

Acquisition of Interests in Overseas Projects



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A. ACQUISITION PROCESS

1. Basic steps

Sign Confidentiality Agreement

Preliminary Due Diligence

Negotiate Key Terms

Agree Price

Sign LOI / MOU/HOA

B decides investment structure

Negotiate SPA

Sign SPA

Satisfy conditions precedent

Pre-closing Due Diligence

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graph TD; A[Closing – B pays $ and gets interest] --- B[Post Closing]; B --- C[Price adjustment]; B --- D[Complete transfers];
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Closing – B pays \$ and gets interest

Post Closing

Price adjustment

Complete transfers

2. CONFIDENTIALITY AGREEMENTS: MAIN POINTS

- Individual Undertakings
- Exclusion of liability for accuracy of information
- 2 way? Should seller be able to disclose fact of negotiations?

3. Preliminary Agreement (HOA/MOU/LOI)

Are they legally binding?

- Certainty
- Agreement to agree
- Reliance

Obligations may arise even of no legally binding obligation to buy and sell

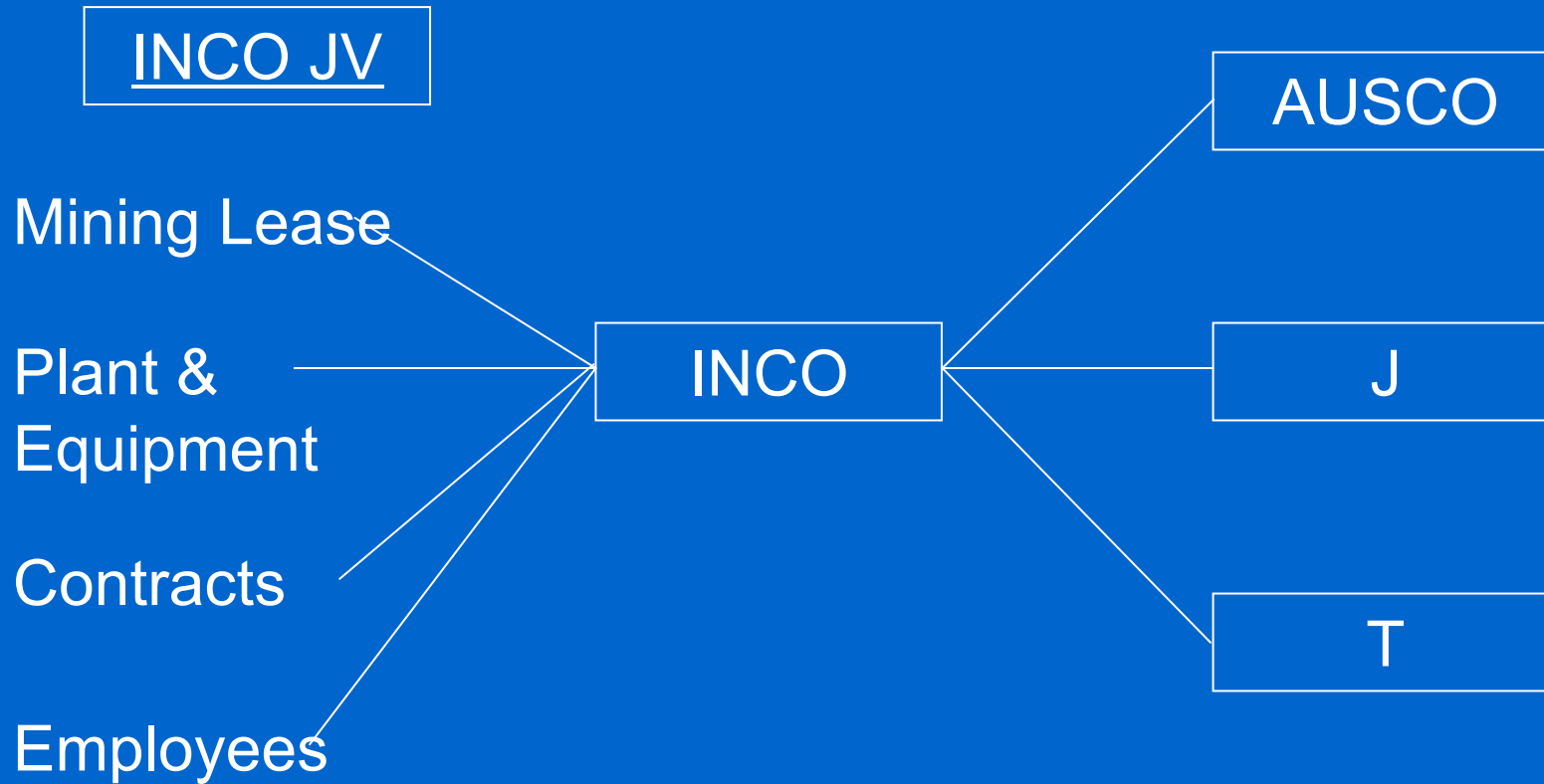
Exclusivity

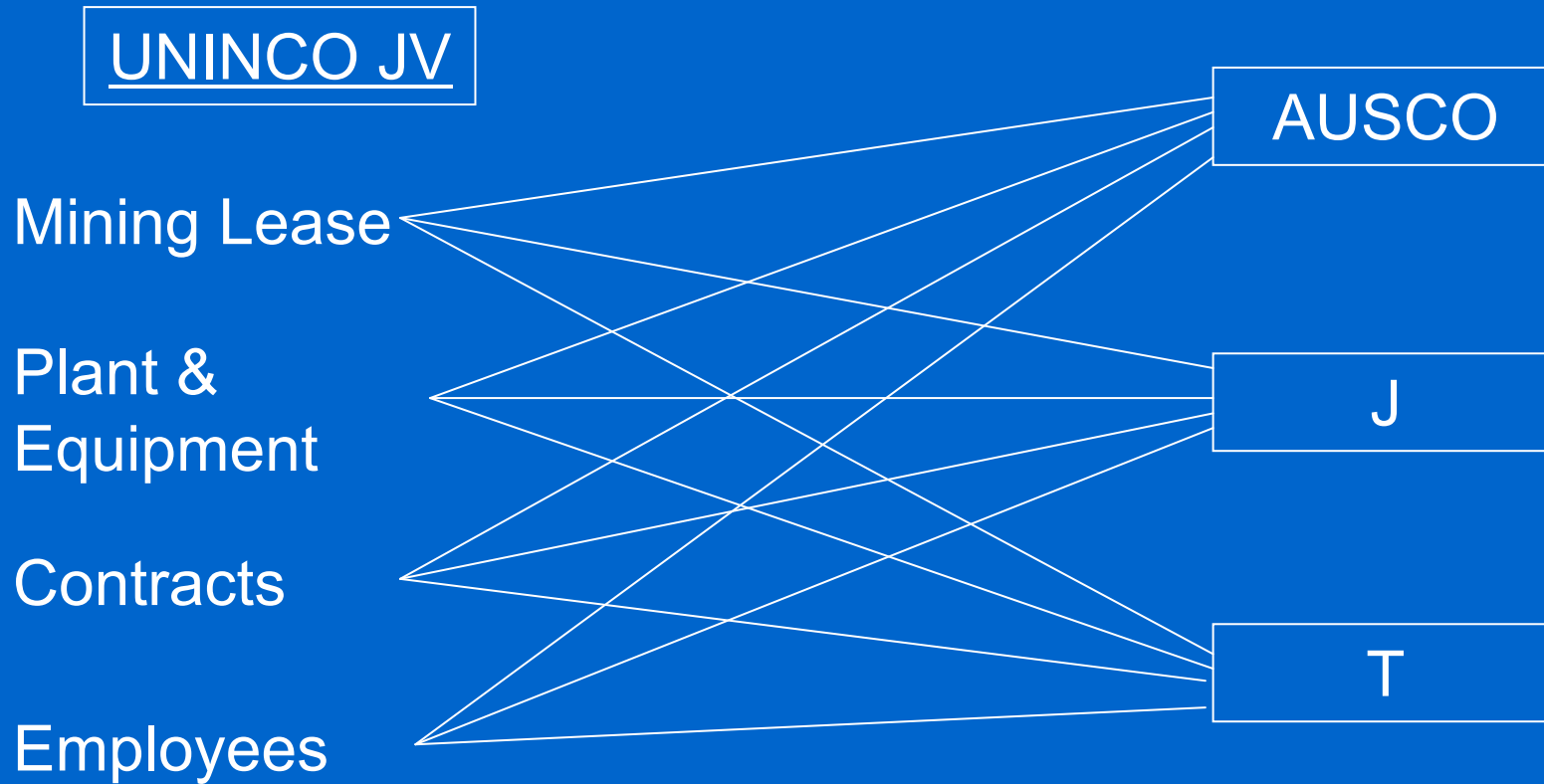
4. Acquisition in Inco's v Unincos's

THIRD PARTIES



ASSETS



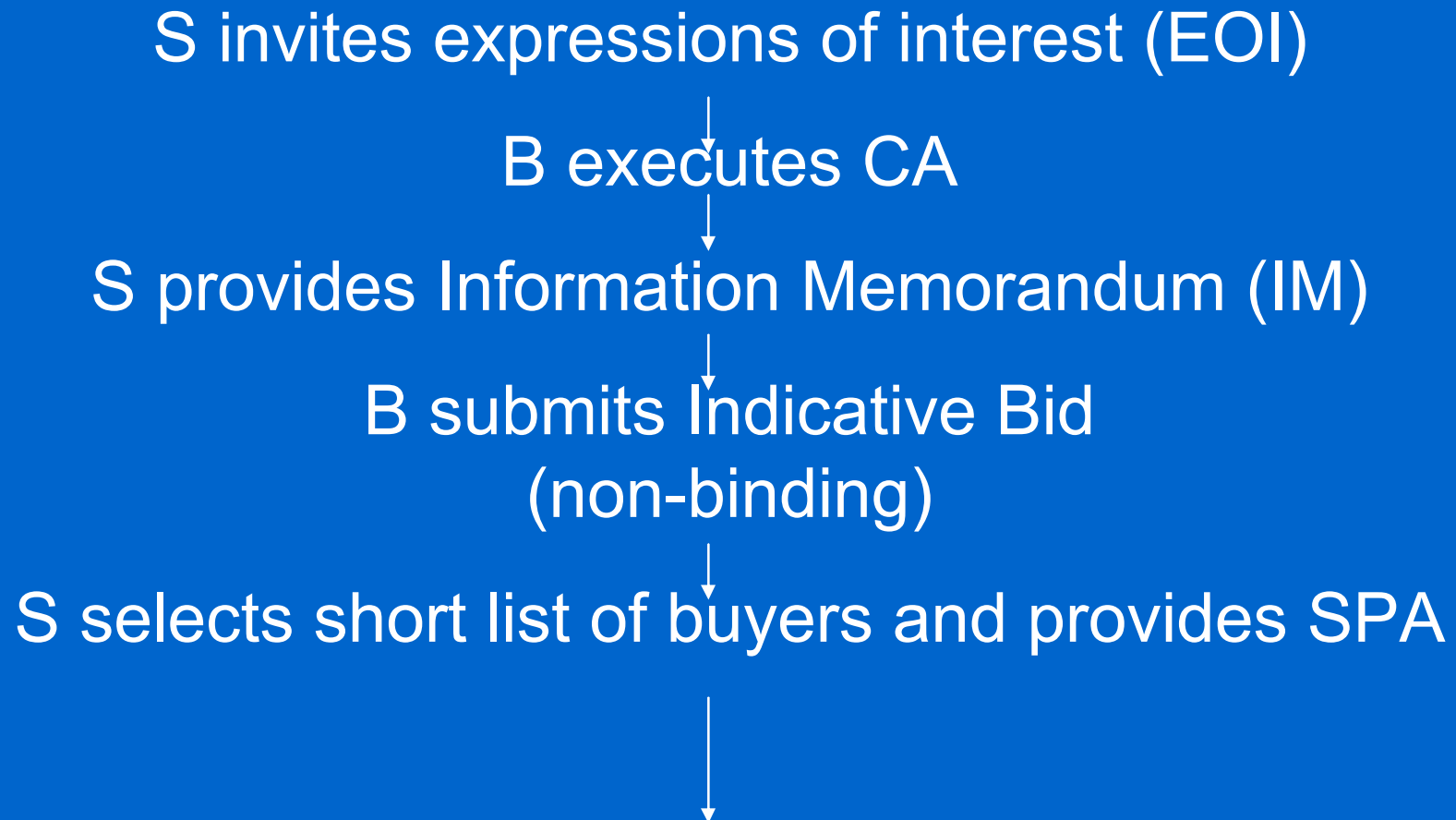


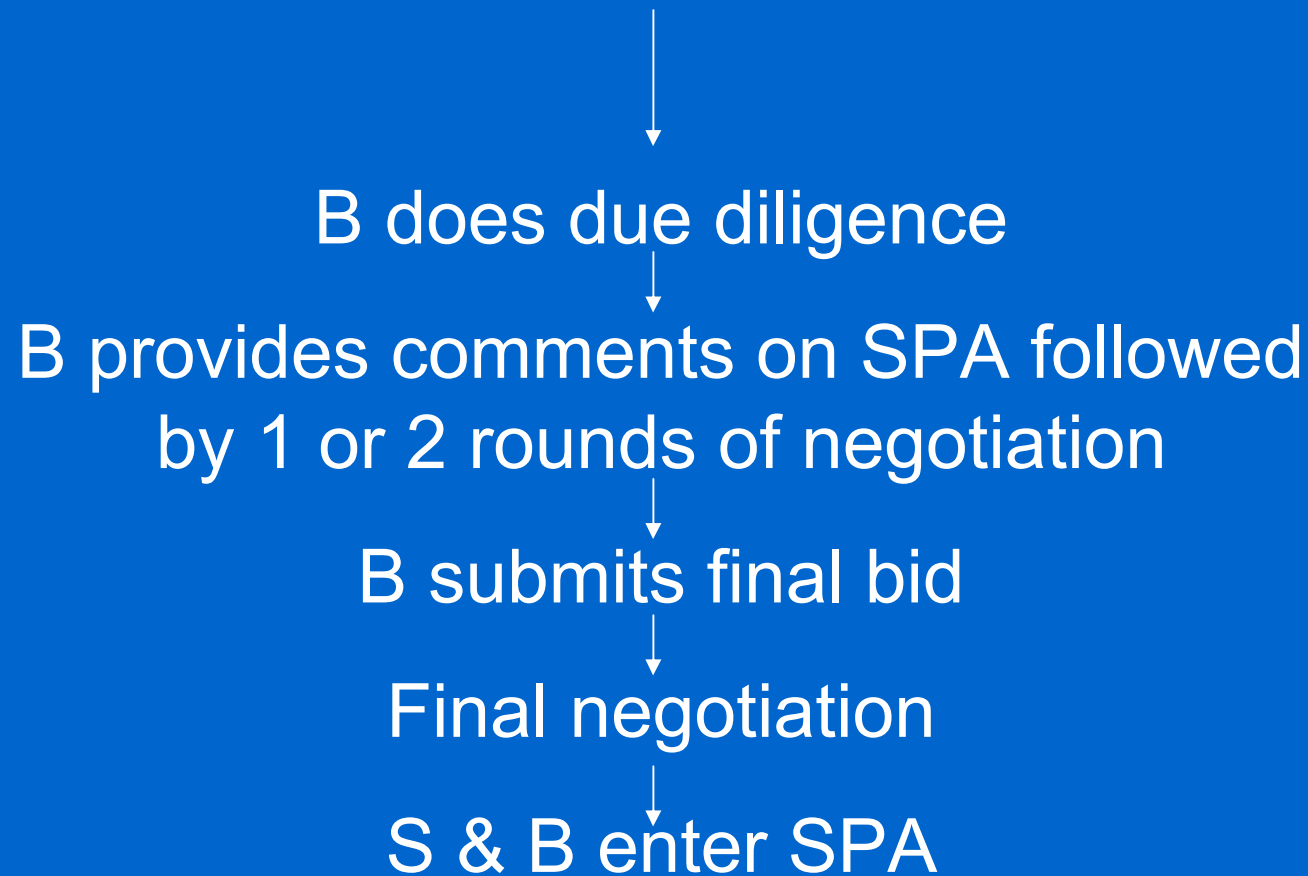
PROCEDURES TO TRANSFER

	Procedural	Legal
TRANSFER OF INTEREST IN INCO	Simple – only 1 transfer: But may involve stock exchange, corporate law	<ul style="list-style-type: none"> -Need to check restrictions on change in ownership -Assume liabilities of the company -More due diligence.
TRANSFER OF INTEREST IN UNINCO	Many transfers required. Document intensive. More costly.	<ul style="list-style-type: none"> -Higher chance of 3rd parties obstructing -Free of liabilities -Transaction costs (e.g. stamp duties, tax)

B. TRADE SALES

Process





Points from Japanese Buyers Viewpoint

Timeframes too short for:

- proper review
- initial approval of each step

Other disadvantages

The game strategy if important – getting close to the manager

Opting out of the auction game

Formulating an attractive looking bid

Special points re government sales -

- additional requirements
- probity

DUE DILIGENCE

