



FINANCING LEGAL ISSUES in INDONESIA

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Security Rights

- Hak Tanggungan
- Fiducia security
- Pledge of Shares
- Corporate guarantee

Security

- Defensive : protect the project assets against an attachment
- Control :
 - Generally not a right of possession (as opposed to public auction) → so lenders cannot manage project assets
 - no right to possessory management (through a receiver)

TRUSTEE and SECURITY AGENT

- Trustee only in Capital Market Law
- Mortgage Law : only agent
- Fiducia Law : trustee and agent

Coal Contract of Work/CCOW (1st generation)

- Consent from the [Ministry of Energy and Mineral Resources] : transfer of CCOW
- Notice to the Ministry of Energy and Mineral Resources : transfer of CCOW to an affiliate
- All purchased property, plant and equipment and all inventories and spare parts are owned by the Government at the Indonesian port of import or when purchased domestically.
- The Government retains title to all coal until delivery to the vessel at the point of export or at the point of sale in Indonesia.

Coal Contract of Work/CCOW

(2nd & 3rd generation)

- All purchased property, plant and equipment and all inventories and spare parts are owned by the CCOW contractor
- [The Government retains title to all coal until delivery to the vessel at the point of export or at the point of sale in Indonesia]

Fixed Assets

- Land:
 - Mining rights over land, no title over the land
 - Right to Build/HGB:
 - Overland belt conveyor
 - Coal crushing plant
 - Coal washing plant
 - Power plant
 - Coal shipping terminal/barge loading facility
 - Buildings (offices, housings etc.)

Moveable Assets : Mining Fleet

- Excavators
- Coal hauling trucks
- Bulldozers
- Graders
- Loaders

Property, Plant and Equipment

- Right to Build/HGB – Fixed Assets
- Moveable assets
- Coal
- Contractor
- Owner-operated mining:
 - purchase:
 - 1st generation CCOW (owned by the Government)
 - 2nd & 3rd CCOW (owned by the contractor)
 - operating lease (owned by the lessor)
- Sub contractors-operated mining
- Government

Security Rights

- Hak Tanggungan over land, buildings and fixed equipment
- Fiducia security
 - over moveable assets/mining fleet
 - over moveable assets/[coal], supplies, materials, spare parts
 - over bank accounts
 - over insurance
 - over account receivables
 - over [CCOW]
 - over [contracts]
- Corporate Guarantee
- Pledge of shares

Hak Tanggungan

- Creation
 - A notarial deed of encumbrance between the grantor and the grantee
 - The registration of the deed of encumbrance at the Land Office
- Creditor's Remedies
 - Sale at a public auction
 - Private sale (notice has been published in newspapers and no objection from third party)

Fiducia Security

- Creation
 - A notarial deed between the grantor and the grantee
 - The registration of the deed of fiducia security (plus the list of assets) at the Fiducia Registration Office
 - For bank accounts, receivables and insurance, must obtain acknowledgment or notice of assignment served by a court official
- Creditor's Remedies
 - Sale at a public auction
 - Private sale (notice has been published in newspapers and no third party's objection)

Pledge of Shares

- Creation
 - A pledge agreement between the pledgor and the pledgee
 - The issuer of the pledged shares is notified
 - Annotation in the issuer's share register book
- Creditor's Remedies
 - Sale at a public auction (for listed shares: on the stock exchange),
 - Private sale (with pledgor's cooperation), or
 - Seek court order to keep the shares.

Offshore Borrowing : Approval or Report

- Approval if state-owned companies or private companies with government project
 - Approval from the Team of Offshore Commercial Borrowing (the PKLN Team)
- No approval: null and void

Offshore Borrowing : Approval or Report

- Report if private companies
 - Periodical reports to:
 - the Minister of Finance
 - Bank Indonesia
 - the PKLN Team
- Failure to report: monetary sanction

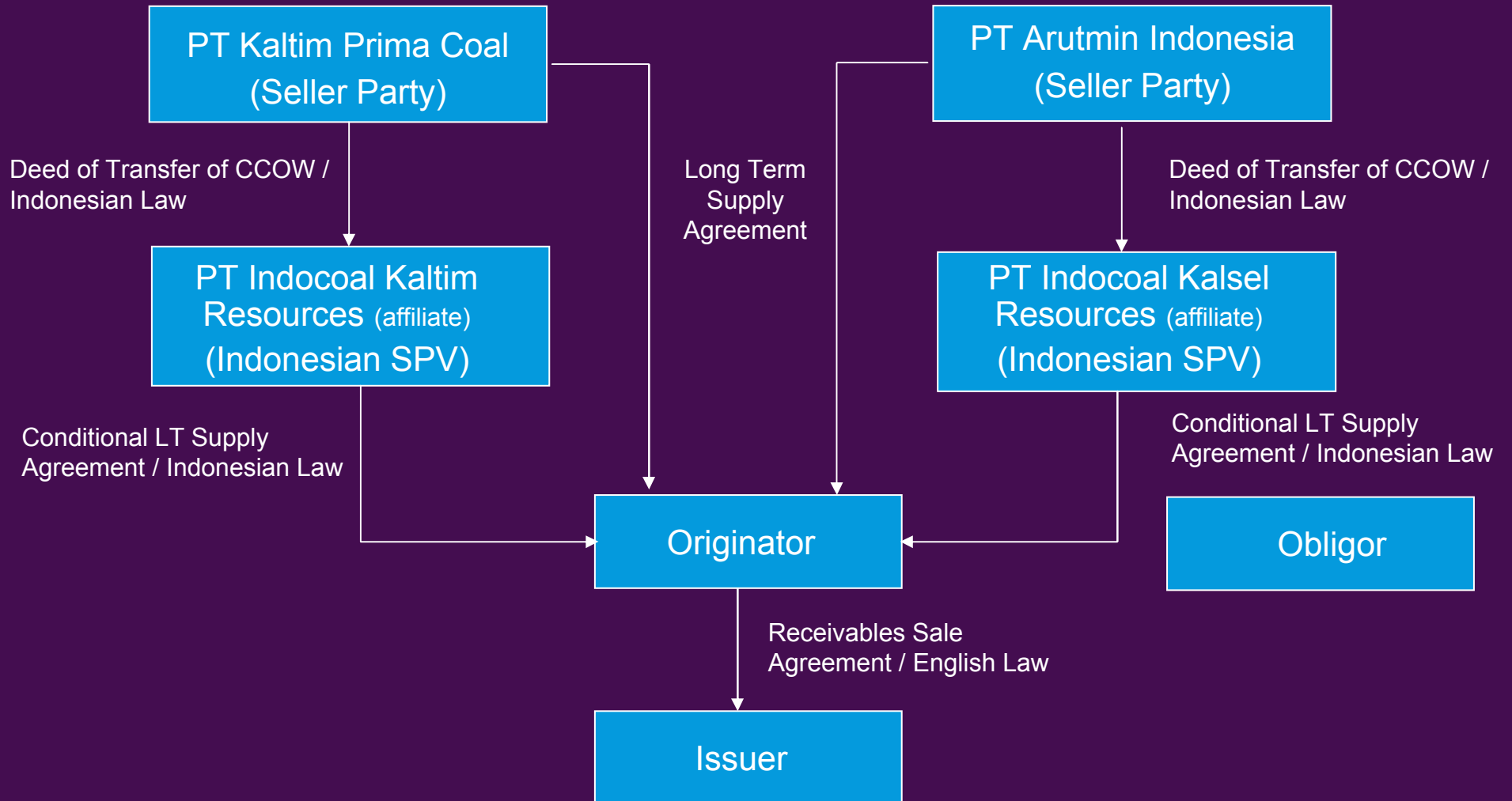
Enforcement

- Civil proceedings in Civil Court
- Bankruptcy proceedings in Bankruptcy Court
- Suspension of Payments proceedings in Bankruptcy Court
- Governing law: foreign law vs. Indonesian law
- Foreign judgement vs. foreign arbitration awards

Financing through Securitisation: HHP Experience

- US\$ 600 mn future flow coal receivables securitisation
- US\$ 178 mn motorcycle loan receivables Putra Surya Multidana
- US\$ 60 mn auto loan receivables Bank Bira
- US\$ 200 mn auto loan receivables Astra Sedaya Finance

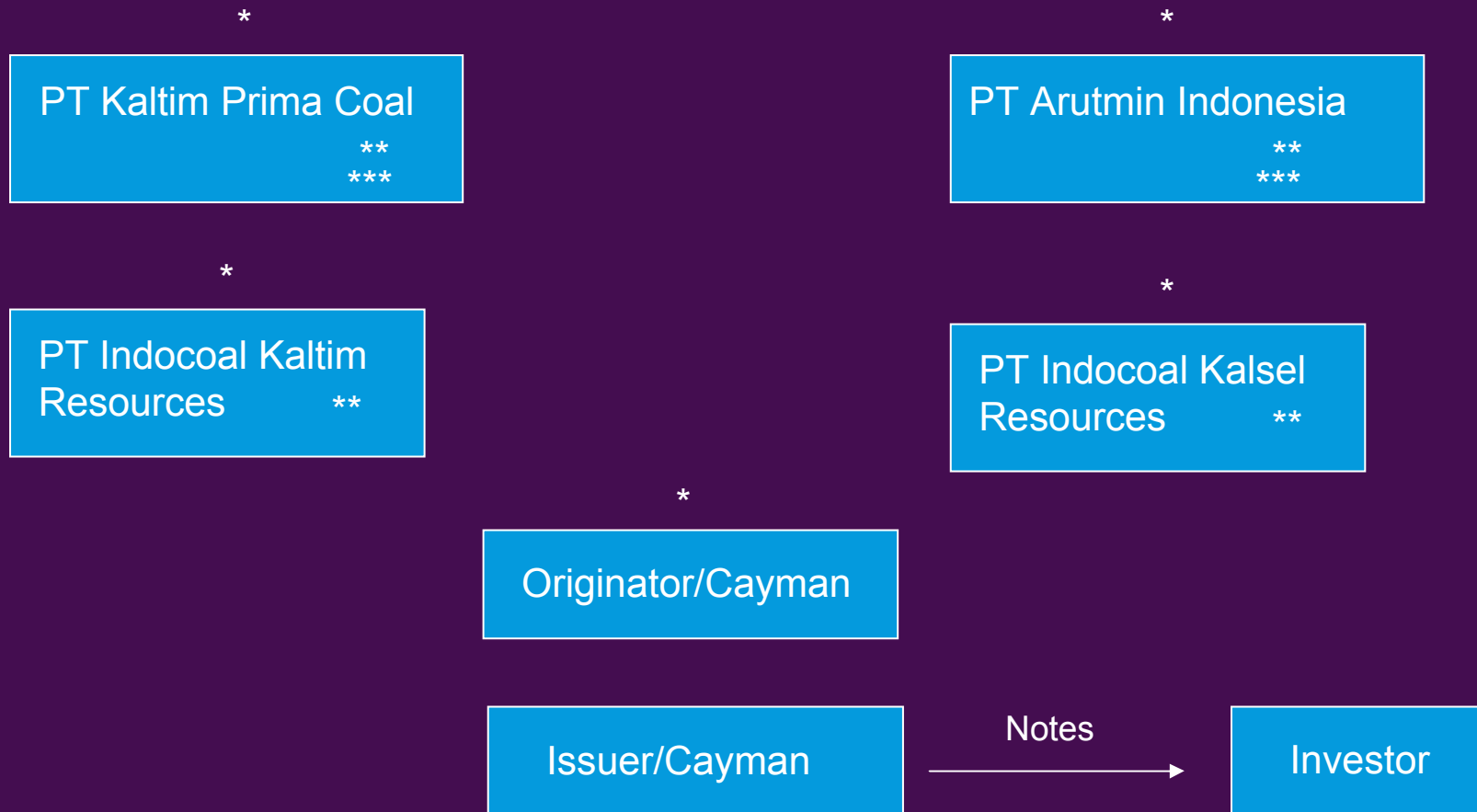
Case Study 1 - Future Flow Securitisation



Future Flow Securitisation

- The Originator purchases coal from the Seller Parties under the Long Term Supply Agreements with a fixed forward price
- The Originator sells the coal to the Obligors
- The Originator sells the existing and future receivables to the Issuer under the Receivables Sale Agreement
- The Notes proceeds are received by the Seller Parties as an advance payment for future sales of coal to the Originator
- The Seller Parties enter into Deeds of Transfer with the Indonesian SPVs. Upon the occurrence of certain bankruptcy events of the Seller Parties, the CCOW will be assigned to the Indonesian SPVs (affiliate). A notice will be sent to the Ministry of Energy and Mineral Resources.

Security Arrangement



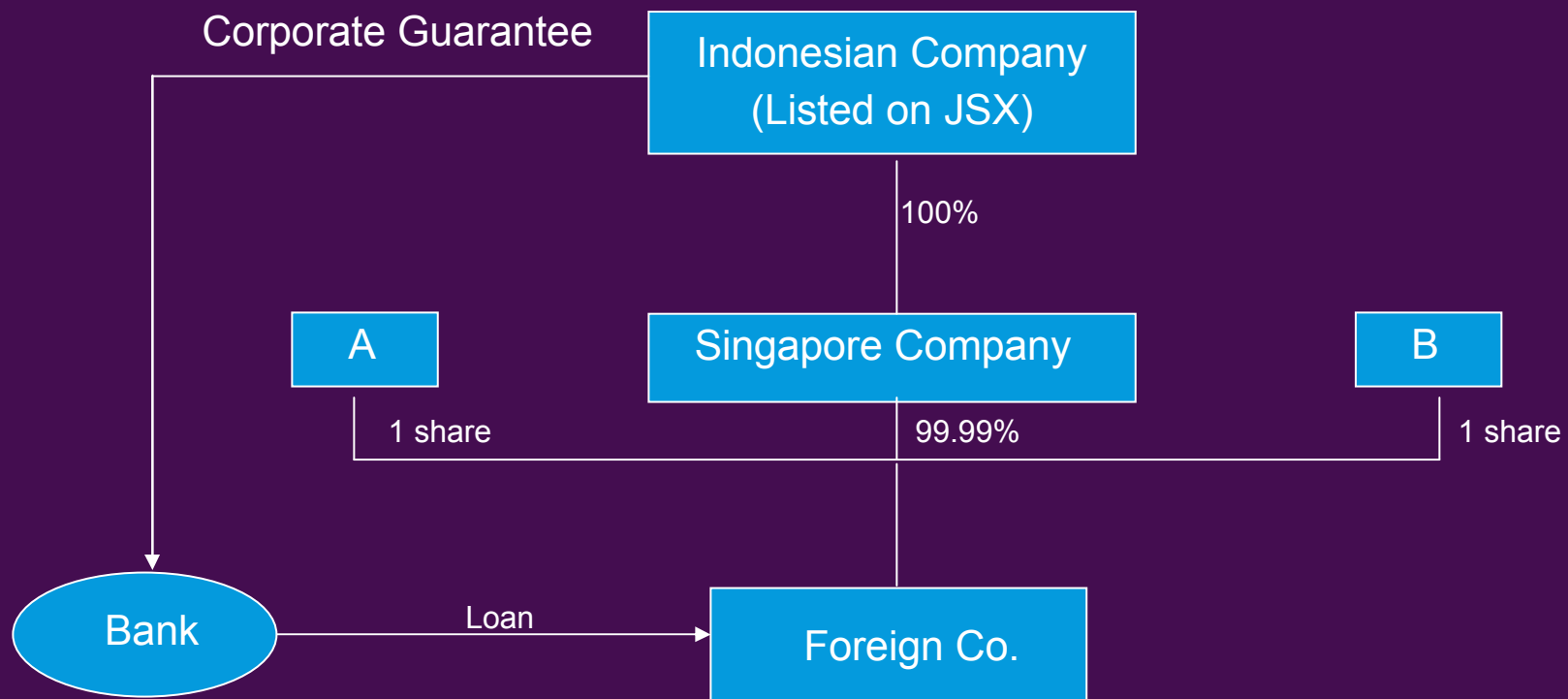
* Pledge of shares

** corporate guarantee to guarantee payment of Notes

*** Fiducia over assets (other receivables, insurance proceeds, proprietary rights) to secure the guarantee

Case Study 2 – Corporate Guarantee

Shareholding Structure



* A and B are directors of the Indonesian Company

Case Study 2 - Corporate Guarantee

- Civil Code
 - Waiver of guarantor privileges
 - Guarantee and indemnity
- Company Law
 - Check authority : BOC approval ?
- Capital Market Law
 - Conflict of Interests rule

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