



LPA-CGR avocats



Key Issues of Refinancing Contracts

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SOMMAIRE

- I. Structuring of the portfolio before the refinancing
- II. Key issues of the credit agreement
- III. Key issues of the intercreditor
- IV. Security interest structuring
- V. Risk of financial assistance & corporate misuse

I. Structuring of the portfolio before the refinancing



- 1. Tax structuring
- 2. Corporate structuring
- 3. Structuring regarding the characteristics of the solar plants

Structuring of the portfolio before the refinancing

1. TAX STRUCTURING

Thin-capitalization limitations:

- Structuring of the portfolio refinanced shall take into account the rule of deduction of interest;
- Deduction of interest is limited to a legal ceiling: 1,67% as of second semester of 2017 or the rate of the market;
- However, with respect to deduction of interest of loan between affiliates, if 3 ratios together show undercapitalization of the company, such deduction cannot apply.

Structuring of the portfolio before the refinancing

1. TAX STRUCTURING

These 3 ratios are:

- **1. The debt/equity ratio:** Debt / Equity > 1,5 = undercapitalized;
- **2. The interest coverage ratio:** Interests paid to affiliates / Results net income before tax > 25% = undercapitalized;
- **3. The interest received test:** Amount of interest received by affiliates > Amount of interest given to other affiliates = undercapitalized.

Structuring of the portfolio before the refinancing

1. TAX STRUCTURING

Tax integration:

The tax integration allows a holding, holding directly or indirectly 95% of the share capital to be the only payor of the income tax for the whole group: possibility to set-off profits and losses of all the companies.

Before 2016, total exoneration of upstream of dividend within the tax integration.

Since 2016, 1% franchise for each upstream of dividend within the tax integration.

Preferable to structure the group in rake (*rateau*) rather than in chain of detention, given the application of the 1% tax at each stage of the group

Structuring of the portfolio before the refinancing

2. CORPORATE STRUCTURING

- Recapitalization of the SPV necessary (i) to meet financial ratios and (ii) avoid dissolution of company if net funds are inferior to half of the share capital;
- In practice, no SPV with 25 or 100 Euros of share capital in the portfolio.

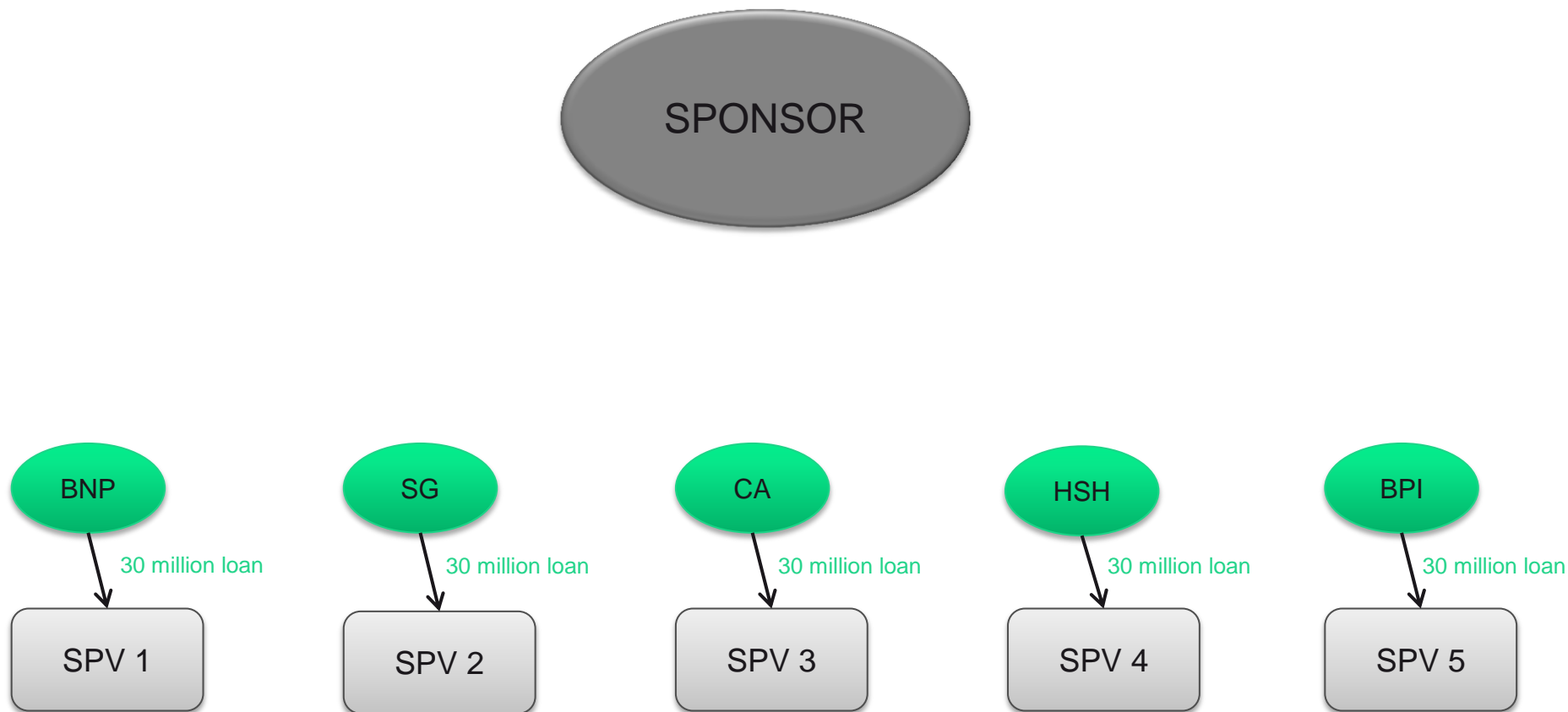
Structuring of the portfolio before the refinancing

3. STRUCTURING REGARDING THE CHARACTERISTICS OF THE SOLAR PLANTS

- Mitigate performing and non-performing solar plants into specific tranche of the portfolio to pass financial ratios;
- Gather solar plants depending on their feed-in tarif (Feed-in tarif from purchase obligation outside any tender offer procedure / Feed-in tarif tender offer);
- Gather solar plants depending on their characteristics into a specific tranche (Ground mounted solar plants / Multi-roof solar plants).

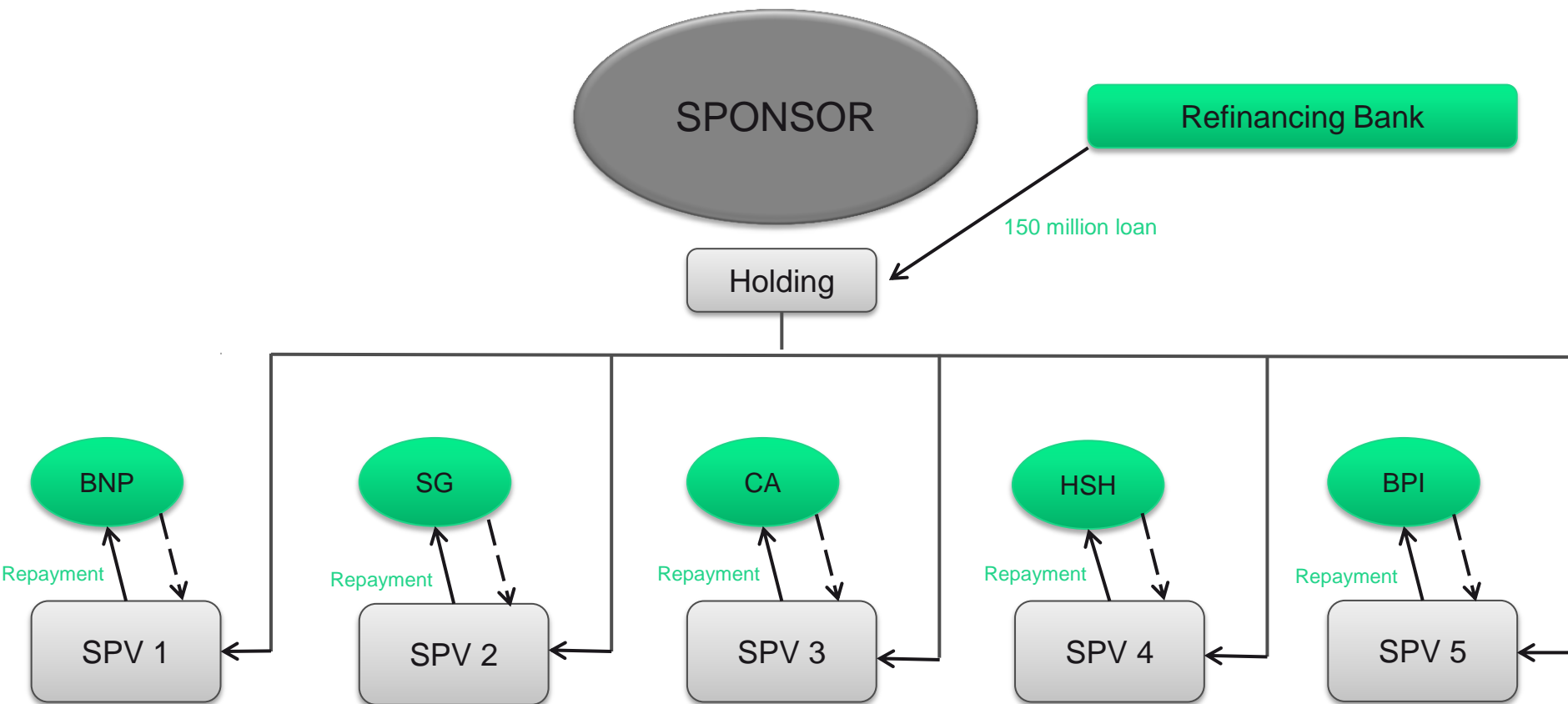
Refinancing Scheme

STEP 1 : BEFORE REFINANCING



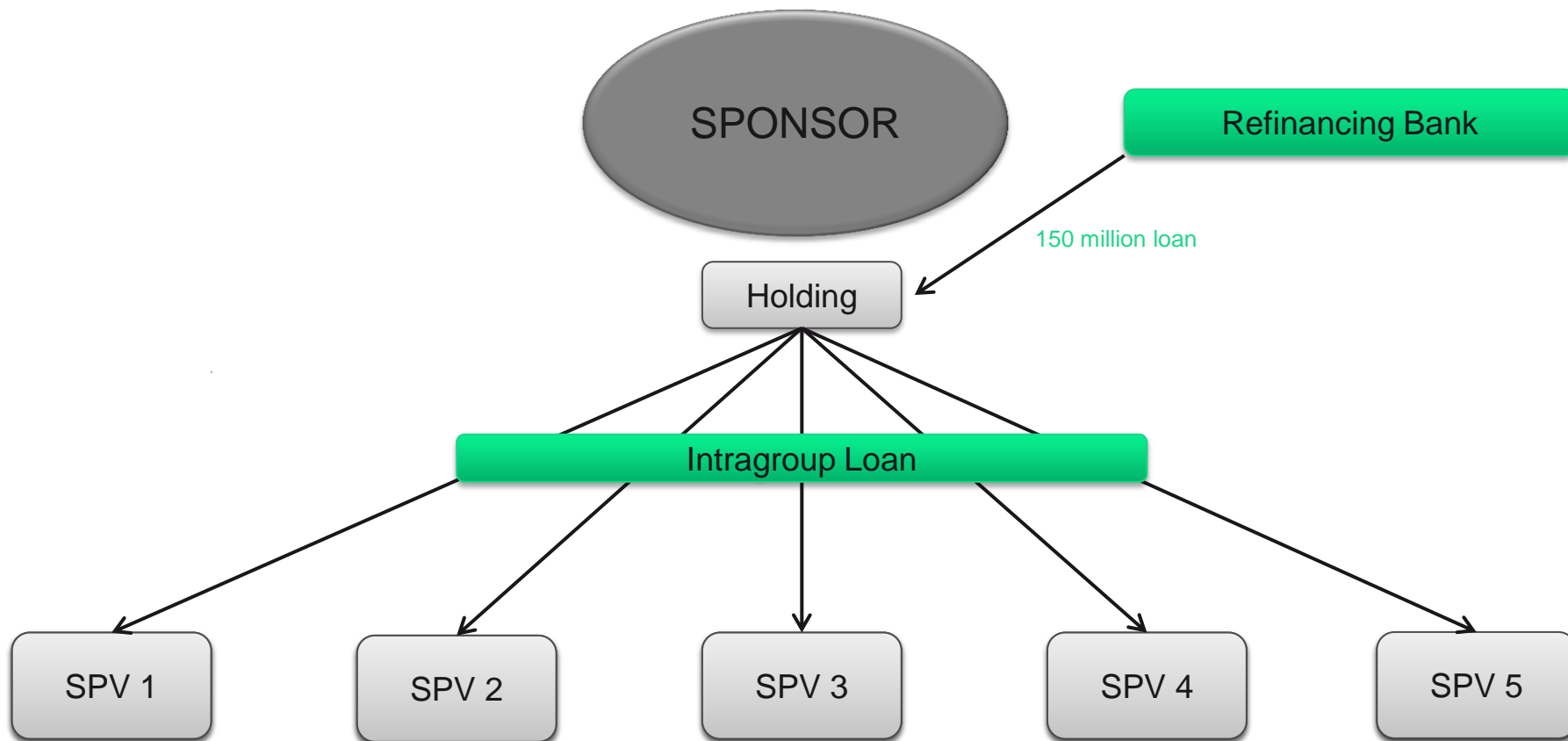
Refinancing Scheme

STEP 2 : DURING REFINANCING



Refinancing Scheme

STEP 3 : AFTER REFINANCING



Refinancing Scheme

BENEFIT OF THE REFINANCING

- ▶ Consolidated financial ratio for each SPV financing;
- ▶ Consolidated covenant and undertakings for each SPV financing;
- ▶ Same reporting requirements towards the lender with similar deadline for each solar plant financing (simplification of the follow-up process with one lender);
- ▶ One contact in one bank : easier and quicker to negotiate waiver;
- ▶ Negotiation of a better rate given the amount refinanced;
- ▶ Possibility to mitigate non-performing plants with performing solar plants;
- ▶ Plant already in exploitation for a few years: less risk to assess for the lender (no risk of construction to be covered by the sponsor).

II. Key issues of the credit agreement



- 1. Voluntary prepayment
- 2. Event of default
- 3. Financial ratios
- 4. Dividend / Cash-pooling agreement

Key issues of the credit agreement

1. VOLUNTARY PREPAYMENT


Either:

- Standard: no penalty in case of early prepayment; or
- Alternatively: penalty (to 5% or more of the amount repaid when repaid the first [3/5] years) (for variable rate)

Given the time and costs of a process of refinancing (6 to 9 month and payment of all advisor's costs), the borrower has no interest to proceed to an early repayment (except sharp fall of interest rate or fixed rate or margin).

Key issues of the credit agreement

2. EVENT OF DEFAULT




Important to negotiate cure period for each event of default if possible (illegality of one security interest, inaccuracy of one of the representation for instance): consequence of a default: early repayment of the entire refinancing loan (subject to good faith) – for minor event of default; blockage of the distribution of dividend, raise of the rate of margin).

Breach of Financial ratios

Cross-Default: default under another financing: a material threshold shall be for foreseen.

Dispute: encompasses any initiated procedure against the sponsor or each SPV – for the borrower, important to add having a material adverse effect on the capacity to repay the refinancing.



Key issues of the credit agreement

2. EVENT OF DEFAULT

Insolvency: generally encompasses any restructuring of the debt of any of the project parties (sponsor, EDF/aggregator, each module, inverter or transformer supplier, the maintainer)

- ❑ One of these events likely to happen during the time of financing (around 15 year) (for instance, bankruptcy of Photowatts, Sillia);
- ❑ Important to provide a period of remedy long enough (60 days) to cure/replace the party;
- ❑ Remedy: Limitation of the presence of supplier in this clause for the period of delivery of replacement products (generally 5 years for module and 10 years inverter) and not for the period power guarantee which runs over 20 years for modules).

Key issues of the credit agreement

3. FINANCIAL RATIOS

- **DSCR** (DEBT SERVICE COVERAGE RATIO)

Initial financing: [115 – 110 % previsionsal DSCR at the time of the financing/ 105% event of default]

Refinancing: [105 % event of default]

- **GEARING**

Initial financing: [20% minimum equity]

Refinancing: [very low rate or no gearing at all]

- **DSRA** (DEBT SERVICE RESERVE ACCOUNT)

Decrease of the amount required (3 month of the service of debt instead of 6 month)

Key issues of the credit agreement

4. DIVIDEND / REIMBURSEMENT OF SHAREHOLDER LOAN

Authorized distribution:

- After payment of all operating costs, loan payment, swap payment, allocation of the debt service reserve account, maintenance reserve account);
- Compliance with a DSCR of 110% (sometimes minimum *gearing* to comply with at the time of the distribution);
- No event of default
- Payment of the dividend at an interest payment date or at any time.

III. Key issues of the intercreditor



- 1. Voting rights
- 2. Hedging bank

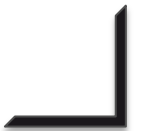
Key issues of the intercreditor

1. VOTING RIGHTS



Decion requiring the majority of senior lenders (2/3):

- The approbation of any amendment of the Budget;
- The decision to trigger early redemption of the loan;
- The decision to waive an event of default or decide whether the event of default has been adequately cured.



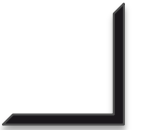
Key issues of the intercreditor

1. VOTING RIGHTS



Decision requiring the vote of all senior lenders:

- Any amendment of a Finance Document;
- The constitution of any new security interest;
- The distribution of the proceeds of any security interest;
- The release of any security interest;
- The order of priority or subordination.



Key issues of the intercreditor

2. HEDGING BANK

Decision requiring prior approval of the Hedging Bank:

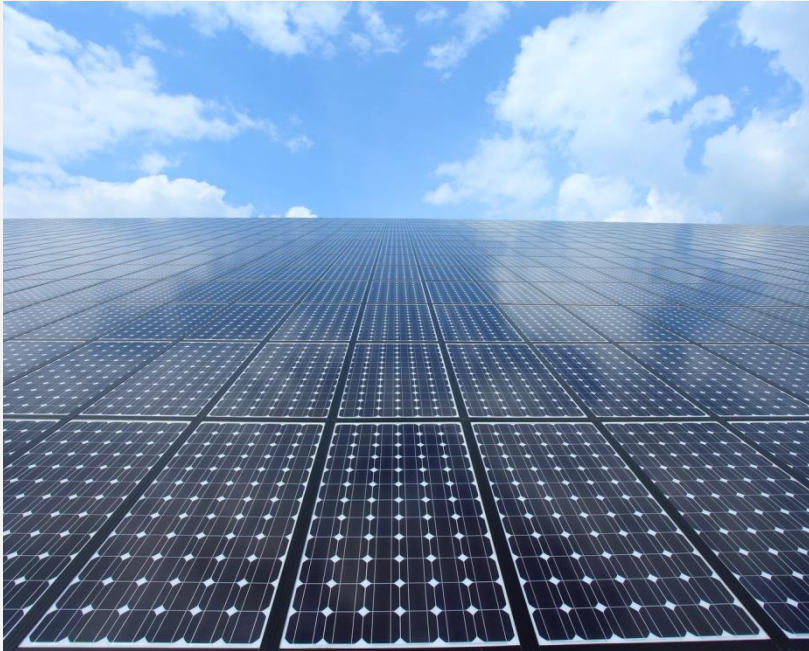
- Provision amending the date, amount, currency of the amount to be paid under the Hedging Agreement;
- rank and seniority of the Hedging Agreement;
- notional amount of the Hedging Debt;
- any release of security interests that could adversely affect the Hedging Bank;

Key issues of the intercreditor

2. HEDGING BANK

- Autonomous termination event allows the hedging bank to terminate the swap agreement **without** the prior approval of the lender (for instance, default of payment under the hedging agreement);
- A non-autonomous termination event allows the hedging bank to terminate the swap agreement **with** the prior approval of the lender (all misrepresentations of the borrower for instance);
- Put in line any event of default under the hedging agreement with event of default under the refinancing agreement;
- Limit the cases of autonomous termination event : acceptable event: otherwise, risk of « *snow ball effect* »;
- Block any independant enforcement of security interest from the hedging bank;
- Dealt with specifically in the intercreditor agreement.

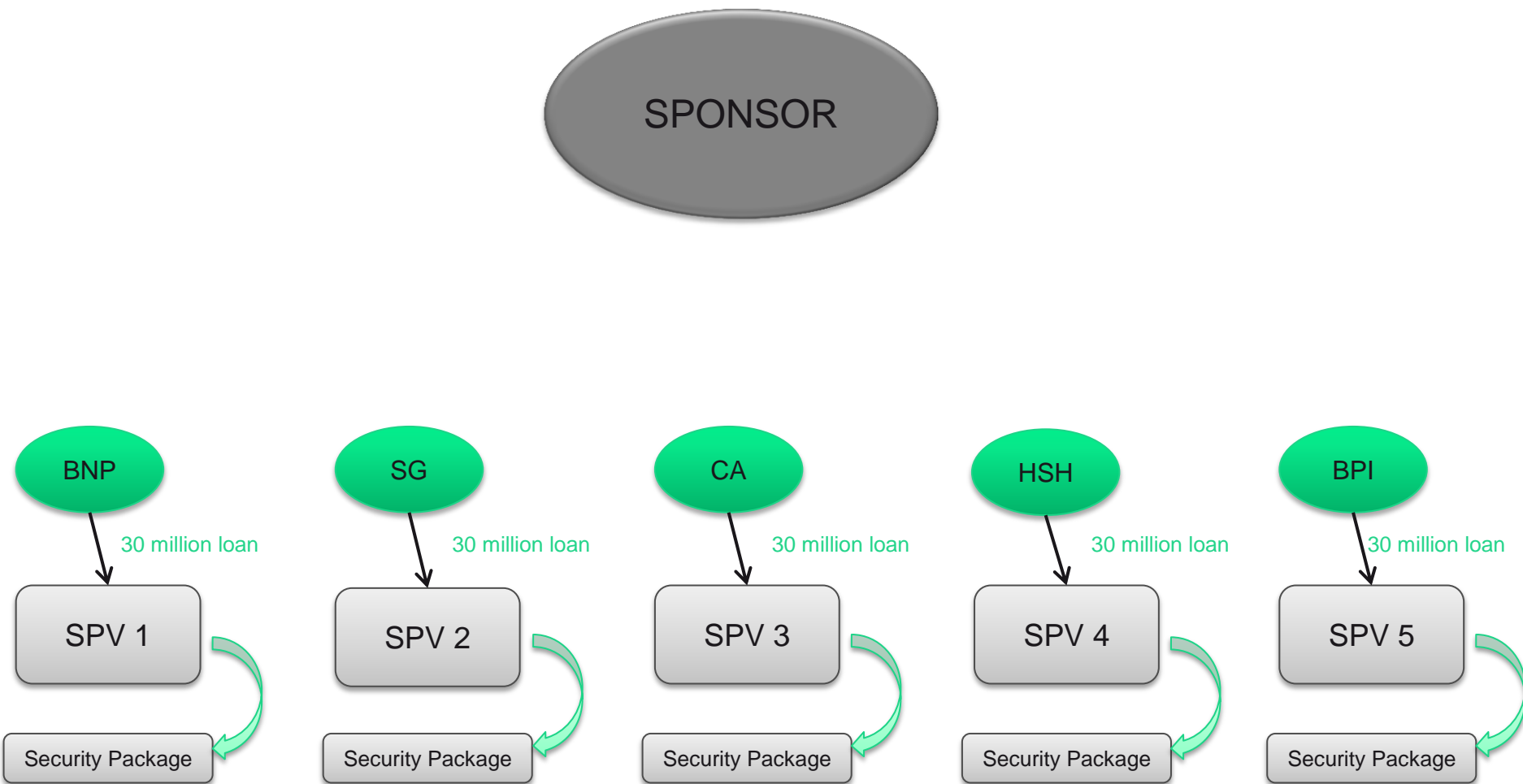
IV. Security interest structuring



- 1. Security interest package before the refinancing
- 2. Security interest package after the refinancing
- 3. Security interests
- 4. Cross-collateralization

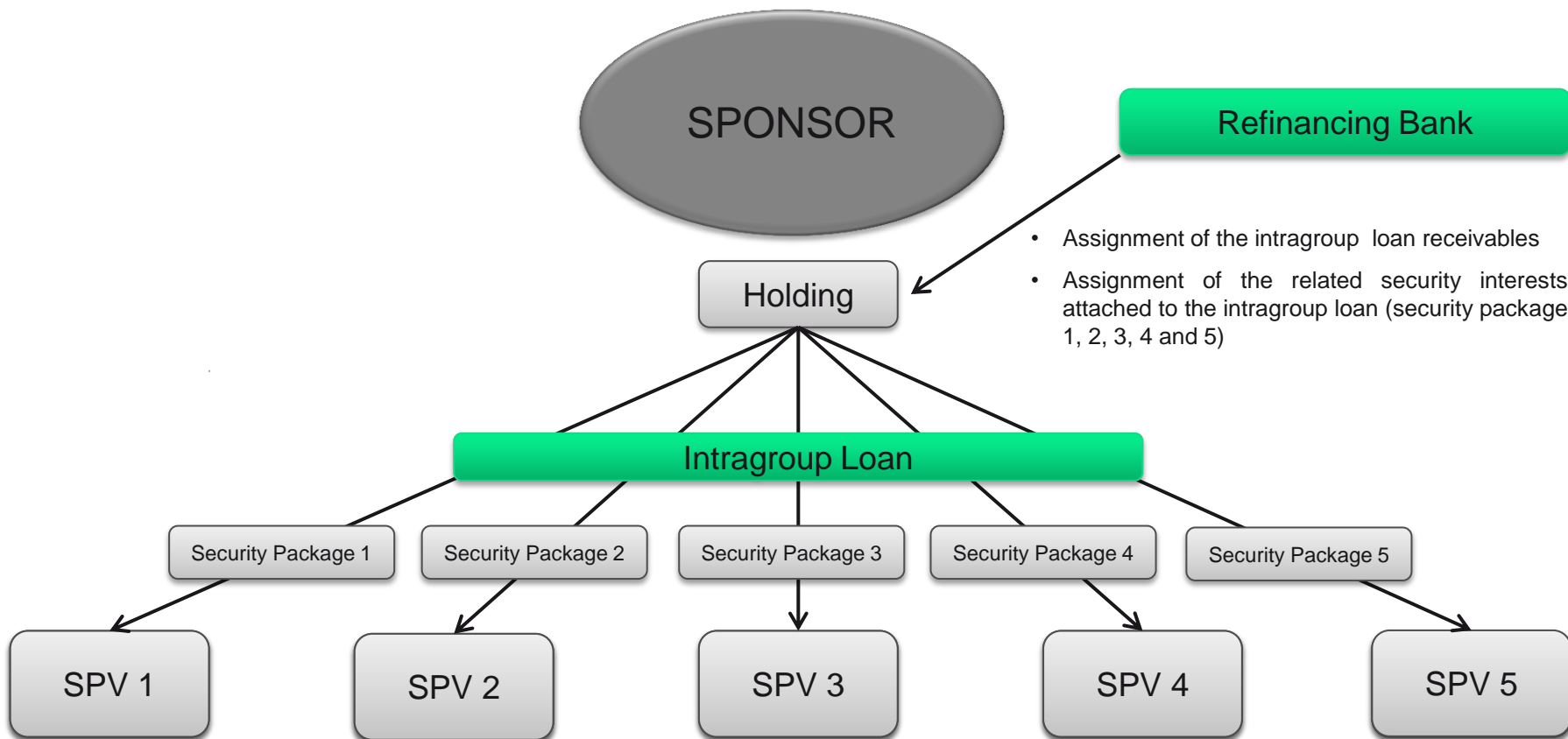
Security interest structuring

1. SECURITY INTEREST PACKAGE BEFORE THE REFINANCING



Security interest structuring

2. SECURITY INTEREST PACKAGE AFTER THE REFINANCING



Security interest structuring

3. SECURITY INTERESTS

Security package before the refinancing for each financing:

- Mortgage or promissory mortgage;
- Non-possessory pledge over movable assets;
- Daily assignment;
- Share pledge;
- DSRA or MRA balance pledge;
- Bank account pledge.

Security package after the refinancing for each financing:

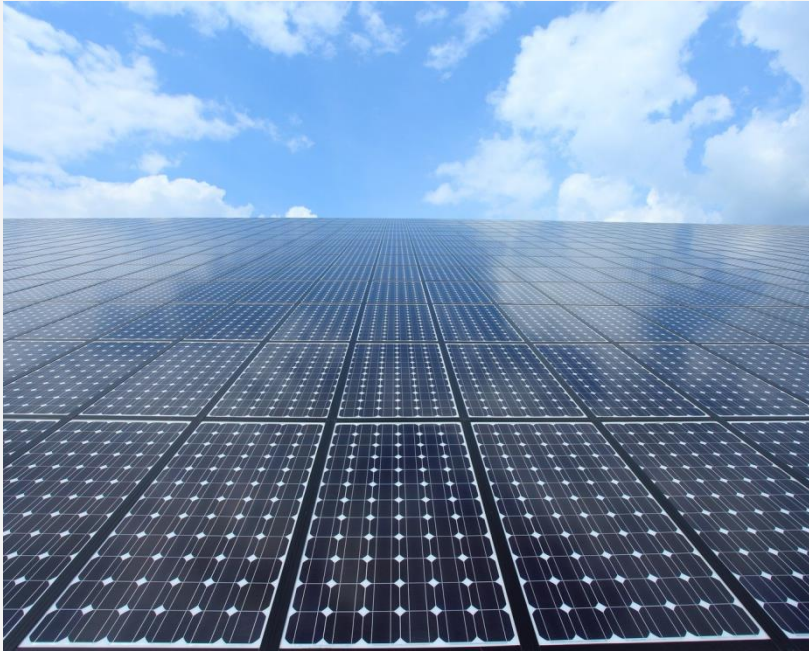
- Daily assignment on the Intragroup loan receivable;
- Transmission of all the security package of each SPV (re-enacted to the benefit of the holding) as accessory to the Intragroup loan receivable.

Security interest structuring

4. CROSS-COLLATERALIZATION

- ❑ Cross-collateralization is the act of using an asset that is used as collateral for a loan as collateral for a second loan. If the debtor is unable to make either loan's scheduled repayments, the affected lender(s) can eventually force the liquidation of the asset and use the proceeds for repayment of the first loan.
- ❑ With respect to the refinancing, each SPV could be deemed jointly and severally liable with the other SPV's of the portfolio.
- ❑ As a consequence, each security package will cover the repayment of its intragroup loan and as well as all other intragroup loans of the portfolio (within the limit of [60 to 80 % of its net assets]).
- ❑ Structural cross-collateralization with the pledge of share of the holding.

V. Risk of financial assistance & corporate misuse



- 1. Prohibition of direct financial assistance
- 2. Prohibition of indirect financial assistance
- 3. Corporate misuse

Risk of financial assistance & corporate misuse

1. PROHIBITION OF DIRECT FINANCIAL ASSISTANCE



- **Article L. 225-216 of the commercial code :**

“A company shall not advance funds, grant loans or grant sureties to enable a third party to subscribe or purchase its own shares”.

- Applicable when the refinancing is made in connection with acquisition of SPV (either intragroup in the framework of reorganization of portfolio or third party SPV);

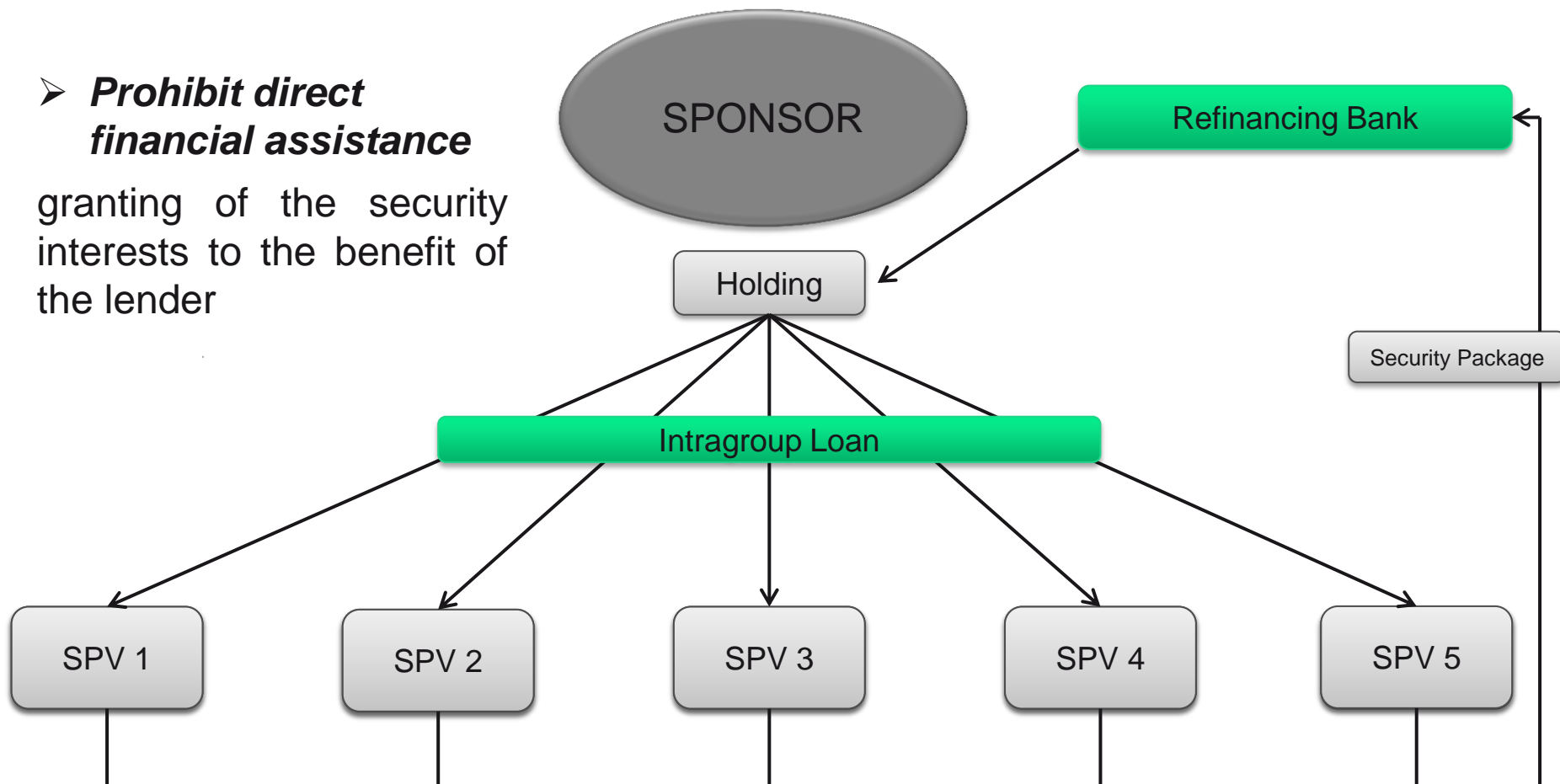


Risk of financial assistance & corporate misuse

1. PROHIBITION OF DIRECT FINANCIAL ASSISTANCE

➤ *Prohibit direct financial assistance*

granting of the security interests to the benefit of the lender



Risk of financial assistance & corporate misuse

2. PROHIBITION OF INDIRECT FINANCIAL ASSISTANCE

➤ ***Prohibit indirect financial assistance :***

- In this case, the securities granted by the newly acquired SPV shall not cover any acquisition costs included in the financing, to not cover fall within the scope of financial assistance.
- In practice, no acquisition costs shall be included in the costs of the project refinanced.

Risk of financial assistance & corporate misuse

3. CORPORATE MISUSE

Rozenblum, February 4, 1985 :

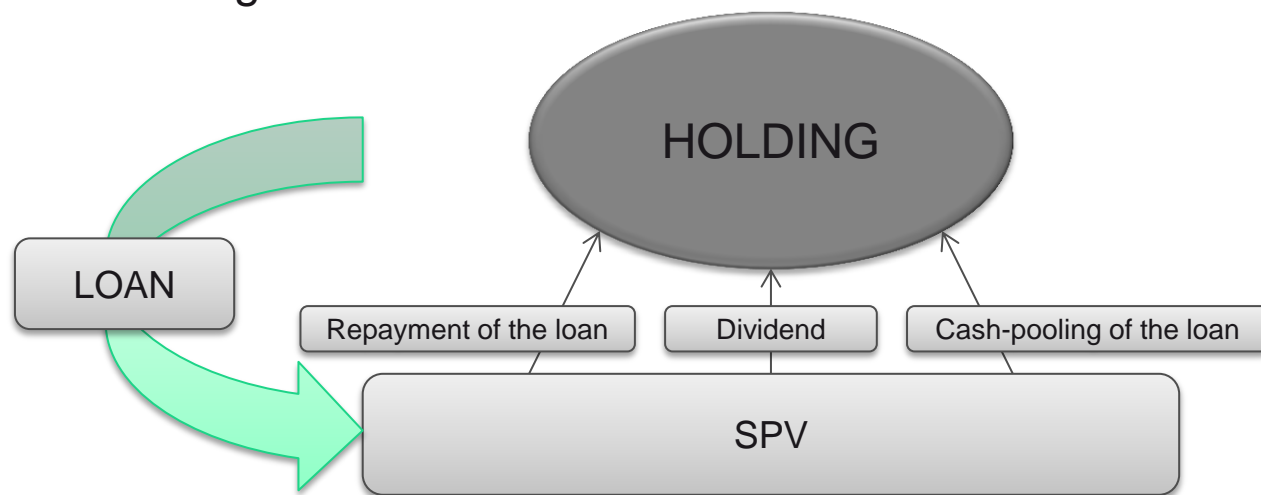
The director of a solvent subsidiary may take into consideration the interest of the group when making a decision that causes an immediate disadvantage to the subsidiary, provided all of the following conditions are satisfied:

- *“the financial support consented by the managers of the company which is part of a group in which they are directly or indirectly interested, should be motivated by the common economic interest in relation with the global policy of the group,*
- *should not be devoid of counterpart and should not provoke imbalance of the mutual obligations,*
- *nor exceed the financial capacity of the solicited company”.*

Risk of financial assistance & corporate misuse

3. CORPORATE MISUSE

- Cash-pooling agreement: subject to compliance of the social interest of the SPV;
- SPV will lend to the Holding;
- To avoid the risk of corporate misuse under the cash-pooling agreement the rate of the loan from the SPV to the Holding should ideally be superior to the ratio of the loan from the Holding to the SPV.



Thank you for your attention

