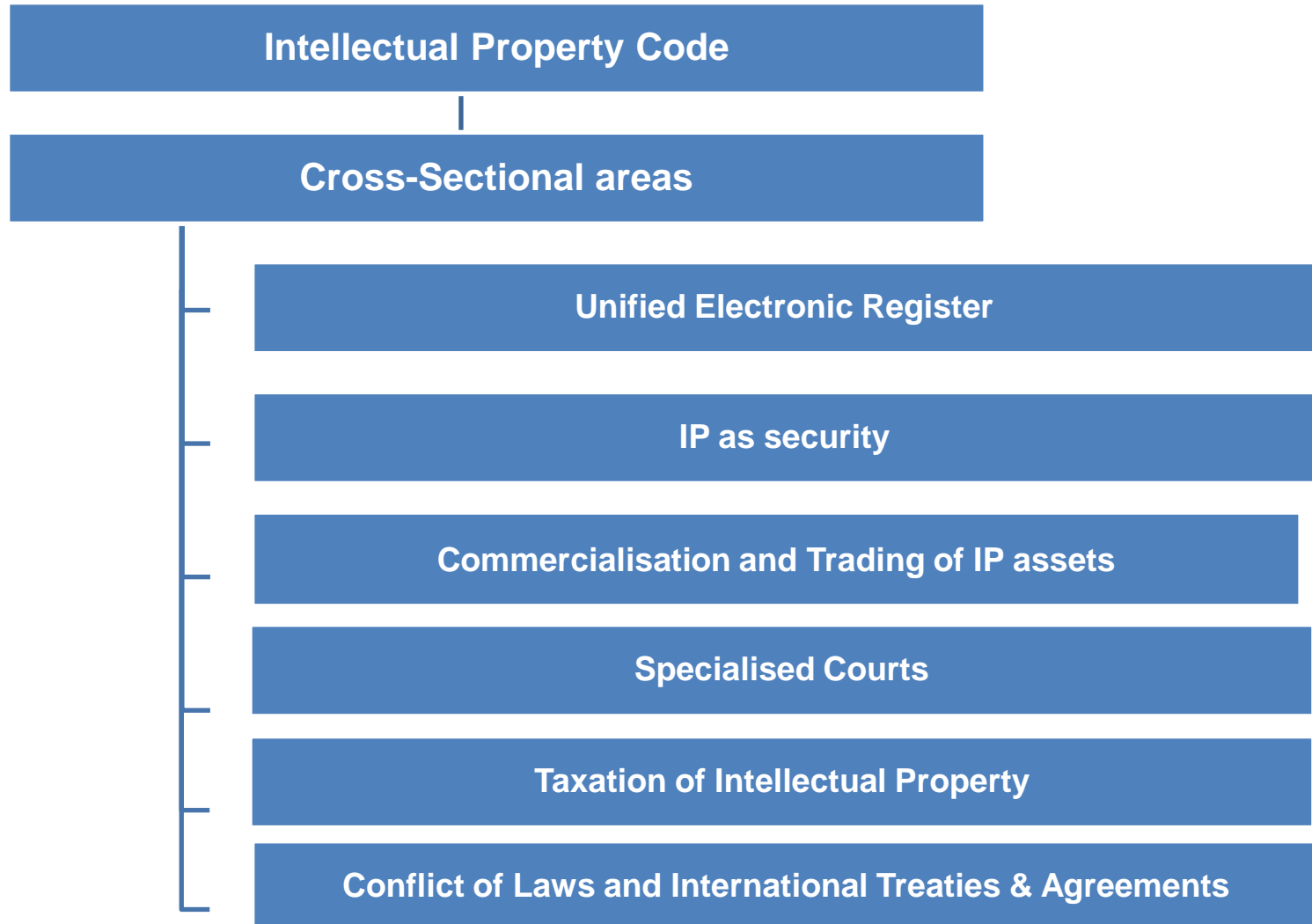
Methodology

- Phased studies to be carried out by the professionals in the IP and ancillary field with international and local experience in different sectors including law, finance, taxation, accounting, investment promotion, regulation, electronic commerce and others.
- **Phase 1:** To test the current vision and develop it further to identify implementation targets;
- **Phase 2:** Full blown studies based on the vision formed in Phase 1.

INTELLECTUAL PROPERTY CODE

Cross-Sectional Areas which permeate IP right-specific legislation

Copyright & Neighbouring Rights	Designs	Patents	Trade Secrets	Image Rights	Trademarks
<ul style="list-style-type: none"> • Film / audiovisual • Digital Games • Software • Music • Journalistic works 		<ul style="list-style-type: none"> • Biotechnology & Life sciences • Utility models • Topographies of semiconductor products • Service Patents 			



Cross-Sectional Areas (1 of 6)

Creating a Unified Electronic Register (UER)

- Registration exists for certain forms of IPRs;
- A UER for all IPRs is key to accurate and quick searches into proprietary rights;
- Registration – a cornerstone of legal certainty of particular relevance when trading IP assets or placing them as security;
- (Voluntary) Registration to be introduced for copyright and novel IPRs (e.g. image rights and trade secrets) to serve as evidence of proprietary rights.

Cross-Sectional Areas (2 of 6)

Taxation, fiscal and other incentives

- Analyse impact of current IP-centred tax, fiscal and other incentives;
- Draw upon experiences of other IP-friendly jurisdictions;
- Extend successful incentives to the whole spectrum of IPRs.

Cross-Sectional Areas (3 of 6)

Security for IP

- The current legal framework does not provide for IP assets being used as security to obtain financing;
- There is a global trend towards treating IP assets as valid forms of security;
- Our favourable securitisation legislation ought to be adapted to IP assets.

Cross-Sectional Areas (4 of 6)

Trading of IP Assets

- Create a legal and administrative framework to enable the trading of IP assets;
- IP trading platforms.

Cross-Sectional Areas (5 of 6)

Specialised Courts

- Our Courts need to be able to handle disputes efficiently and effectively;
- Procedures should be aimed at quick and effective solutions in view of volatility of ITC and IP markets;
- Creating specialised courts to handle IP disputes sends a powerful message to international businesses.

Cross-Sectional Areas (6 of 6)

Conflict of Laws and International Treaties

- To ensure that Malta strikes the perfect balance between harmonisation and discretion in adopting and transposing international treaties and European Union legislation;
- To ensure that the adoption of international policy positions and transposition of cross-border legislation is effected with clear strategy and scope.

Specialised Areas

Copyright and Neighbouring Rights

- Key to the digital industries;
- Enhance current protection levels and create effective voluntary registration allowing for greater certainty;
- Adopt industry-specific measures where required.

Specialised Areas

Image/Personality Rights

- Currently no *ad hoc* protection, save for Guernsey and limitedly in America;
- Malta should seek to exploit this state of affairs and its status as EU Member State to offer *ad hoc* protection coupled by greater cross-border enforceability in cases of breach.

Specialised Areas

Trade Secrets

- The subject of a draft EU Directive (November 2013) elevating the relevance of these IP rights;
- Malta should offer greater certainty and higher levels of protection than the minimum requirements set in the Directive;
- Voluntary registration of trade secrets as a means of creating certainty should be considered.

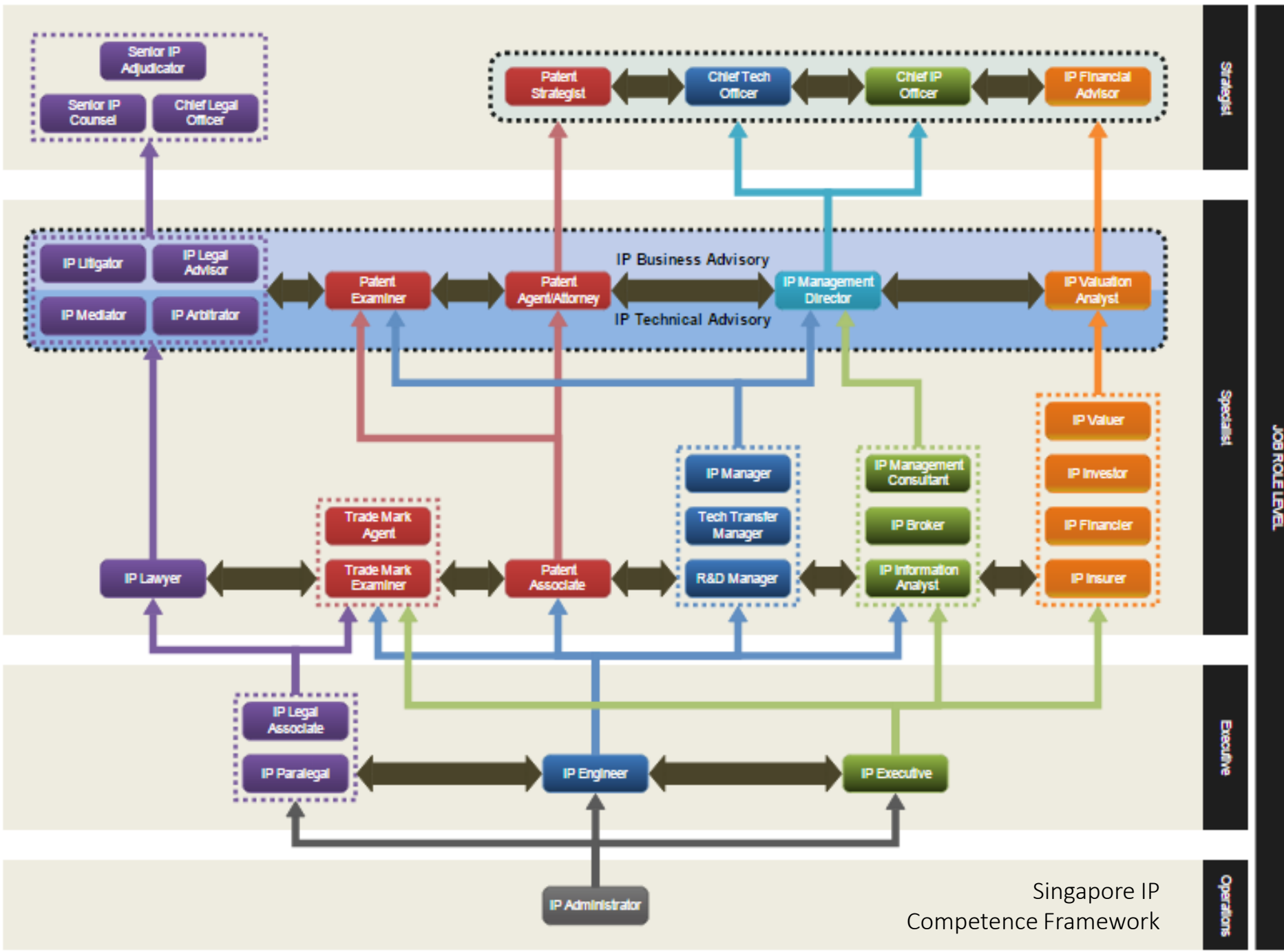
Specialised Areas

Patents, Trademarks and Designs

- Improve on current filing procedures, where required;
- Invest in academic preparation of technical evaluators and consider the market opportunities in patent filing services;
- Evaluate the validity of introducing novel concepts, such as Service Patents;
- Introduce sector-specific measures where required, e.g. for biotechnology and life sciences.

Focus areas in support

- Legal certainty
- Incentives
- IP Intermediaries and their businesses



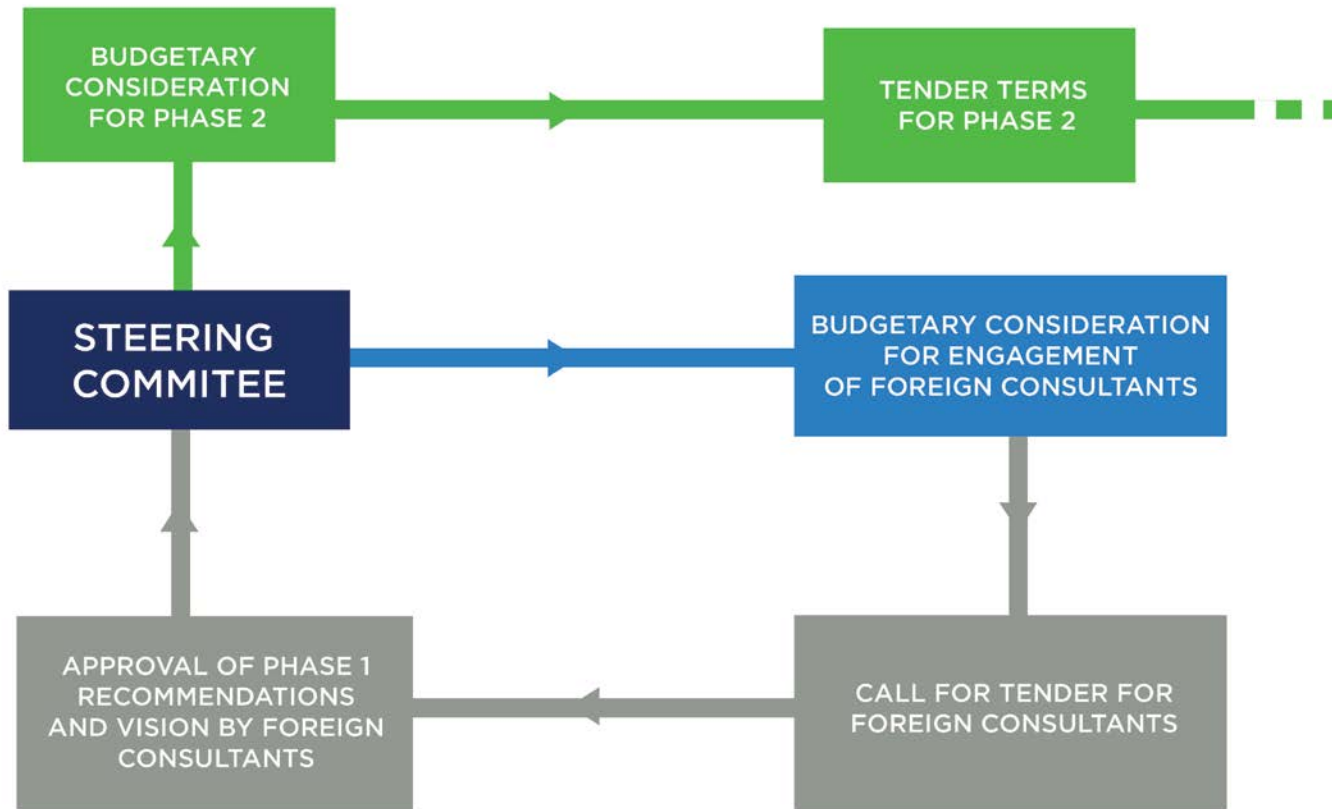
Singapore IP Competence Framework

PROJECT DYNAMICS

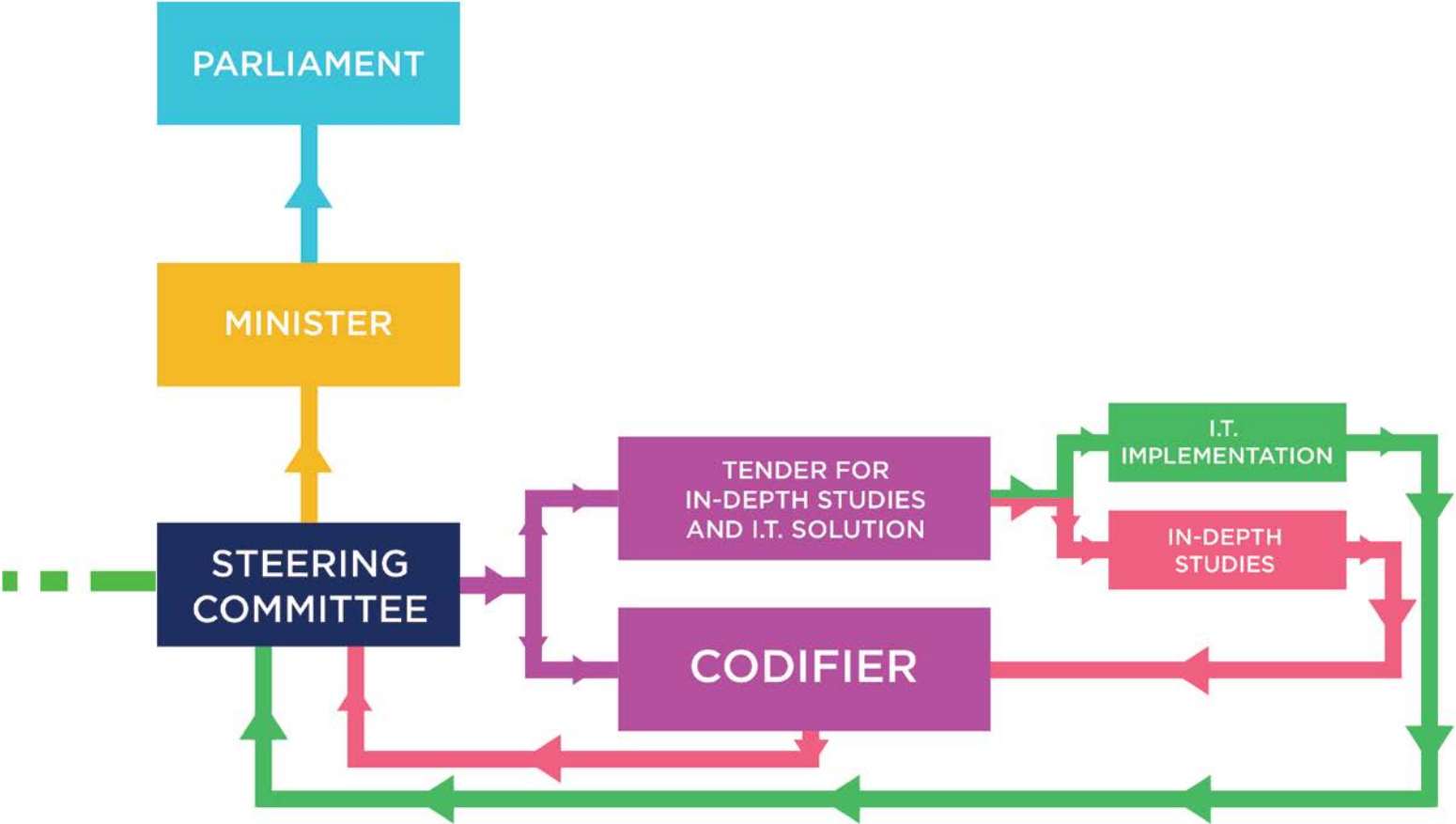
PHASE 1 - PRE-TENDERING PROCESS
VISION TESTING & VOLUNTARY IN DEPTH STUDIES



PHASE 1 - PRE-TENDERING PROCESS
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PHASE 2 - IMPLEMENTATION STAGE



QUESTIONS

**Register your interest
to participate:**

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THANK YOU