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**Cross Border Financing: The Basics and the New
Landscape**

Co-Chairs

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Speakers

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Clemens Philipp Schindler

Part I.

Inbound Financing – Selected Issues

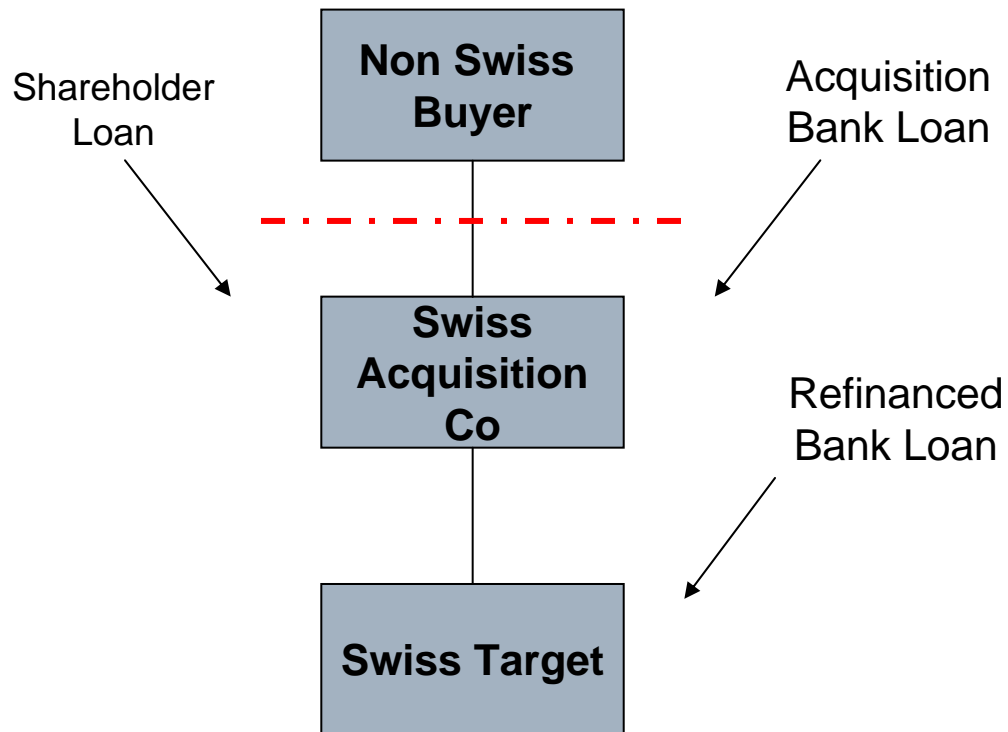
- ❑ US Target
- ❑ UK Target
- ❑ Italian Target
- ❑ Swiss Target
- ❑ Austrian Target

SWISS INBOUND FINANCE ISSUES

- ❑ Acquisition Vehicle
- ❑ Interest Deduction
- ❑ Debt Push Down
- ❑ Depreciation of Goodwill
- ❑ Structure for Consortium Acquisition

Swiss Target: Swiss Acquisition Vehicle

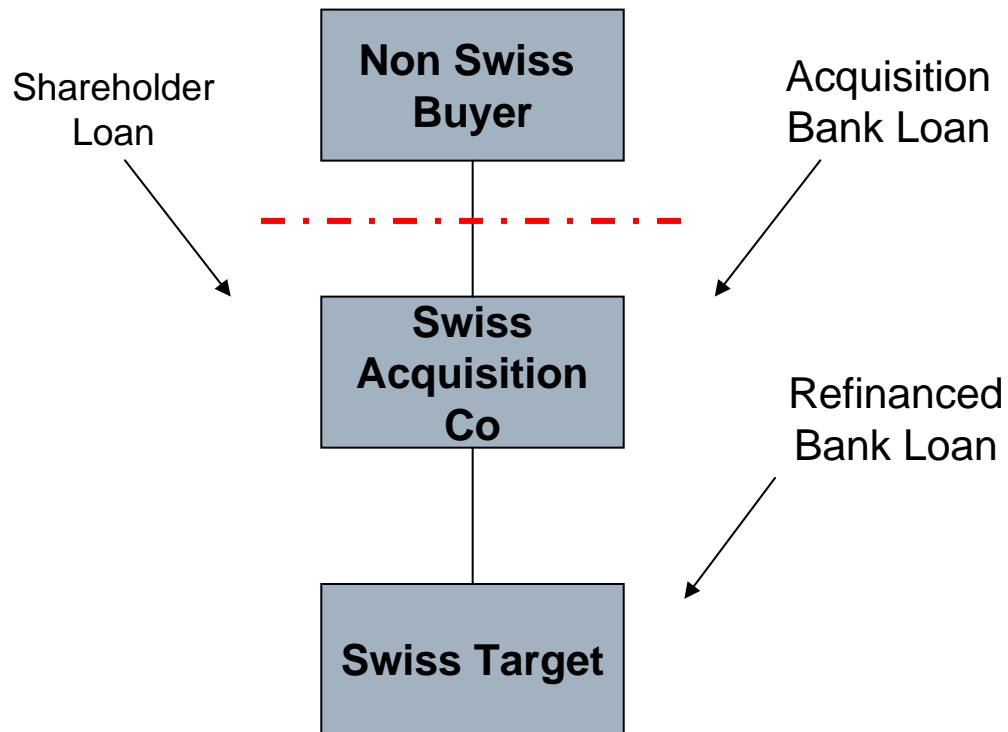
Post acquisition structure:



- Swiss restrictions:
 - no tax consolidation
 - no tax effective debt push down
 - no tax effective depreciation of acquired goodwill
- Mitigation measures:
 - use existing Swiss operating company, if any, as Swiss Acq Co
 - dispose of certain target assets and upstream excess cash to Swiss AcqCo for amortisation of acquisition debt
 - acquire certain valuable group assets and increase debt funding of Swiss Target
 - cascade of acquisitions (asset deals)

Swiss Target: Interest Deduction

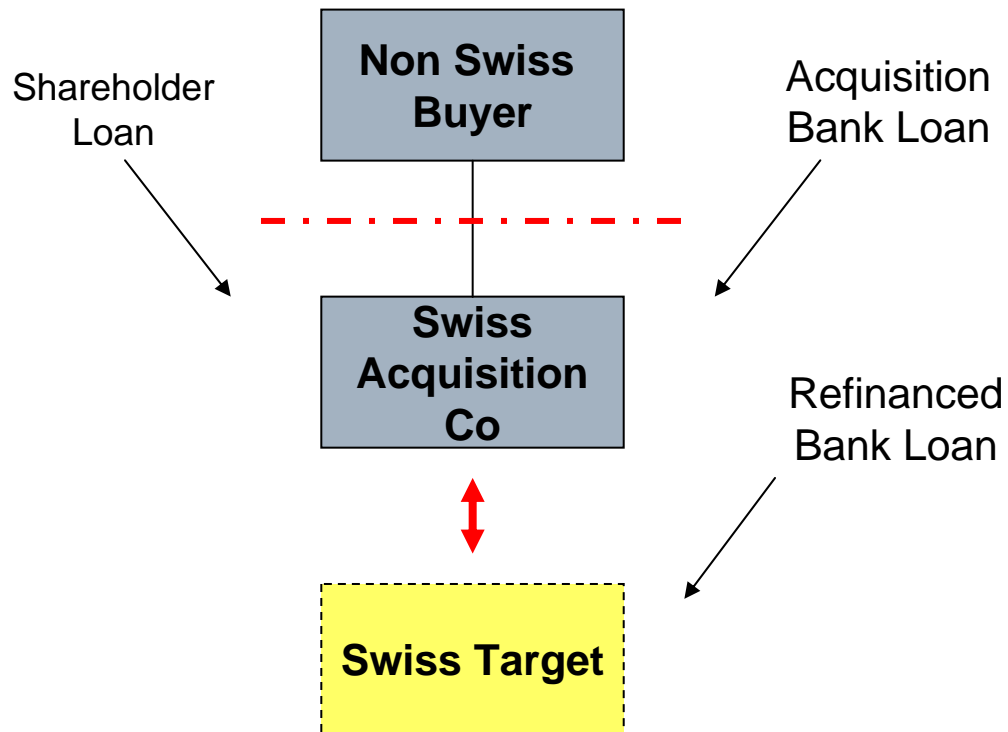
Post acquisition structure:



- interest deduction in Swiss AcqCo will set-off participation income from Swiss Target reducing the effectiveness of the Swiss participation relief (if AcqCo is operating company)
- in general, no interest w/h's, except on means of collective debt fund raisings
- parent (down stream) guarantee may lead to a partial re-characterisation of Bank Loan into a constructive related party loan with ensuing denial of interest deduction and 35% dividend w/h tax
- save harbour rules relating to admissible related party debt funding (70% for participations) and maximum interest rates

Swiss Target: Debt Push Down

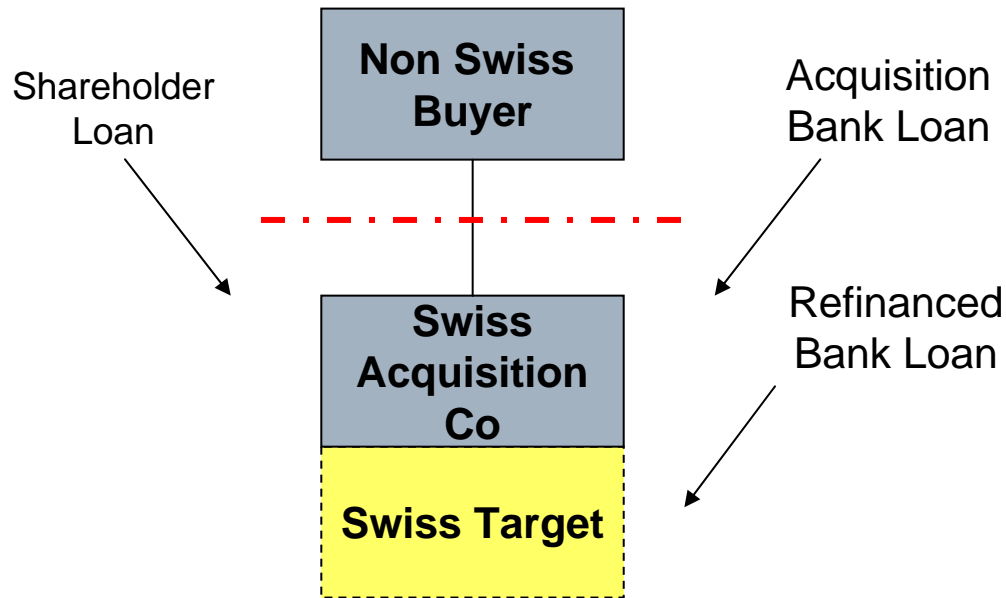
Post acquisition structure:



- no tax effective debt push down by down or up-stream merger of Swiss AcqCo and Swiss Target possible (at least during the first 5 years)
- no tax savings
- however, merger may provide better security for Bank Loan (i.e. direct asset level security in general preferred over up-stream security subject to financial assistance limitations)

Swiss Target: Goodwill Depreciation

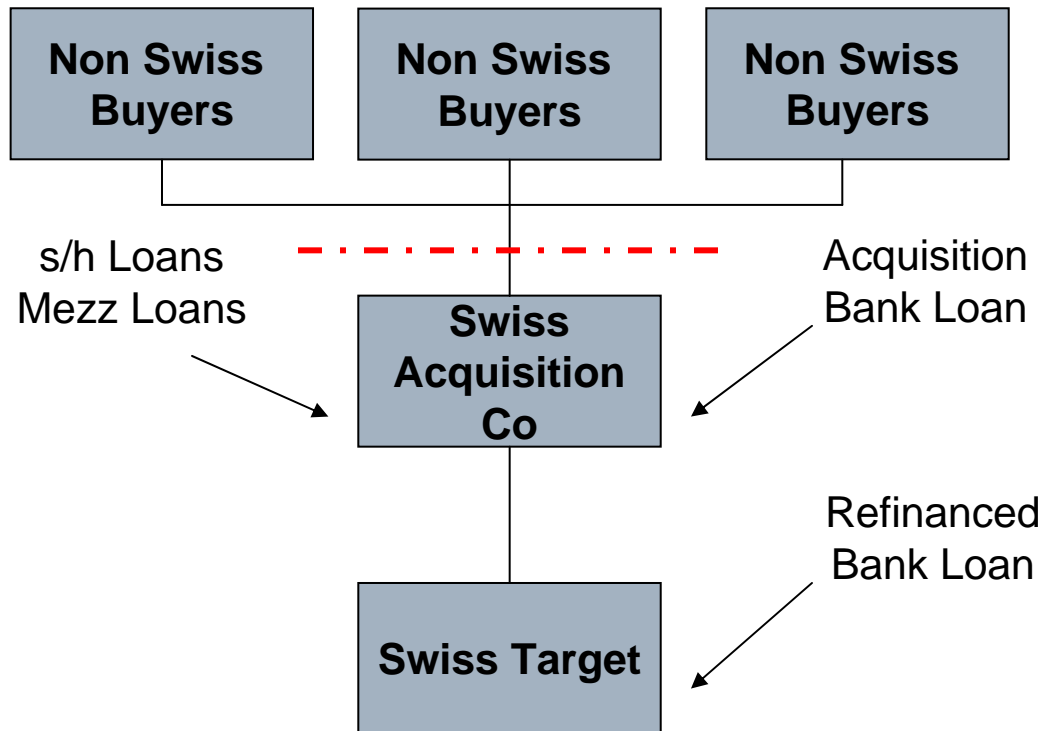
Post acquisition structure:



- a merger loss (due to acquisition goodwill) cannot be deducted and acquisition goodwill activated as an intangible asset cannot be depreciated for corporate income tax purposes
- no tax deferral

Swiss Target: Consortium Acquisition

Post acquisition structure:



- interest deduction capacity on related party loans does not turn on characteristics of loan (subordinated, term, convertible, mezzanine, etc)
- interest deduction does not carry a huge tax benefit as (i) deduction will set-off participation income and reduce the effectiveness of the Swiss participation relief (in case of an operating Swiss AcqCo) or as (ii) AcqCo will not pay income taxes due to holding regime and participation deduction (in case Swiss AcqCo is a mere holding company)

Part II.

Outbound Financing – Selected Issues

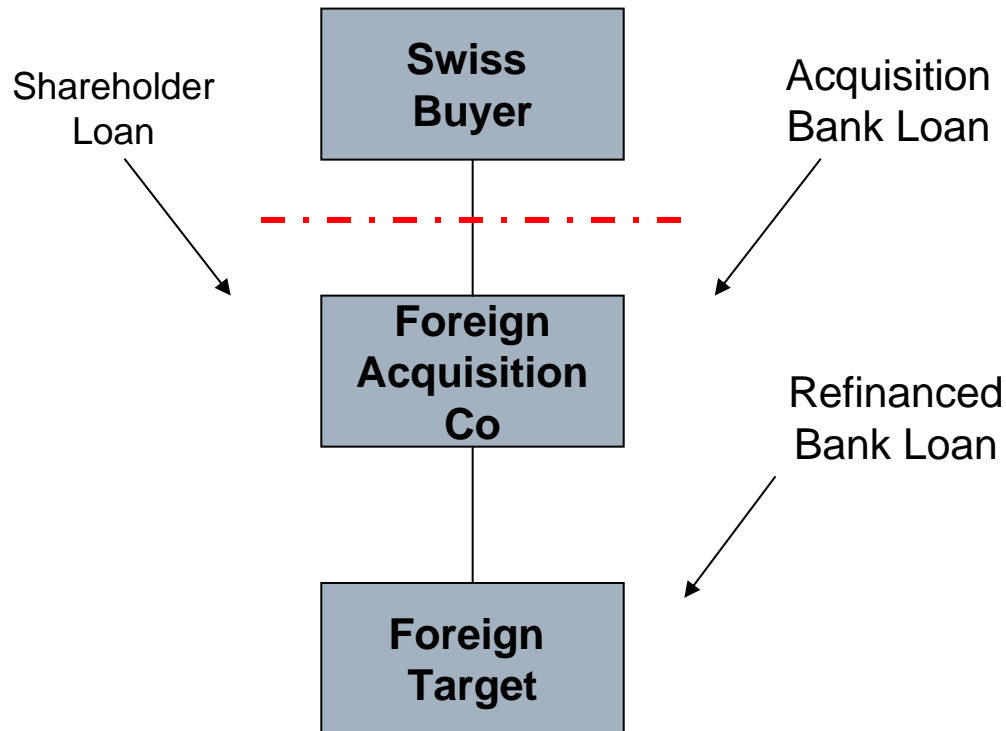
- ❑ US Acquiror – Foreign Target
- ❑ UK Acquiror – Foreign Target
- ❑ Italian Acquiror – Foreign Target
- ❑ Swiss Acquiror – Foreign Target
- ❑ Austrian Acquiror – Foreign Target

Swiss Outbound Finance Issues

- ❑ CFC?
- ❑ Dividends & Gains on Disposals
- ❑ Loss Consolidation?

Swiss Outbound Financing Issues - CFC?

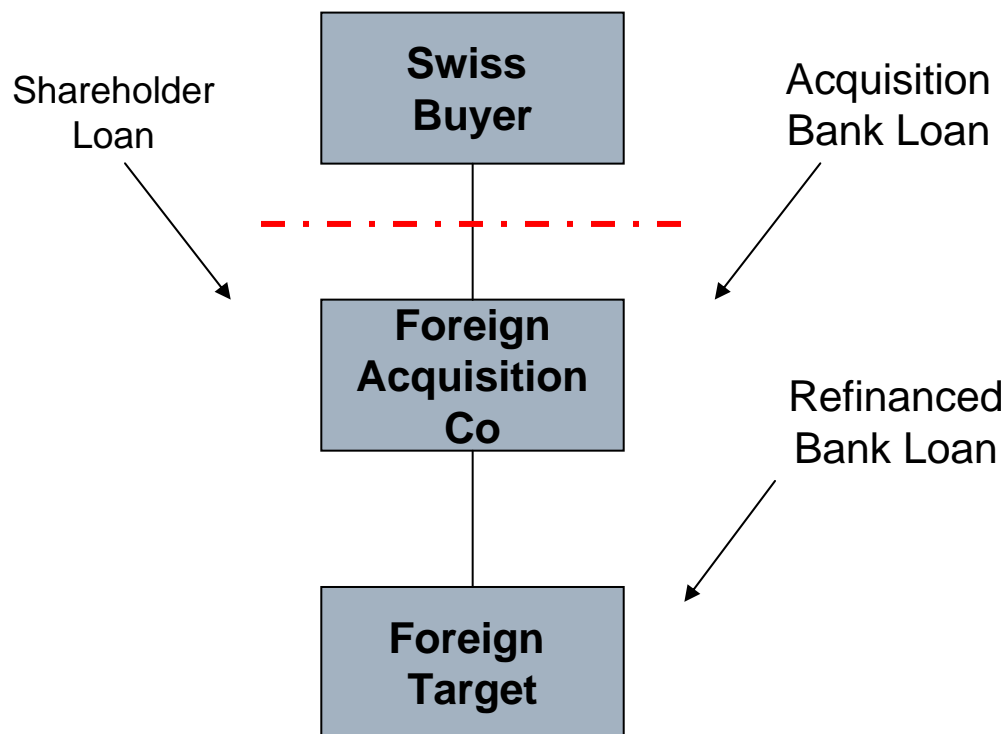
Post acquisition structure:



- no CFC rules in Switzerland
- equal treatment of participation income from foreign participations with participation income from Swiss participations (i.e. dividends & disposal gains qualify for Swiss participation relief)
- Swiss tax leakage in case of set-offs of participation income against tax loss carry forwards, interest and overhead cost allocation to participation income (only relevant if Swiss Buyer is an operating company)

Swiss Outbound Financing Issues - Dividends & Gains on Disposals

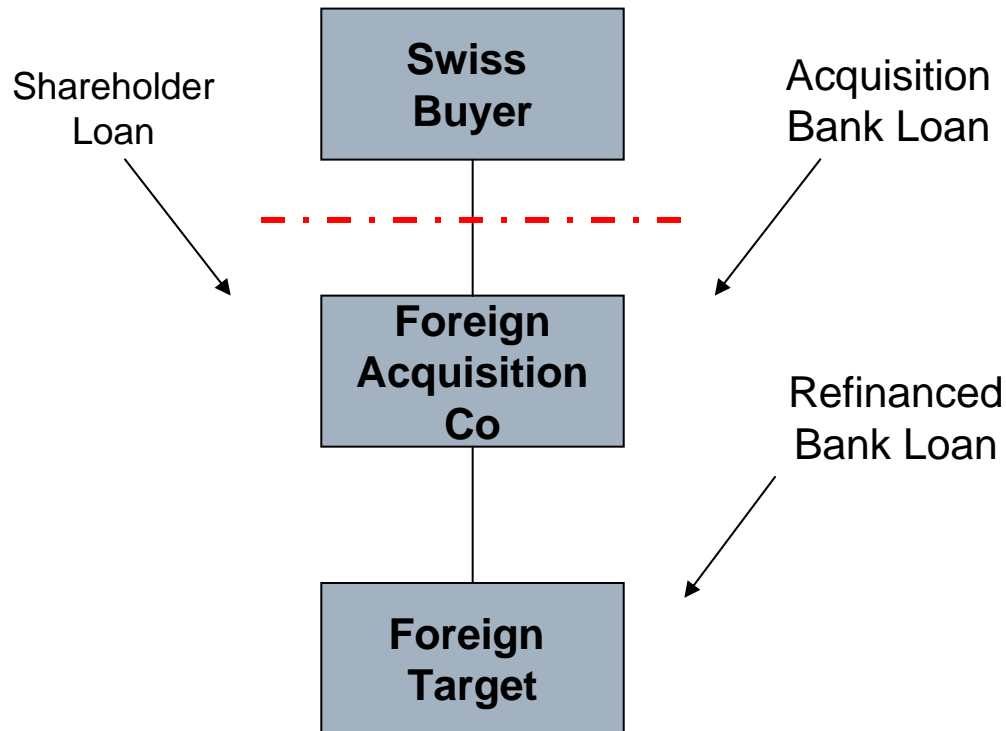
Post acquisition structure:



- equal treatment of participation income from foreign participations with participation income from Swiss participations
- Swiss tax leakage in case of set-offs of participation income against tax loss carry forwards, interest and overhead cost allocation to participation income (only relevant if Swiss Buyer is an operating company)

Swiss Outbound Financing Issues - Loss Consolidation?

Post acquisition structure:



- no domestic and no cross-border group loss consolidation
- loss consolidation requires statutory merger of loss and profit companies (carry-over rule re tax characteristics)
- foreign branch losses may reduce tax base of Swiss head office (however, recapture rule)
- tax loss carry forwards only (no tax loss carry backs) and limitation to 1 plus 7 carry forward years

Part III.

Current Financing Trends by Country

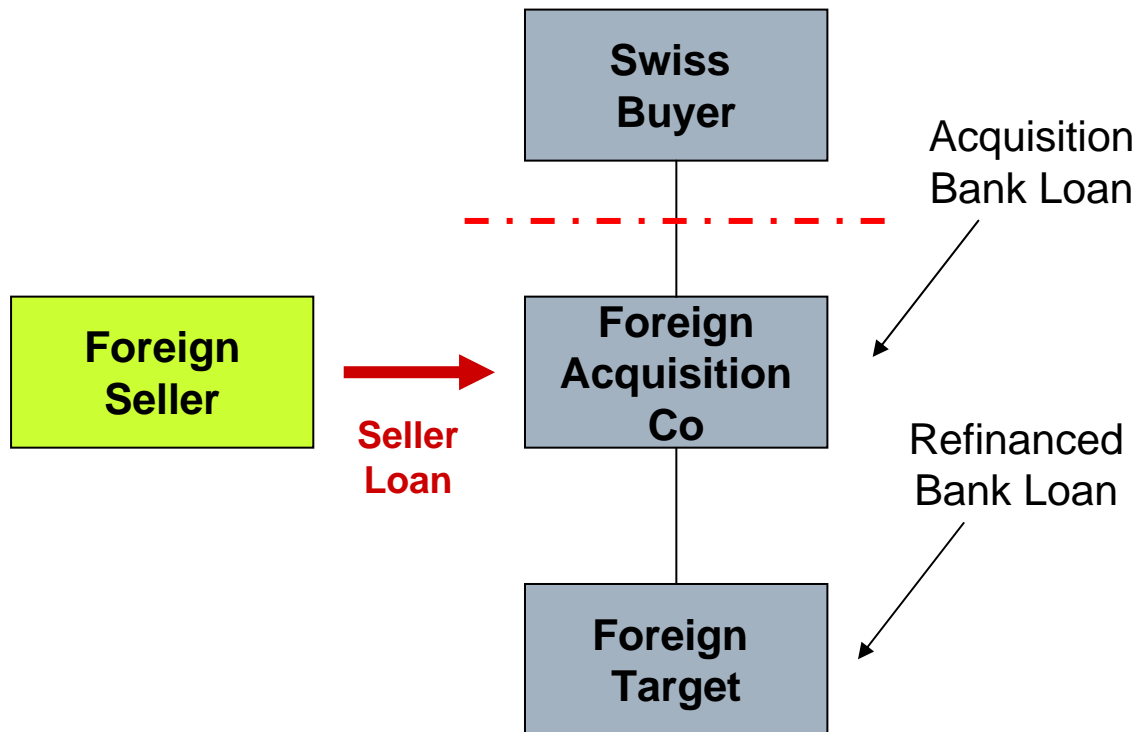
- ❑ US Trends
- ❑ UK Trends
- ❑ Italian Trends
- ❑ Swiss Trends
- ❑ Austrian Trends

Current Landscape – Switzerland

- ❑ Seller Loans
- ❑ Joint Ventures – Consortium
- ❑ Debt / Equity Swaps
- ❑ New Financing Means: Covered Bonds

Swiss Current Landscape: Seller Loans & Earn Outs

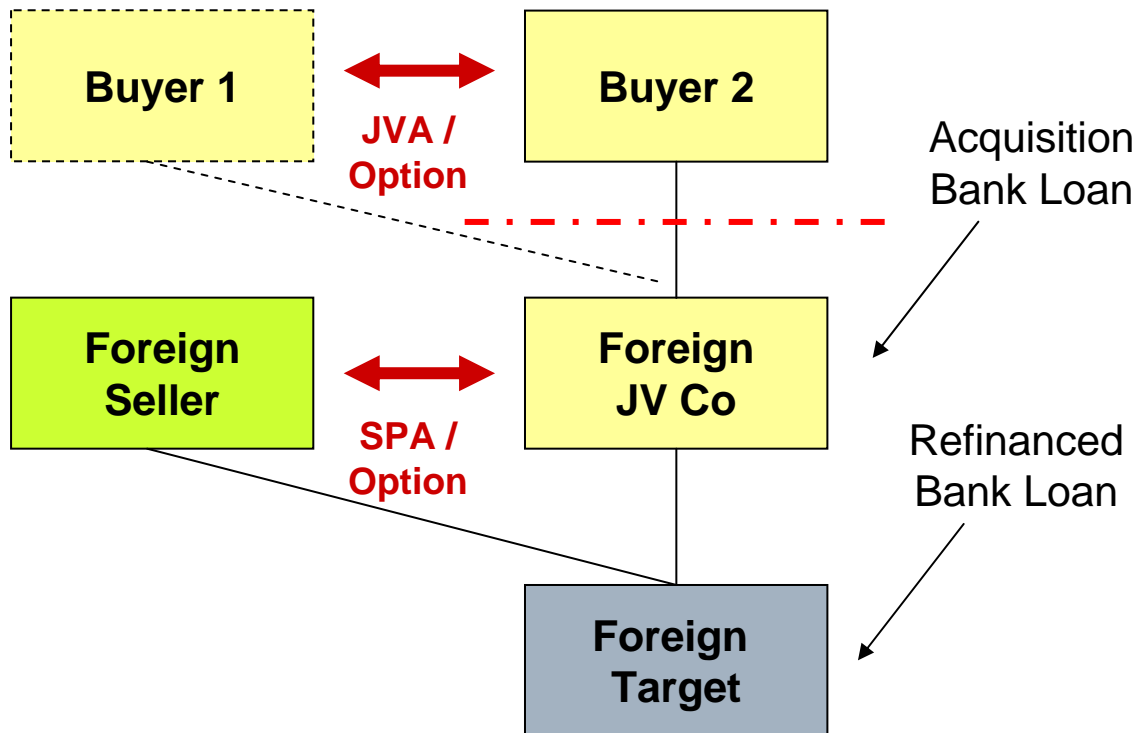
Post acquisition structure:



- no limitation to interest deduction on Seller Loan, Acquisition Bank Loan and Refinance Bank Loan provided that no parent down stream guarantees
- ordering of debt funding (i.e. senior / junior) does not matter
- earn out may lead to a reduction of financing costs

Swiss Current Landscape: Joint Ventures

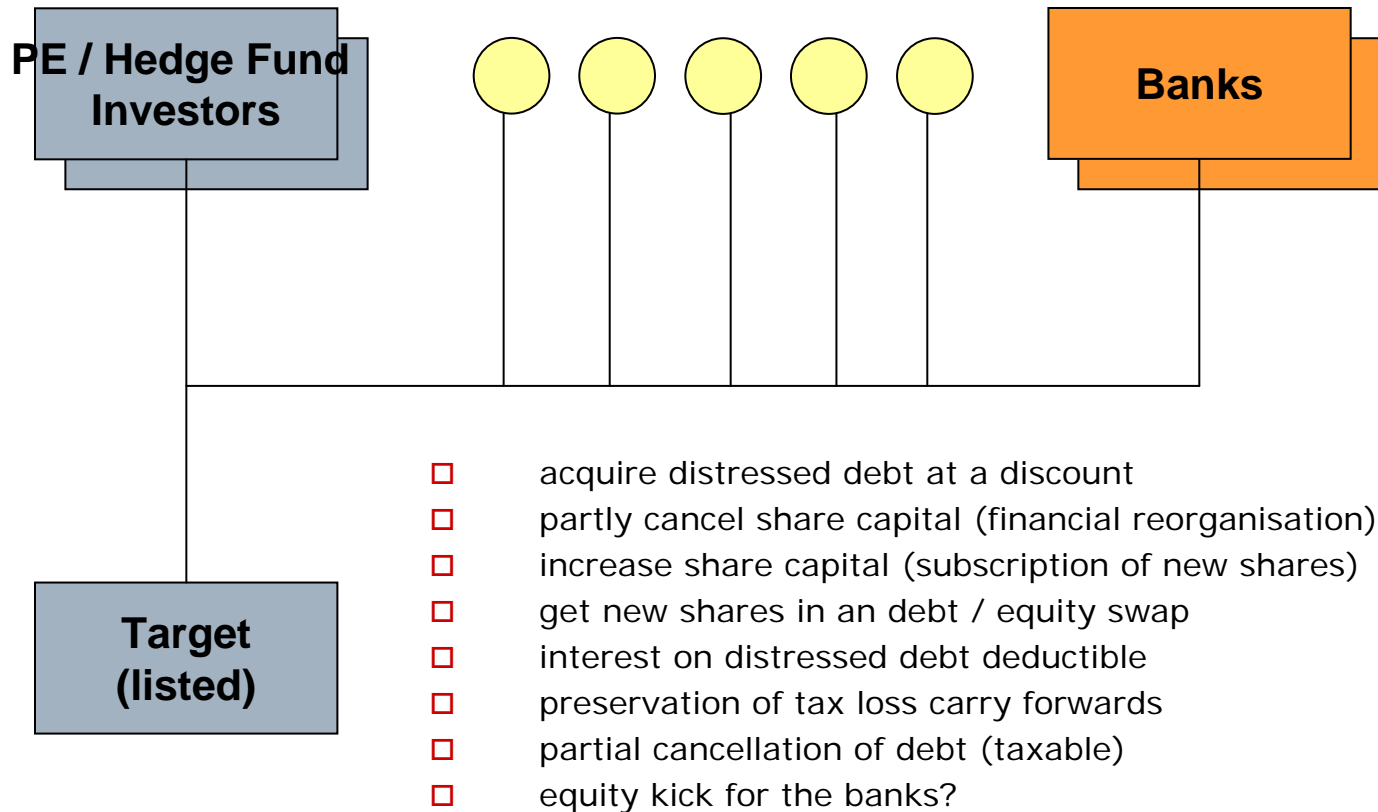
Post acquisition structure:



- JV either with Seller or with Co-Buyer:
- Call / Put Options to unwind JV
- limitation on interest deduction on s/h loans
- no limitation on interest deduction on Acquisition Bank Loan and Refinance Bank Loan provided that no parent downstream guarantees

Swiss Current Landscape: Debt / Equity Swaps

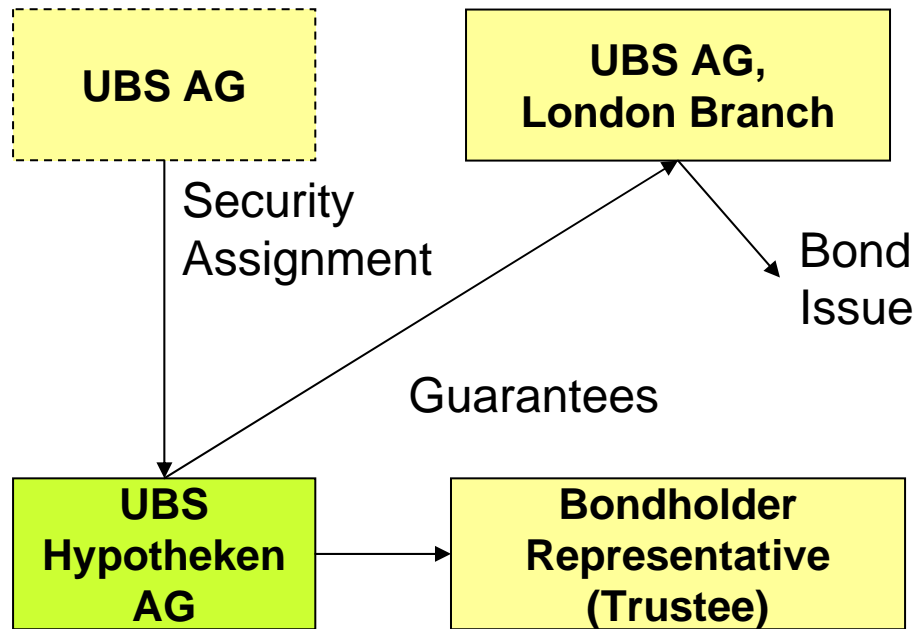
Post acquisition structure:



Swiss Current Landscape: Covered Bonds

- Issues
 - High interest rates on UBS unsecured funding
 - Swiss mortgage portfolio readily available to secure UBS funding
 - Swiss withholding tax / Swiss issuance stamp tax on bonds issued by UBS AG, Switzerland
 - Separate Swiss withholding tax on Swiss mortgage secured bonds, if holder is a non-Swiss person

Swiss Current Landscape: Covered Bonds (Basic Structure)



- ❑ UBS grants mortgage loans to Swiss customers
- ❑ UBS security assigns mortgages to UBS Hypotheken AG (Swiss based SPV)
- ❑ UBS AG, London Branch, issues covered bonds
- ❑ Covered bonds are guaranteed by UBS Hypotheken AG; mortgages serve (indirectly) as security
- ❑ Guarantee also to Bondholder Representative, which assumes specific functions in a guarantee case

Thank You!

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