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PPSR – Group Structures with Holding & Trading Companies

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PPSA Client Webinar Series

13 October 2016, Brisbane

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Introduction

Corney & Lind Lawyers Pty Ltd

➤ Mid size law firm – 18 lawyers + 30 staff

➤ Our focus areas:

Schools & Education

Not for Profit & Charity

Commercial

Employment & Discrimination

Personal Injury

Commercial & Construction Litigation

Migration & Visas

Family Law

Criminal & Traffic

Estate & Elder Law

➤ Our lawyers travel to you if needed

➤ Specialist lawyers committed to delivering “*just redemptive outcomes®*” with care and integrity

➤ Based right next to the CBD opposite the RBWH transport hub



Overview

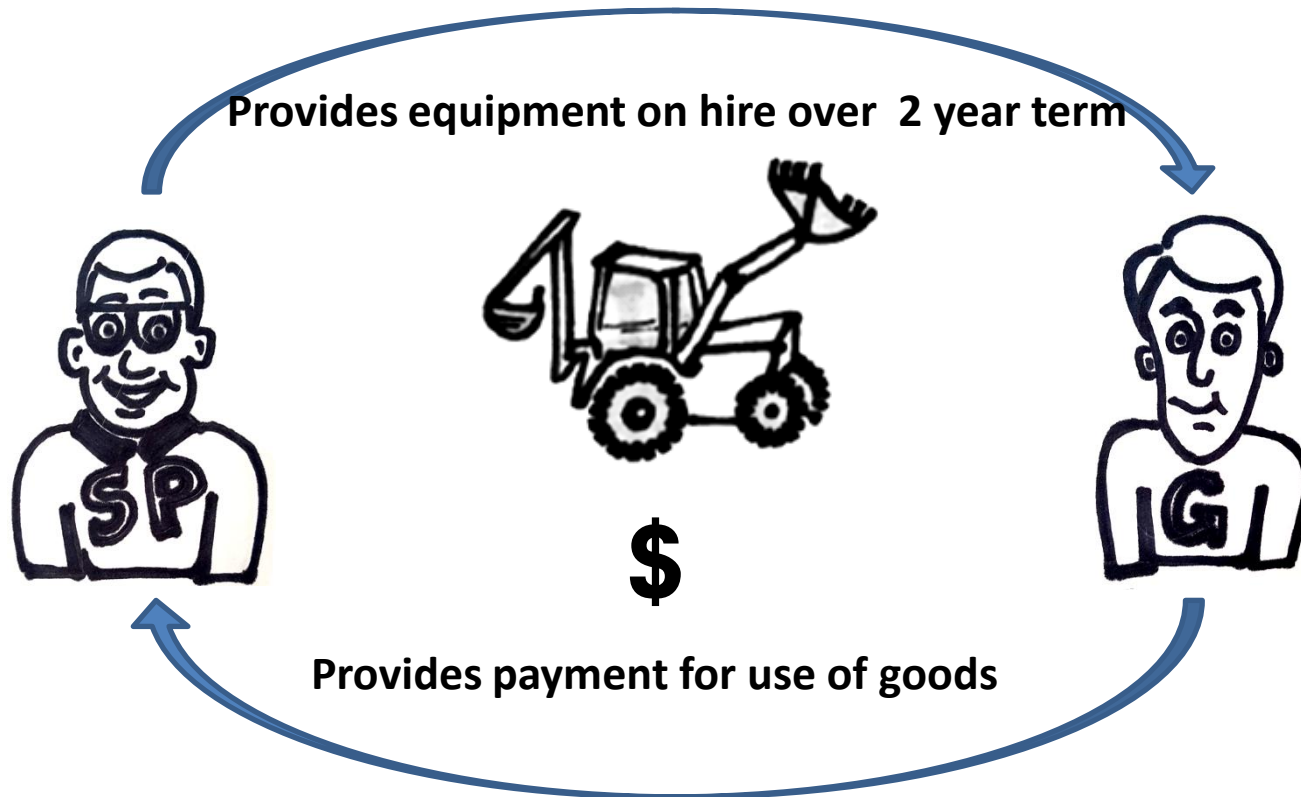
- Holding companies' business transactions with related trading entities
 - Leases
 - Loans
 - Bailments for value
 - Bailments for no value
- When the Holding Company/Subsidiary Company needs to register a PMSI and when it does not
- Impact on lending arrangements with principal external lenders



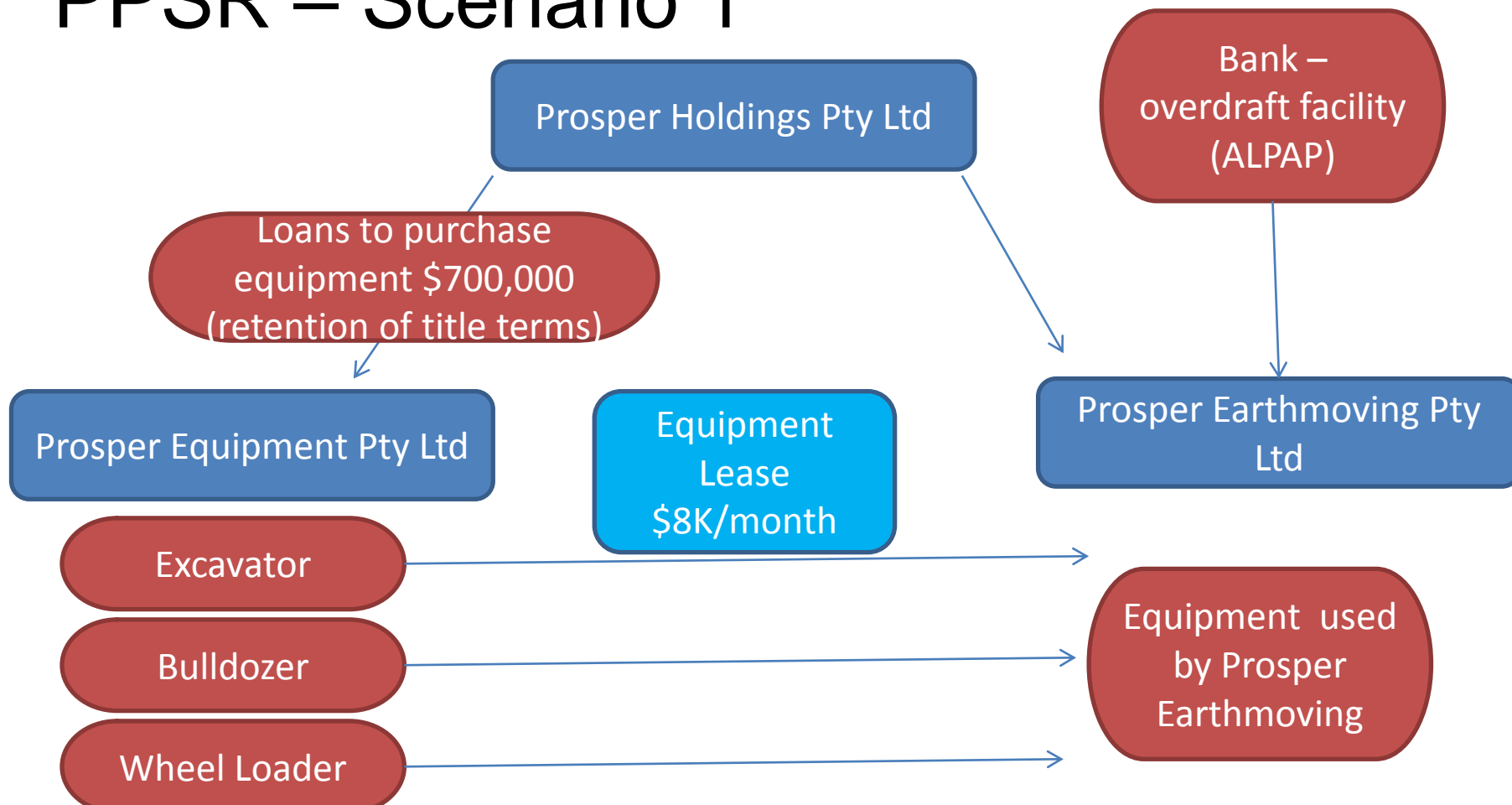
Recap – PPSR Essentials

- Secured Party
- Grantor
- Collateral
- Security Interest
- PPS Lease
- Purchase Money Security Interest

Recap – PPSR Essentials



PPSR – Scenario 1



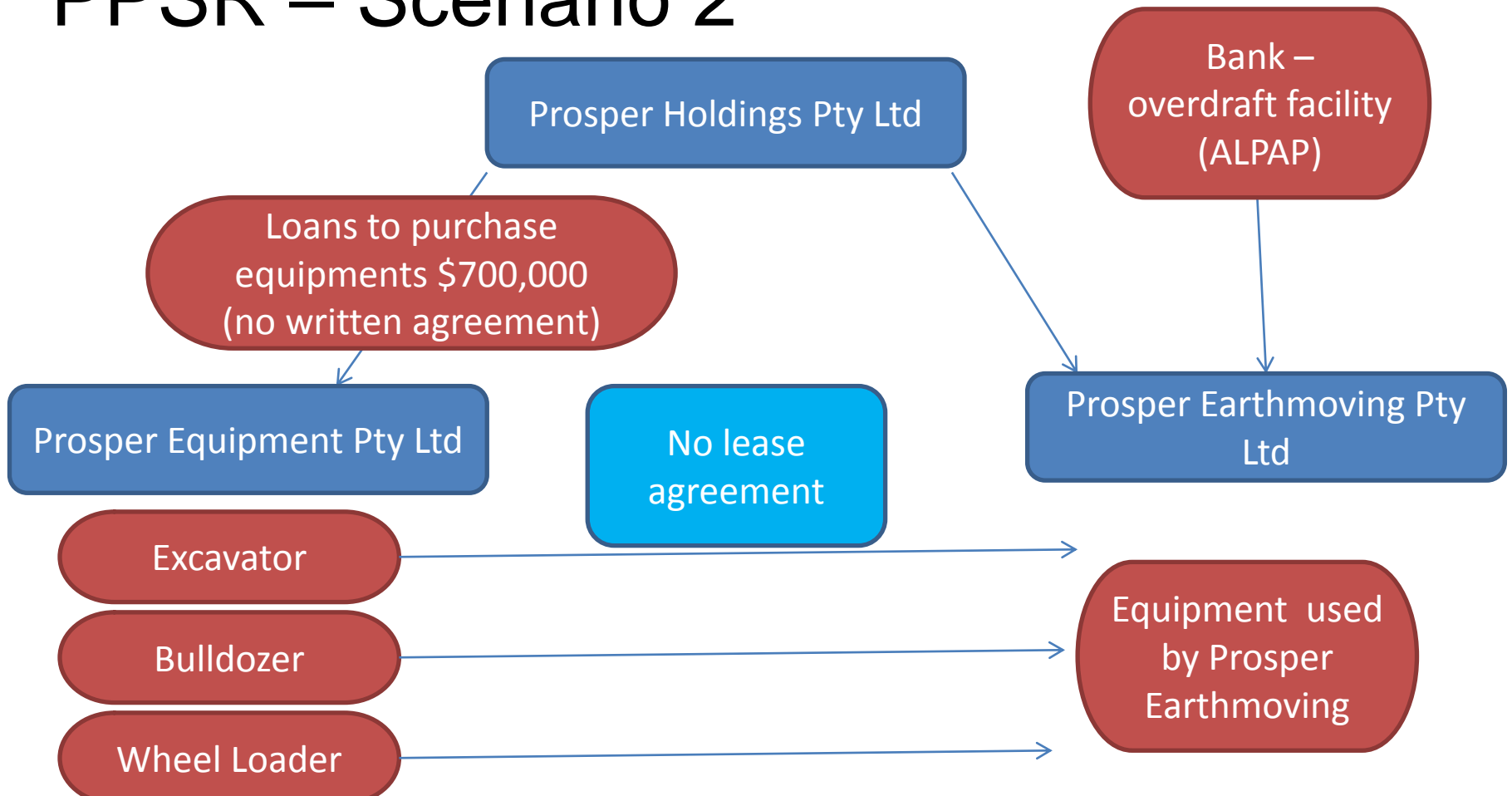


Application of PPSA – Scenario 1

Identifying the Security Interests?

- Prosper Holdings – PMSI over equipment
- If no PMSI is registered – Prosper Holdings has only an unsecured loan
- Prosper Equipment – equipment lease for an indefinite period – PPS Lease / PMSI
- Both PMSIs will have priority over Bank's ALPAP

PPSR – Scenario 2



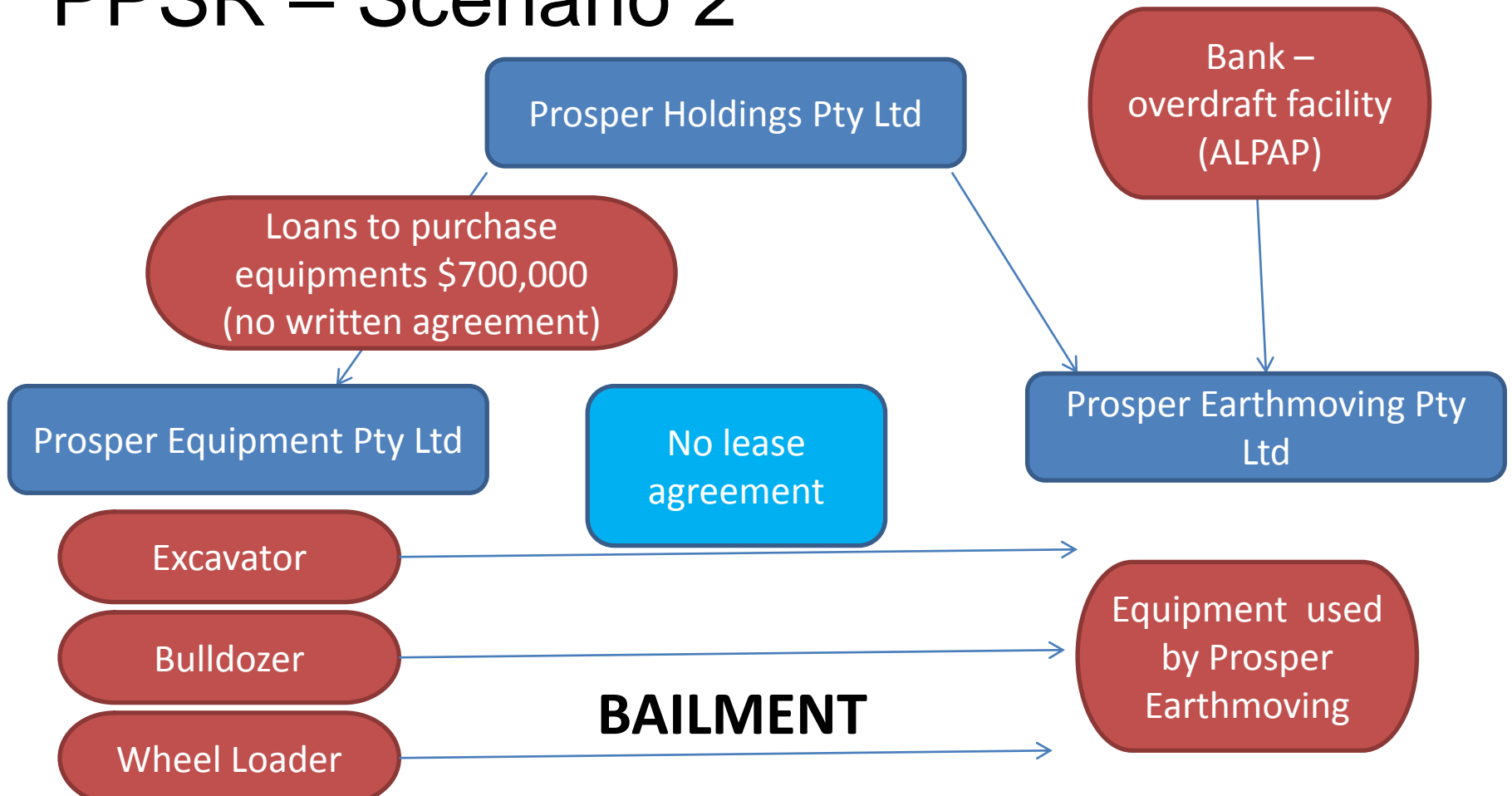


Application of PPSA – Scenario 2

Identifying the Security Interests?

- Prosper Holdings – PMSI over equipment if registered in time, but it may not be enforceable against third parties
- S 20 Requirements for enforcement against third parties – Written Security Agreements are vital
- If no PMSI is registered – Prosper Holdings has only an unsecured loan

PPSR – Scenario 2





PPS Lease Exclusions

A **PPS Lease** does **not** include:

- a lease by a lessor who is **not regularly** engaged in the **business of leasing goods**; or
- a bailment by a bailor who is **not regularly** engaged in the **business of bailing goods**; or
- a lease of consumer property as part of a lease of land where its use is incidental to the use and enjoyment of the land; or
- a bailment for which the bailee (in possession) provides no value

S 13(2) – (3) PPSA



PPS Lease Exclusions

What does it mean to be regularly engaged in the business of bailing / leasing goods?

- What about a one-off transaction?
- NZ Court of Appeal - Rabobank New Zealand v Mcanulty & Others [2011] NZCA 212

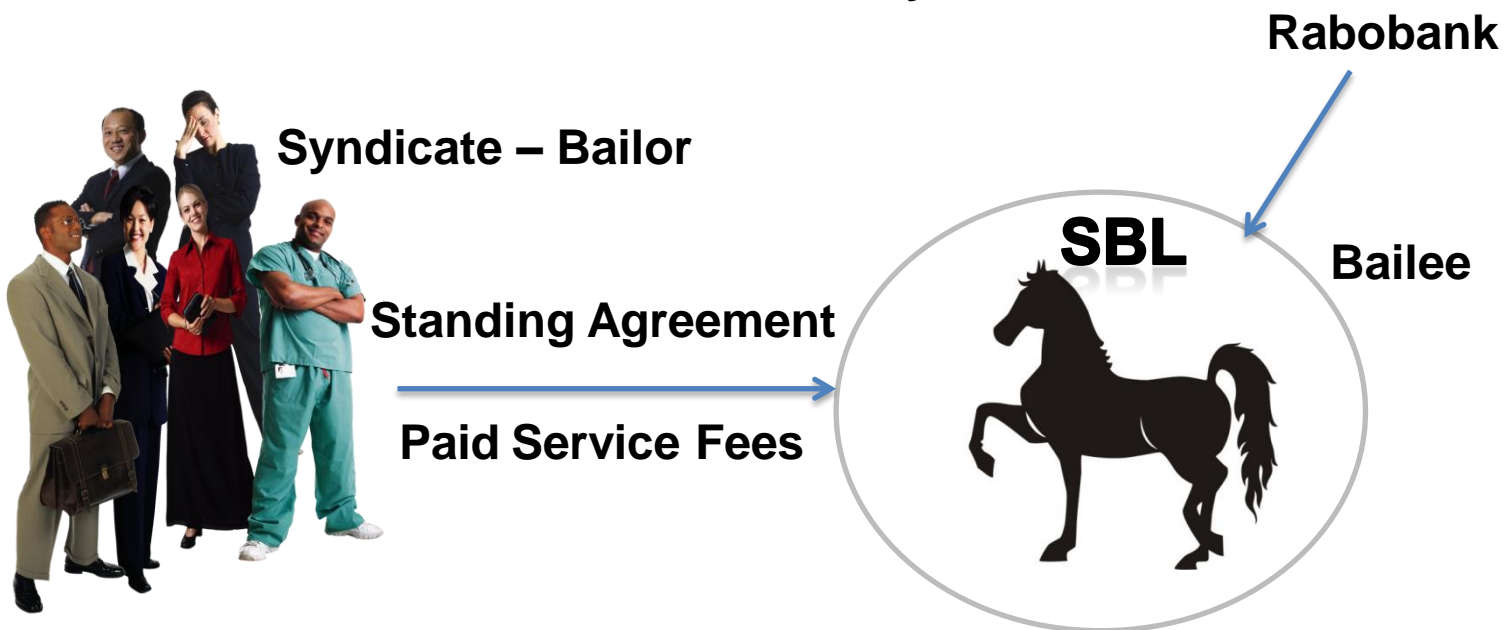
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PPS Lease Exclusions

Rabobank New Zealand v Mcanulty & Other





PPS Lease Exclusions - Cases

What does it mean to be regularly engaged in the business of bailing / leasing goods?

- NZ Court of Appeal - Rabobank New Zealand v Mcanulty & Others [2011] NZCA 212
 - words “in the business of leasing goods” = profit
 - excludes gratuitous bailments
 - word “regularly” not an isolated, single transaction
 - course of business transactions involving a series of leases
 - a single transaction that was a one-off, cannot be said to be “regular”



PPS Lease Exclusions - Cases

What does it mean to be regularly engaged in the business of bailing / leasing goods?

- Re Arcabi Pty Ltd (Receivers & Managers Appointed)(in liquidation) [2014] WASC 310
 - Bailment did not amount to a security interest which secures payment or performance of an obligation
 - No PPS Lease, because owners not in business of bailing goods
 - Two possible interpretations for s 13(3) noted

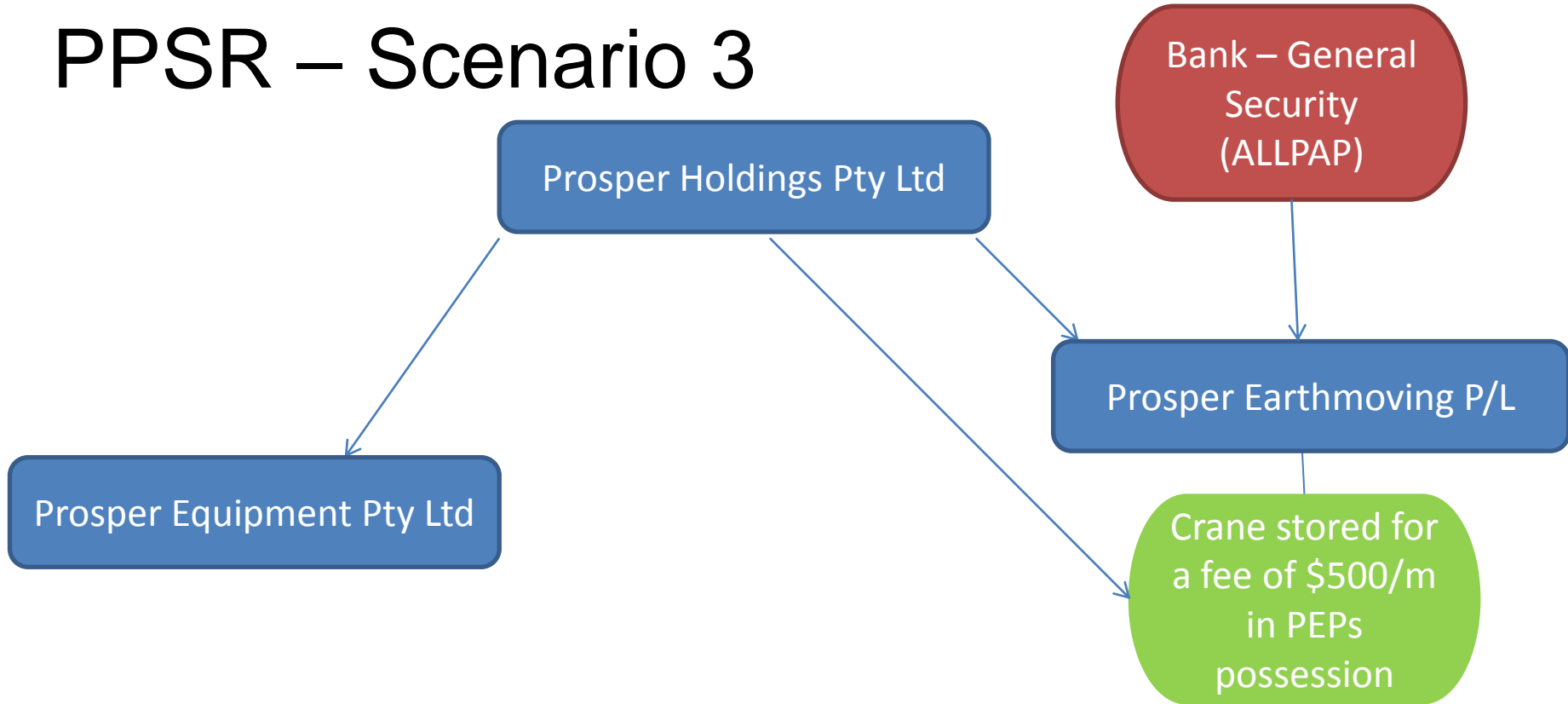


PPS Lease Exclusions - Cases

What does it mean to be regularly engaged in the business of bailing / leasing goods?

- Forge Group Power Pty Ltd (in liquidation) v General Electric [2016] NSWSC 52
 - “regular” two possible meanings
 - periodic or a recurrence at fixed intervals
 - normal, that is not abnormal in context of lessors business

PPSR – Scenario 3





Offers to *Webinar* Participants

1 – 2 hour PPSR High Point Advice Conference

- Usually \$850.00 (plus GST)
- For the first 6 emails - \$700.00 (plus GST)

Note: Offer applicable for the first 6 responses within 7 days

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