



Cross-border restructuring of Chinese and Indonesian businesses

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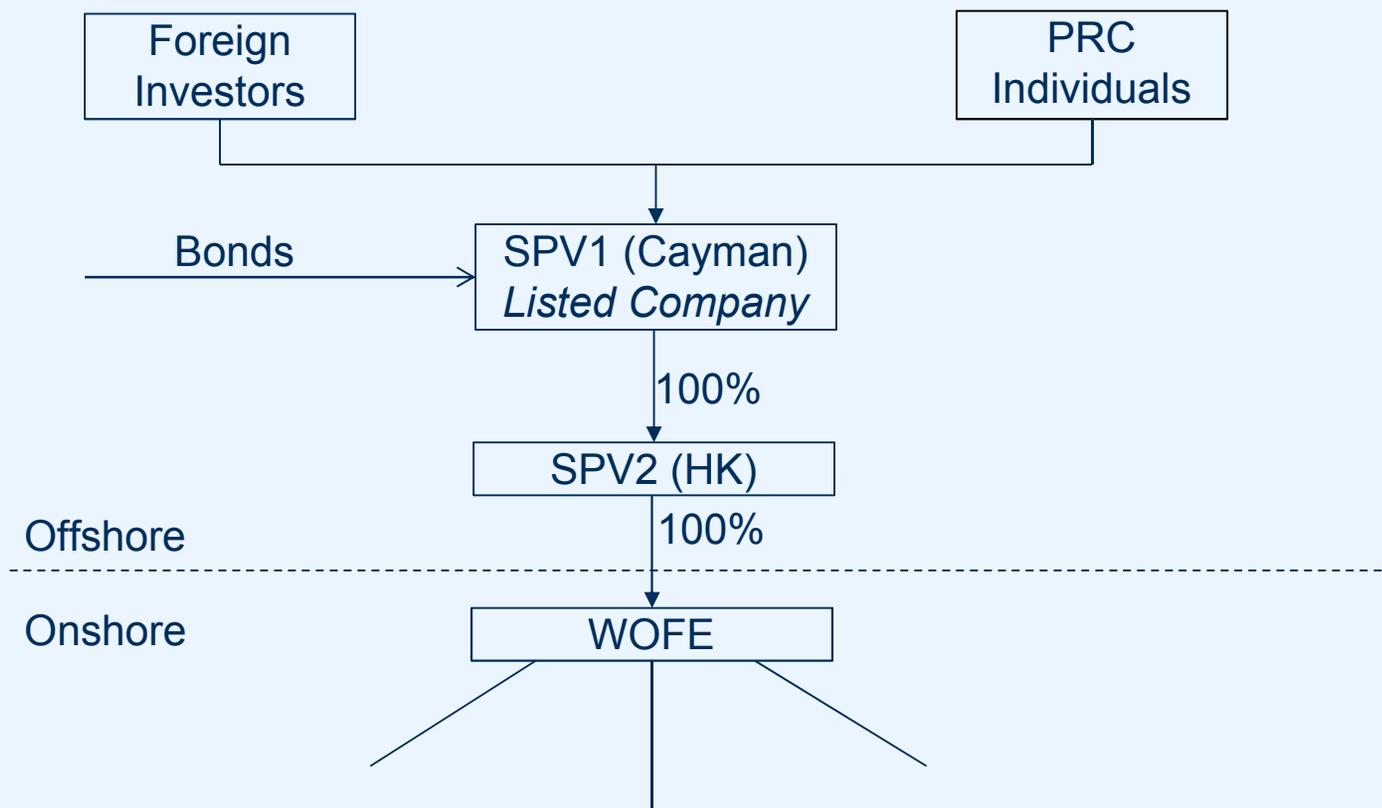
Introduction

What we will cover this afternoon

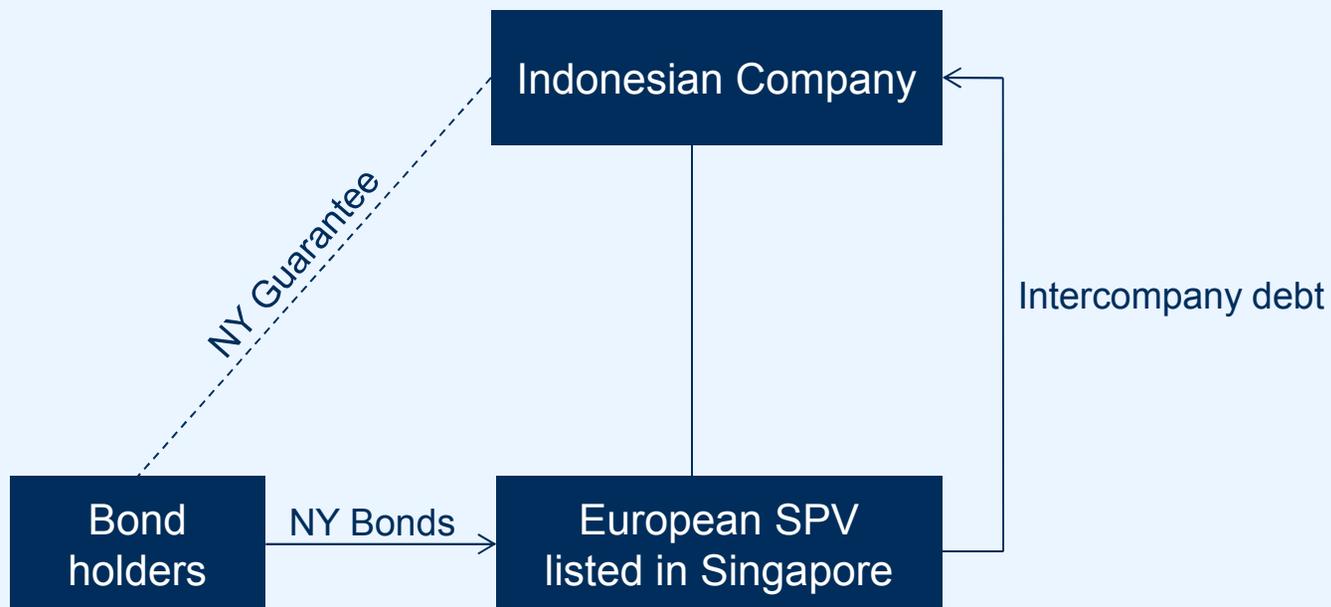
- Restructuring of Chinese and Indonesian businesses with foreign elements
- Offshore solutions
- Onshore solutions
- International considerations



Typical Chinese Corporate Structure



Typical Indonesian Corporate Structure



Case studies – offshore/HK solutions

1. Just and equitable winding-up and shareholders' dispute



2. Schemes of arrangement for foreign companies



3. Coercive bond exchange offers

4. Parallel insolvency proceedings, in particular schemes and provisional liquidation



5. HK court's willingness to recognise and assist foreign insolvency proceedings



6. Offshore office-holders' ability to control onshore operations



Just and Equitable Winding-up

- Foreign company's connection with HK:
 - (1) There must be a sufficient connection with HK which may, but does not necessarily have to, consist of assets within the jurisdiction.
 - (2) There must be a reasonable possibility, if a winding-up order is made, of benefit to those applying for the winding-up order.
 - (3) One or more persons interested in the distribution of assets of the company must be persons over whom the court can exercise a jurisdiction.
- Relevance of shareholders' dispute and company's solvency
- Application to insolvent scenarios

Schemes of Arrangement

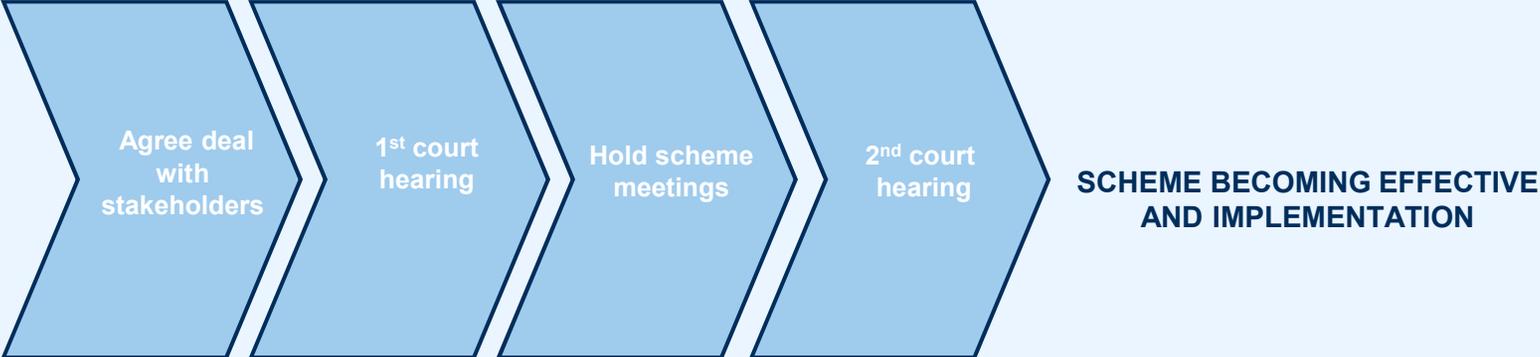
- Flexibility as to:
 - (i) content
 - (ii) those affected
 - (iii) timing
- Very short legislation (essentially unchanged for 150 years): great flexibility in practice over time, but especially recently
- Jurisdiction based on winding-up jurisdiction
- Developing area of practice around the world

What is a scheme of arrangement?

- Statutory procedure whereby a company makes an arrangement with its members or creditors (some or all)
- Can effect almost any kind of debt restructuring, internal reorganisation or merger as long as the necessary approvals are obtained
- 4 stage-process



The process



Scheme considerations

- **Who may propose a scheme:** usually a collaboration between the company and 75% of the stakeholders by value is required
- **Class issues:** the rights of those creditors are **not so dissimilar** as to make it impossible for them to **consult together** with a view to their **common interest**
- Fairness issues
- Distinction between scheme and insolvency proceeding
- Which jurisdiction

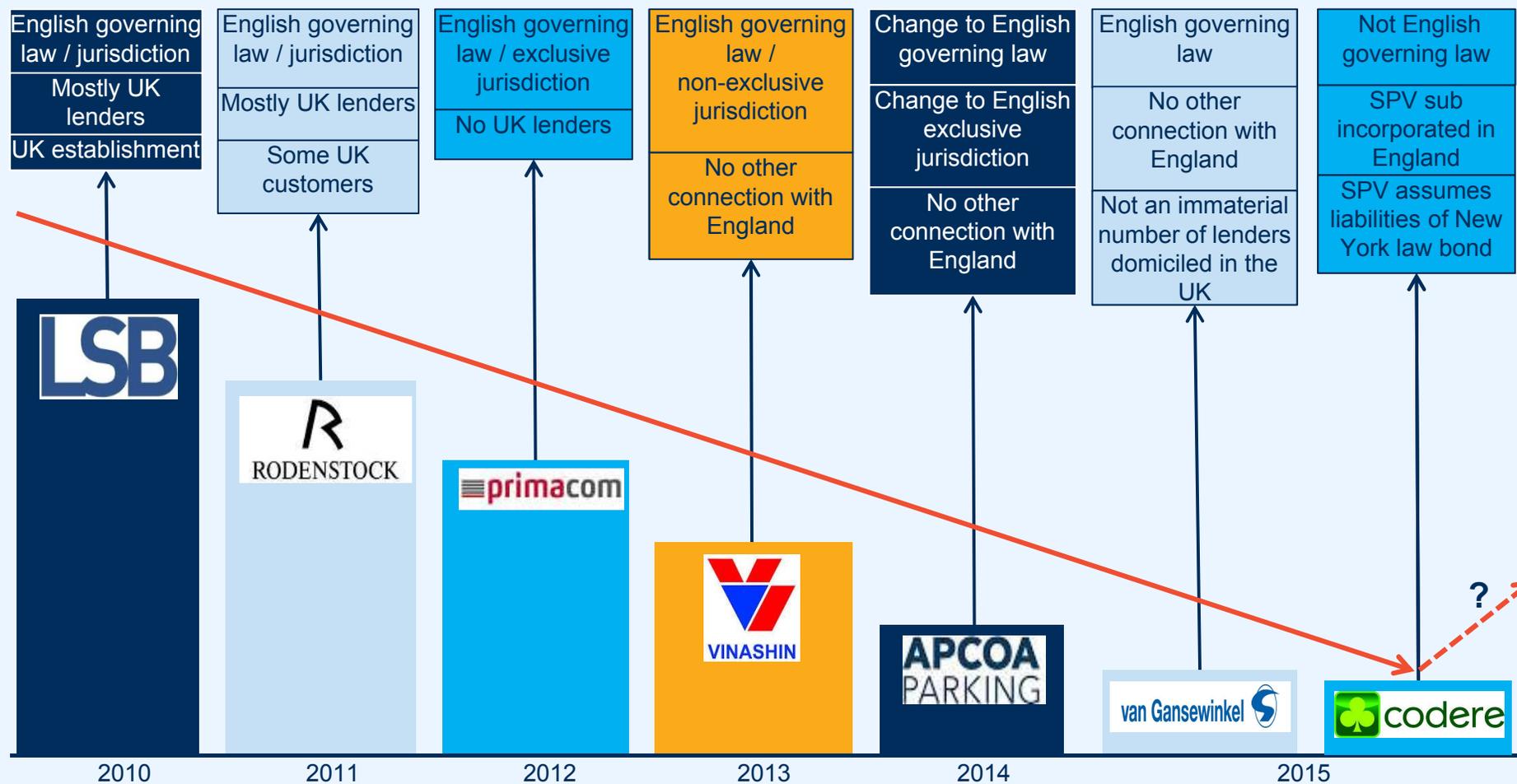
Comparison of schemes in different jurisdictions

	Hong Kong	Cayman Islands	Bermuda
Statutory approval requirement	<ul style="list-style-type: none"> • Majority in number representing 75% in value of those creditors attending and voting at a meeting convened for that purpose • Approval by at least 75% of voting rights of members voting at a meeting (75% test) and votes cast against the scheme at the meeting do not exceed 10% of the total voting rights attached to all disinterested shares (negative 10% test) • “Headcount test” no longer applicable for a takeover offer 	<ul style="list-style-type: none"> • Majority in number representing 75% in value of those attending and voting at a meeting convened for that purpose • “Headcount” test applies 	<ul style="list-style-type: none"> • Majority in number representing three-fourths in value of those attending and voting at a meeting convened for that purpose • “Headcount” test applies
Timing of court process	<ul style="list-style-type: none"> • Three months, but flexibility to discuss timetable with the court 	<ul style="list-style-type: none"> • Minimum of three months, depending on court timetable 	<ul style="list-style-type: none"> • Minimum of three months, depending on court timetable

Schemes of arrangement for foreign companies

- Schemes are not limited to English incorporated companies
- Test: does the company have a “**sufficient connection**” with the forum?
- Sufficient connection can be various things, including:
 - assets in the jurisdiction;
 - scheme creditors based in the jurisdiction; or
 - loan agreements governed by the law of the forum
- Expert evidence that the scheme will be recognised in the home jurisdiction of the debtor is generally required

Schemes of arrangement – wish you were here?



Coercive Bond Exchange Offers

- Voluntary participation with coercive elements
- “Carrot and stick” approach, typically with pre-negotiation
- Pros and cons for issuers and bondholders
- Minority protection?

Parallel Insolvency Proceedings/Cross-Border Recognition

- Default / traditional choice – parallel insolvency proceedings
- HK court's willingness to open parallel proceedings
- Need for parallel schemes, eg Grande Holdings (HK and Bermuda), LDK Solar (HK and Cayman), Kaisa (HK and Cayman), Winsway (HK and BVI)
- Chapter 15
- Is recognition enough?
- Assistance/relief given to foreign officeholders, – cf. *Global Distressed Alpha Fund 1 v PT Bakrie Investindo* [2011] EWHC 256 (Comm); [2011] 1 WLR 2038

Onshore Issues

- Common issue in offshore structures
- Creditors' perception, eg Suntech – “China has different concepts of the rules of law and creditors' rights compared to those found in the Cayman Islands and the United States; it is the last place that one would go”
- Shanshui Cement
- Indonesia suspension of payment procedure (PKPU), eg BTEL (*Universal Investment Advisory SA v Bakrie Telecom PTE, Ltd.*, 51 Misc. 3d 1212(A) (N.Y. Sup. Ct. 2016))

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