

# Overview of Financing Agreements for Project Finance

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A Lender's Perspective

**5 June 2014**

Asian Development Bank

27th Training Program of Asian EXIM Banks Forum on Project Finance

# About Efic

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- Australia's export credit agency.
- Purpose is to support growth of Australian business internationally.
- 100% owned by the Government of Australia (AAA rating).
- Operates on commercial principles but different risk profile to banks.
- Fills 'market gap' when commercial finance unavailable/insufficient.
- Role complementary to commercial lenders.
- Customers range from SMEs to large listed companies.

# Efic's finance and insurance solutions

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## DIRECT LOANS

- Corporate
- Project vehicles
- Foreign government

## GUARANTEES

- Export finance guarantees
- Bonds/guarantees:
  - performance, advance payment and warranty bonds; US surety bonds
  - documentary credit guarantees

## INSURANCE

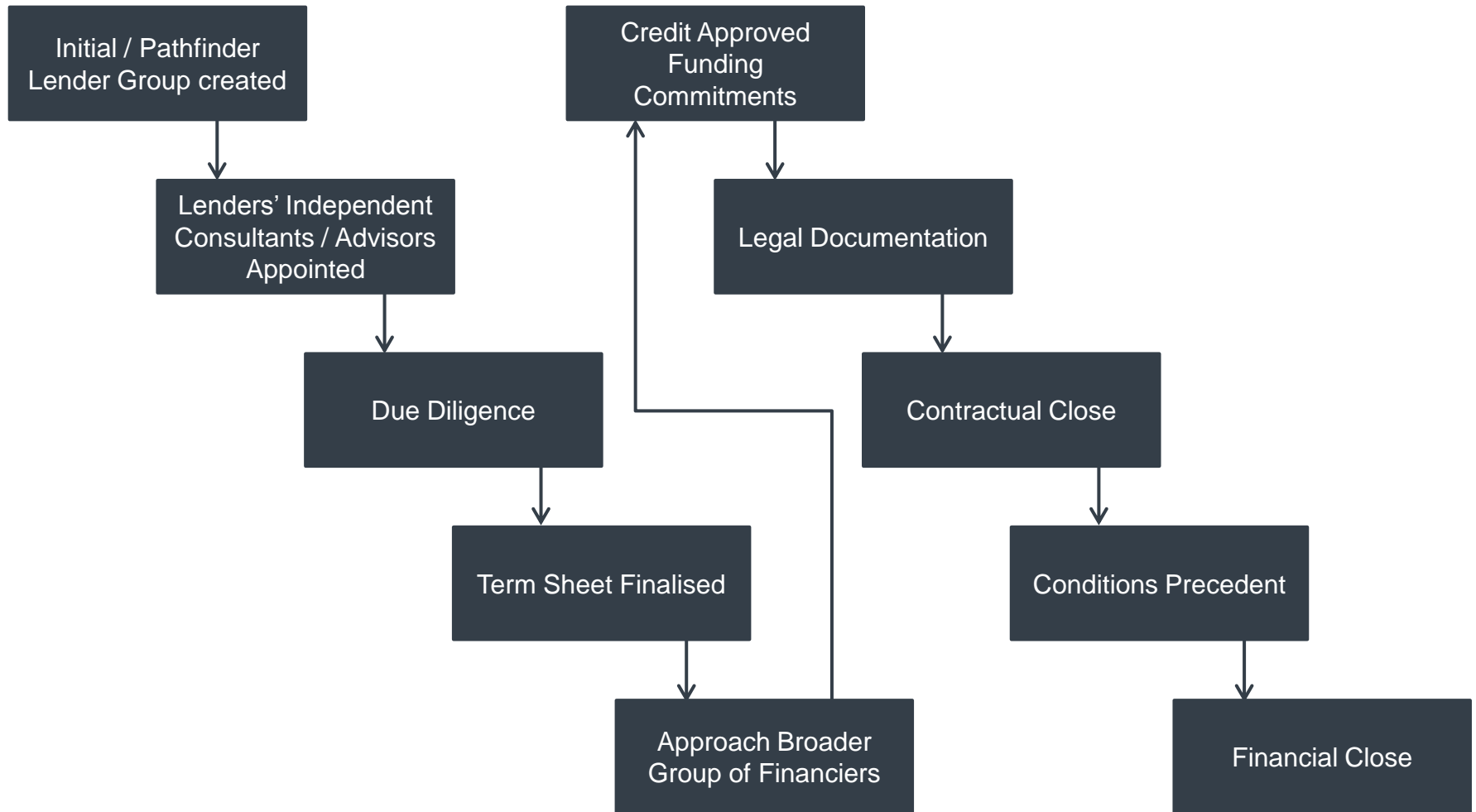
- Political risk insurance
- Export payments insurance
- Bond insurance



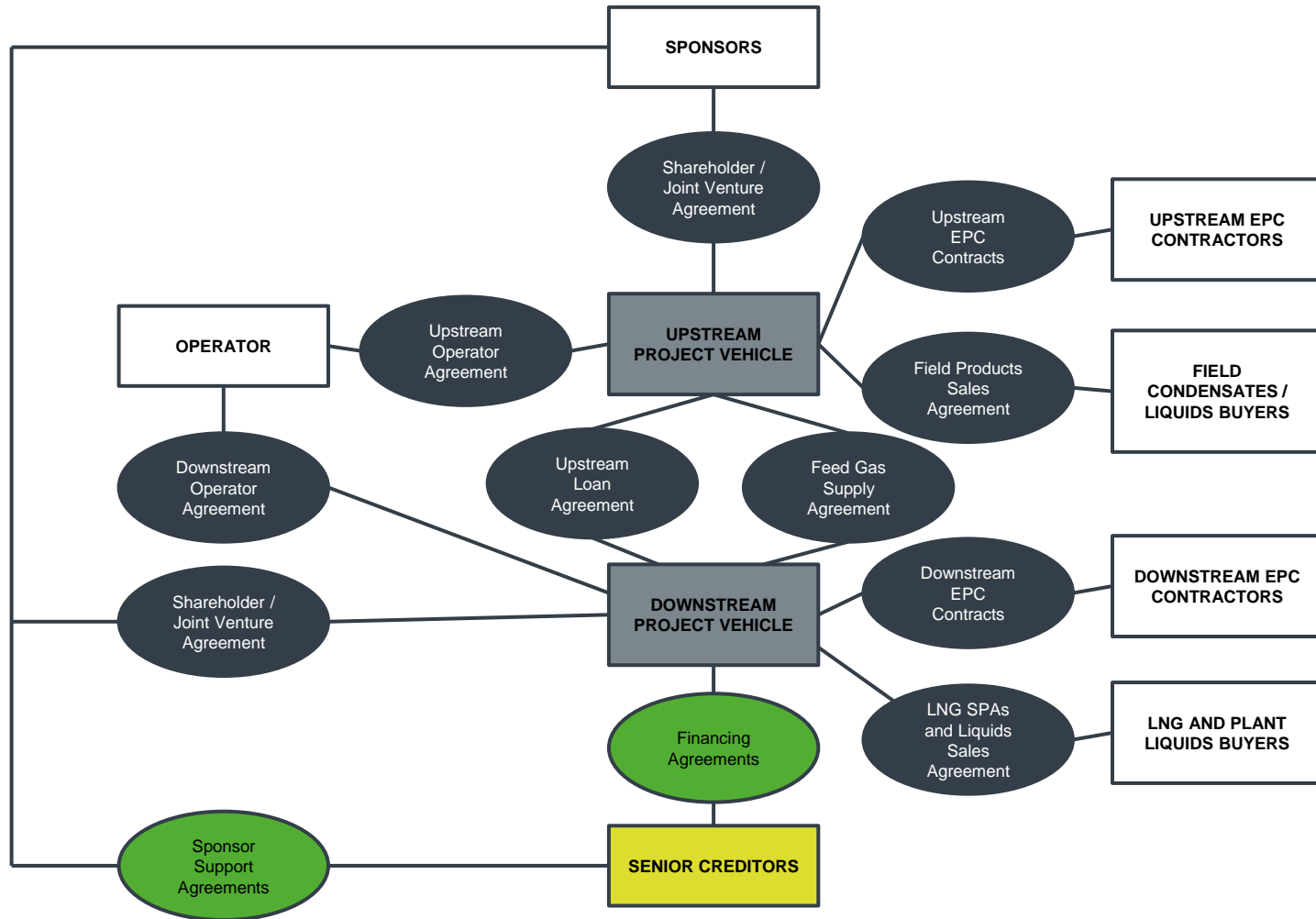
# Efic's Recent Mining & Resources PF Experience

Project	Location	Total Senior Debt	Stage	Efic's Support	Other ECAs and Multilaterals
Lumwana Copper Project	Zambia	US\$584 million	Closed	Direct Loan PRI	AFDB DEG ECIC EIB FMO
PNG LNG Project	PNG	US\$14 billion	Closed	Direct Loan	China EXIM JBIC NEXI SACE US EXIM
Ichthys LNG Project	Australia	US\$20 billion	Closed	Direct Loan	Atradius Coface Euler Hermes JBIC KEXIM KSURE NEXI
Oyu Tolgoi Copper and Gold Project	Mongolia	US\$6 billion	Documentation	Direct Loan PRI	EBRD EDC IFC MIGA US EXIM

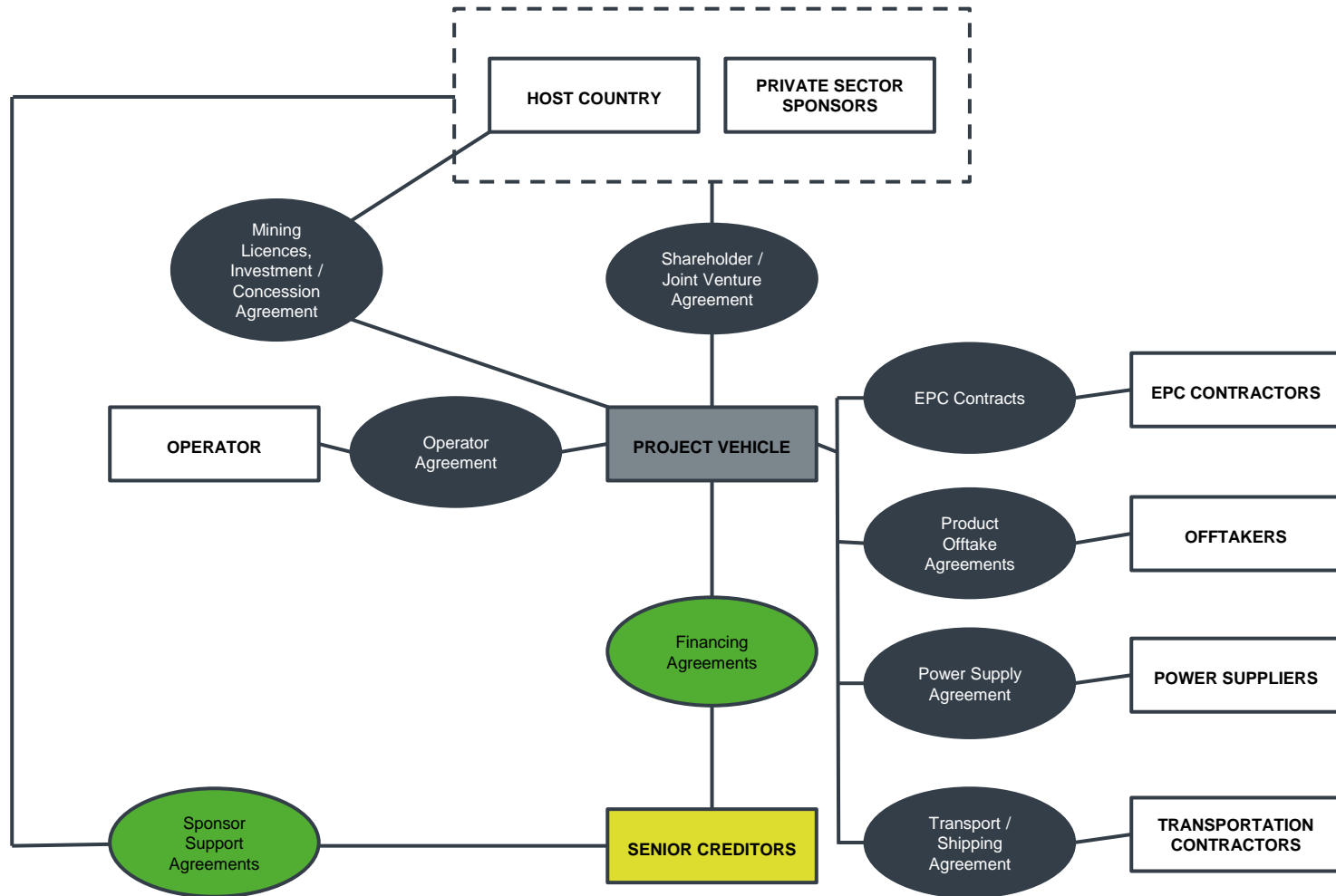
# Project Financing Process (Lender's Perspective)



# Example Project & Financing Structure (LNG)



# Example Project & Financing Structure (Mining)



# Key Financing Documents

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- Common Terms Agreements
- Loan Agreements
- Intercreditor Agreement
- Security Documents
- Sponsor Support Documents
- Ancillary / Miscellaneous Agreements

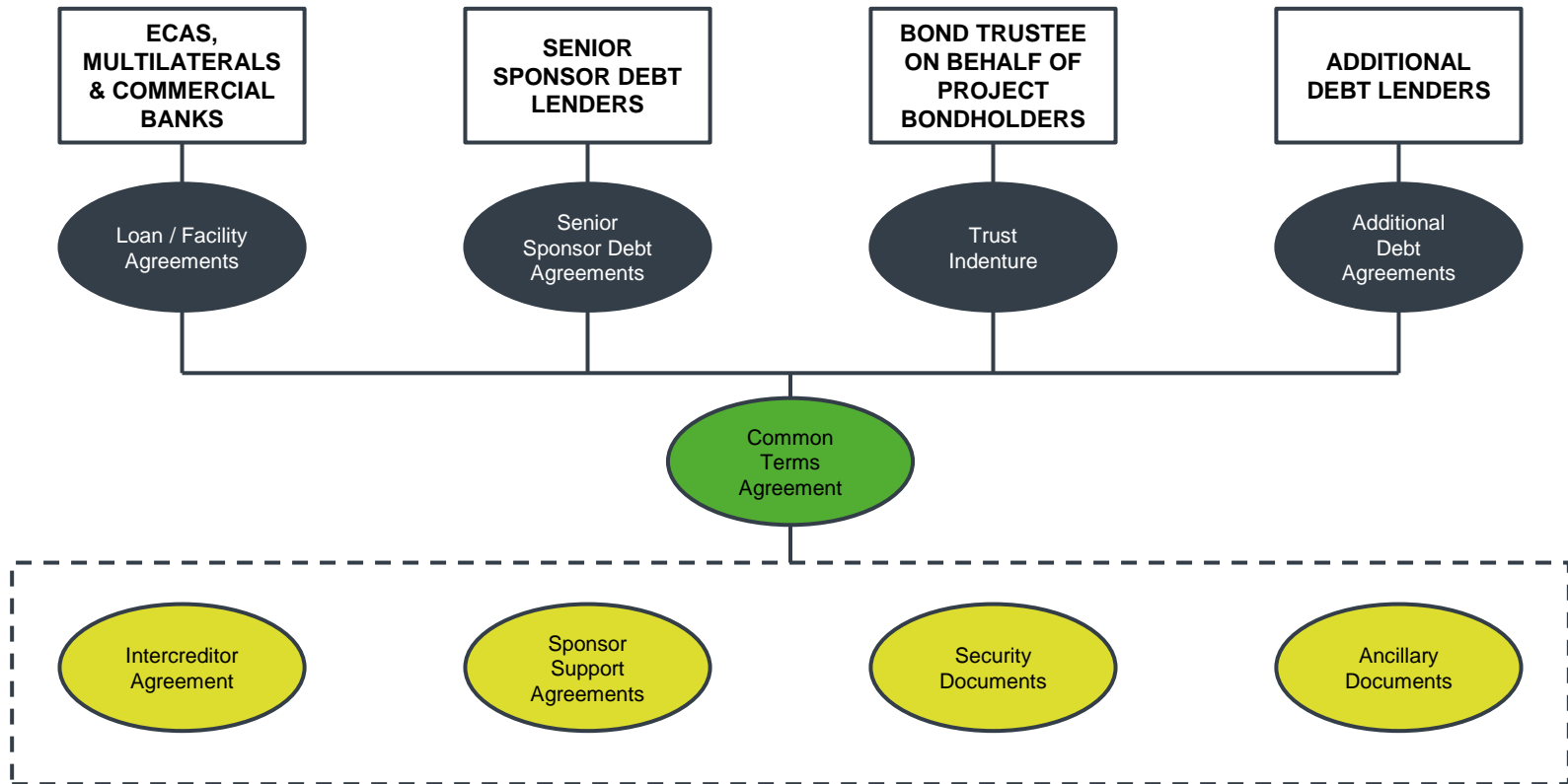


# Common Terms Agreement

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- Typically required for mining and resources project financings as these are commonly funded using multi-sourced debt finance
- Purpose:
  - acts as an umbrella agreement for all lenders
  - sets out terms and conditions common to all senior lenders
  - supplements loan and other credit agreements
- Documentation process can be accelerated if a comprehensive term sheet has been agreed

# Common Terms Agreement



# Common Terms Agreement

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- Key terms and conditions typically include:
  - cover ratios (DSCR, LLCR, PLCR etc)
  - drawdown mechanics
  - benchmark interest rate / adjustments
  - repayment and mandatory prepayment
  - voluntary and partial prepayment or cancellation
  - representations and warranties
  - financial and project information reporting requirements
  - project supervision
  - covenants / undertakings
  - events of default (pre and post completion)
  - project completion
  - conditions precedent / financial close

# Loan Agreements

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- Individual loan facility agreements sit under the Common Terms Agreements
- Could include:
  - Individual ECA direct and covered senior loan agreements
  - Individual Multilateral Agencies' "A" and "B" senior loan agreements
  - PRI covered commercial banks' senior loan agreement
  - Uncovered commercial banks' senior loan agreement
  - Senior sponsor loan agreement
  - Bond indenture
- Each contains specific / special terms and conditions related to each senior debt tranche (e.g. tenor, pricing, conditions precedents, mandatory prepayment triggers, undertakings, drawdown and repayment profiles, intercreditor arrangements etc.)
- Issues:
  - Mandatory prepayment rights for individual lenders / lender group and impact on other lenders
  - Event of default triggers

# Sponsor Support Documents

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- Common feature of mining and resources project financings (esp. in emerging markets)
- Types of direct sponsor support could include:
  - debt service undertakings /guarantees
  - completion guarantees
  - cash injection undertakings (e.g., for cost overruns)
  - working capital maintenance agreements
  - price underpinning (to assure “floor” price for product)
  - comfort letters
- Types of indirect sponsor support include:
  - take-or-pay, throughput and put-or-pay contracts
  - supply maintenance agreements
- Other types of support may include:
  - operation and maintenance or management agreement with one or more project sponsors

# Sponsor Support Documents

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- Issues:
  - **Junior / small balance sheet sponsor support providers (incl. host country government entities)**
    - Stronger sponsors to undertake risk on behalf of weaker sponsors
    - “Last man standing” structures
    - More due diligence / focus on completion risks and mitigants
  - **Political risk carve-outs (political violence, expropriation, currency convertibility)**
    - “suspensive event” regime
  - **Guarantee / support payment regime and structure**
    - waiting period (on-demand vs after a fixed period has lapsed)
    - lump sum vs periodic payments

# Ancillary Agreements

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- Onshore and Offshore Accounts Agreement (opening, closing, operation and maintenance of project bank accounts)
- Transfer Restrictions Agreements (restrictions on assignments, transfer of interests in the project vehicle and project)
- Fee letters (upfront fees, commitment fees)

# Intercreditor Agreement

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- Large financings → multiple funding sources → complex intercreditor issues
- Intercreditor Agreement addresses procedures and voting requirement for **taking decisions** and **enforcing security** among the secured senior lenders,
- Intercreditor Agent is central to all decision processes and communications among Secured Parties
- Security Trustee is appointed to hold and enforce security package
- Documentation options include:
  - standalone document
  - security trust deed
  - part of Common Terms Agreement
  - secondary level intercreditor principles can be documented in individual senior loan tranche agreements



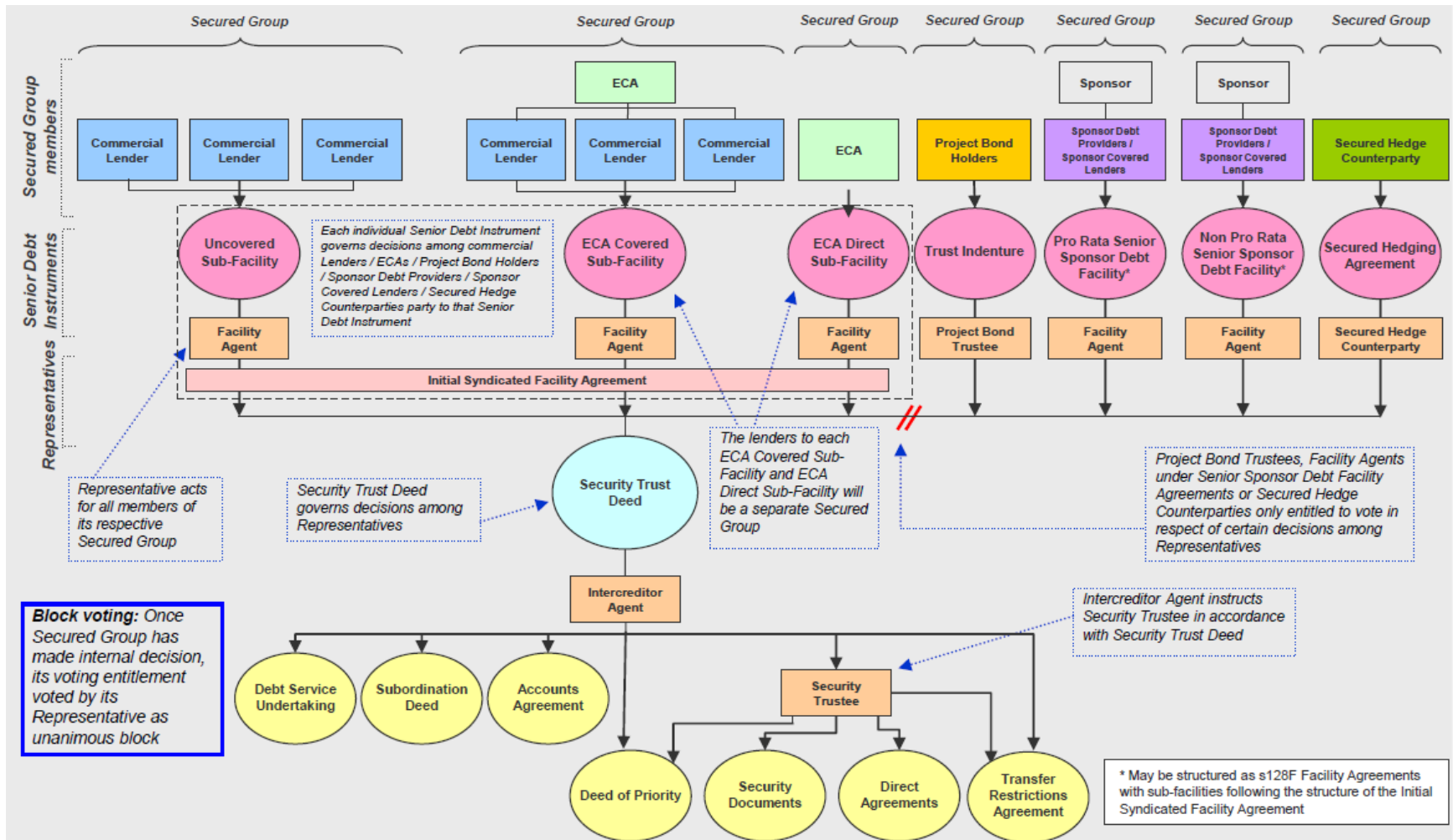
# Intercreditor Agreement

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## ■ Issues

- when to draft → more efficient when financing plan and identities of senior lenders are known or stabilised
- common desire for control by all senior lenders
- categories of decisions
- voting rights / thresholds regarding enforcement actions
- block vs proportional voting (“one dollar, one vote”)
- changes in composition of senior lenders over time due to different senior debt maturity dates
- additional senior lenders
- “snooze and loose” provisions
- preferred creditor status

# Intercreditor Agreement



# Intercreditor Agreement

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- Categories of decision and voting thresholds can vary from one transaction to another
- Example
  - unanimous (100%)
  - fundamental (>75%)
  - majority (>51%)
  - enforcement action (see below)
  - sole lender decisions (e.g. notice of event of default, project drawstop default, request draw on sponsor support agreement)
  - individual secured lender group decision (standalone regime within debt tranche)
  - special ECA / multilateral agency voting rights (e.g. policy matters)
  - limited voting rights for senior sponsor debt, project bond holders and hedge counterparties
- Enforcement Action voting threshold
  - payment defaults / insolvency / fundamental event of default
  - other events of default

# Security Documents

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- Key consideration as, apart from any sponsor completion support (if any), the senior lenders' only collateral is the project's tangible and intangible assets.
- Security package serves 2 key purposes:
  - allows senior lenders to take control over the underlying project and deprive the borrower of the pledged assets when the loan is in default or when necessary
  - assures the senior lenders that no other creditors are able to take the secured assets in preference to the senior lenders

# Security Documents

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- Security Package could include:
  - Direct agreements (step-in rights in relation to key Project Agreements)
  - Pledges over project accounts (onshore and offshore)
  - Pledge over key shares or equity interests in project vehicle
  - Fixed and floating charges over project vehicles assets and undertakings
  - Security interest over or assignment of certain key Project Documents (e.g. Investment Agreement, mining licences, concession agreements, site usage licences/leases, key construction contracts, offtake agreements, operations / management services agreement etc.)
  - Charges / security assignment over insurance and reinsurance receivables
  - Security assignment in relation to all shareholder subordinated debt
  - Subordination Deed (subordination of claims to secured parties)
  - Deeds of Priority (priority of security)

# Security Documents

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- Issues / complications can arise
  - where the project is located in a country with no filing or registration code or in extreme cases even a basis insolvency law
  - where the enforceability of contractual step-in-rights granted to lenders is uncertain
  - where the security package can be registered but no certainty is provided that such security can be enforced
  - where host country equity interest cannot be pledged
- Lenders can be asked to go without the full traditional security package (e.g. to solely rely on pledges of offshore bank accounts, assignment of offtake agreements or security over shares in project vehicle)

# Financing Documents – general final comments

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- Complex
- Patience required to undertake due diligence (assess the economic, technical, political and legal risks and issues), finalise deal structure and term sheet, legal documentation and closing process
- Bulky and lengthy
- Advent of standard market language for certain clauses and provisions (e.g. LMA, PPPs) but range of assets to be project finances defies the application of fixed rules / templates
- Tendency to start the documentation process by looking at precedent documents (esp. insurance, technical and operational issues)
- If not managed efficiently, potentially costly and time consuming

# Syndication

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- Underwritten / syndicated vs club deals
- Efic approach
  - Does not underwrite and syndicate deals
  - Can front deals on behalf of other ECAs
  - Can undertake risk transfer pre- or post contractual close



# Contact

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