

FUNDING THE GOLDEN FLEECE

Structured Trade and Commodity Finance – Legal and Commercial Issues

Gillad Dalal
Partner
Norton Rose Australia

BFSLA Conference
6 August 2011

Introduction

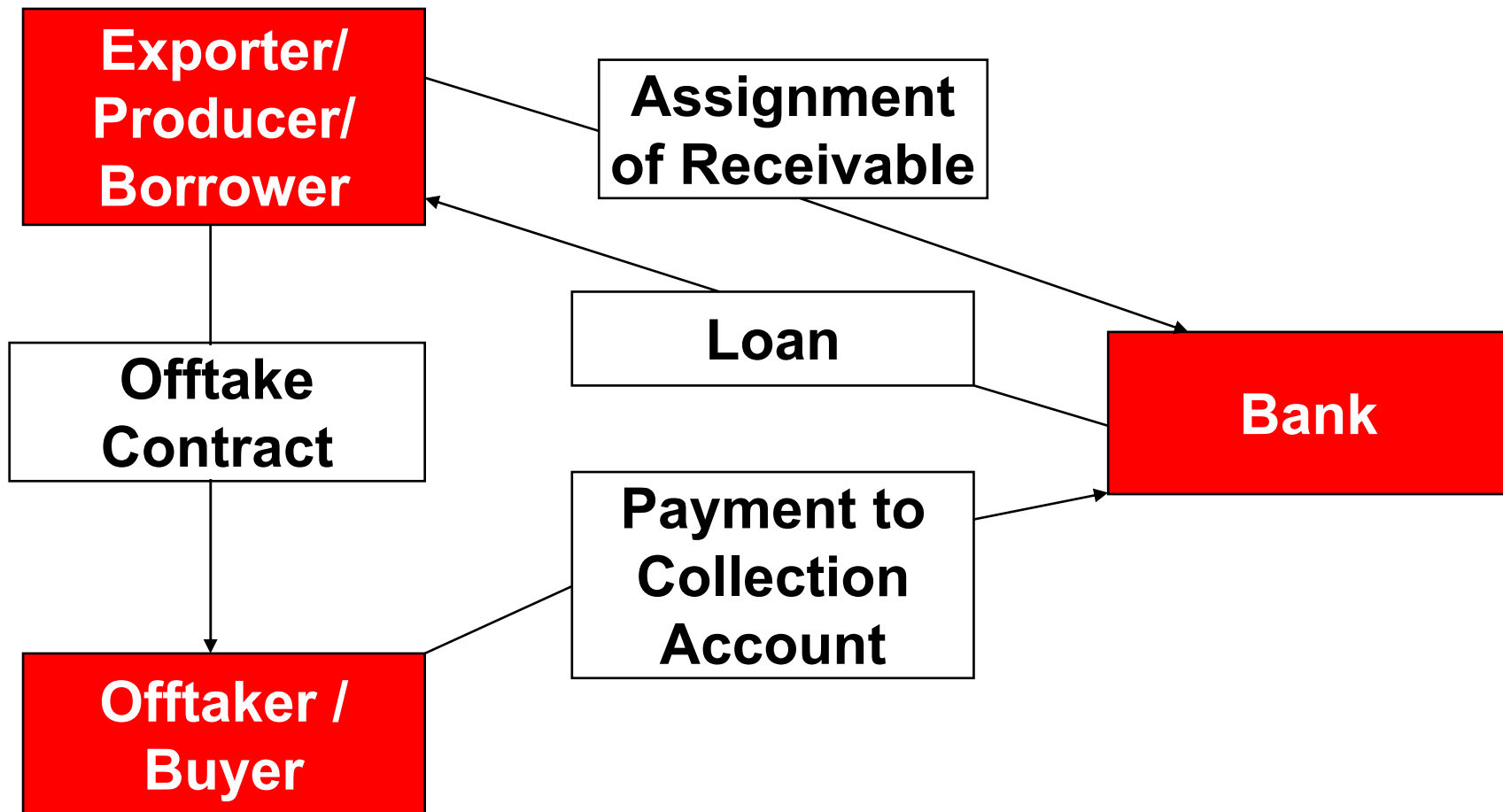
What is Structured Trade Finance?

- Structured around a particular commodity / customer need
- Usually larger amounts of debt / funding required
- Usually longer tenor than typical trade transactions
- More complex structures used
- Due diligence usually required on offtakes and other relevant contracts
- Usually (not always) used with tradeable commodities (e.g. grain, oil, iron ore, etc.)
- Usually these are quite capital efficient structures for Banks, however Basel II and III may impact capital cost of these structures

Common Structured Trade and Commodity Finance Structures

- Pre-export finance
- Pre-payment finance
- Borrowing base lending
- Sale and repurchase financing (Repos)

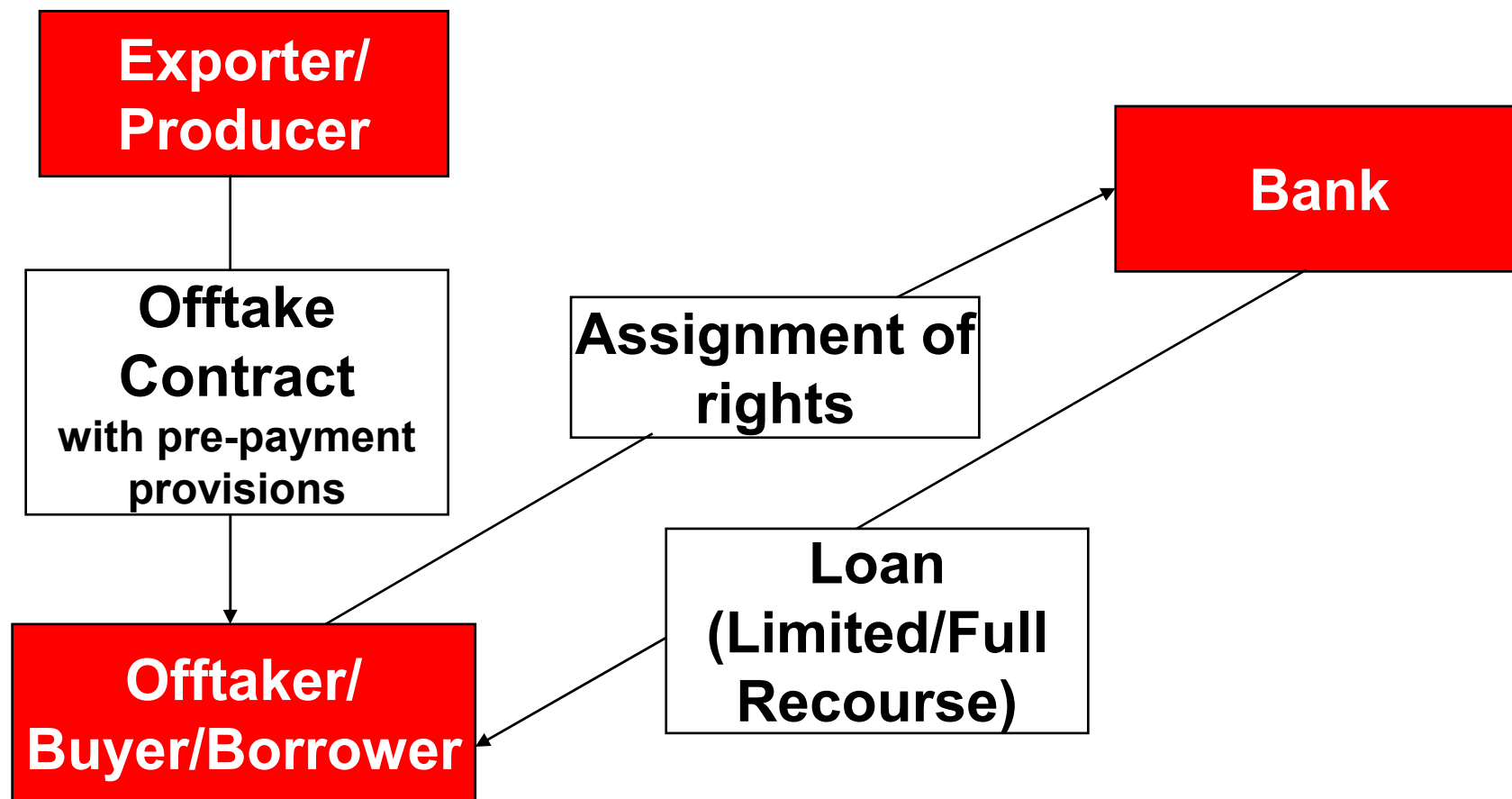
Pre-export finance



Pre-export finance - Legal issues

- Normal short term loan issues
- Review of offtake / Assignment of offtake / Foreign law issue
- Security/collection account - issues around security over deposit
- Commercial disputes between buyer and seller - Bank deals in documents not goods

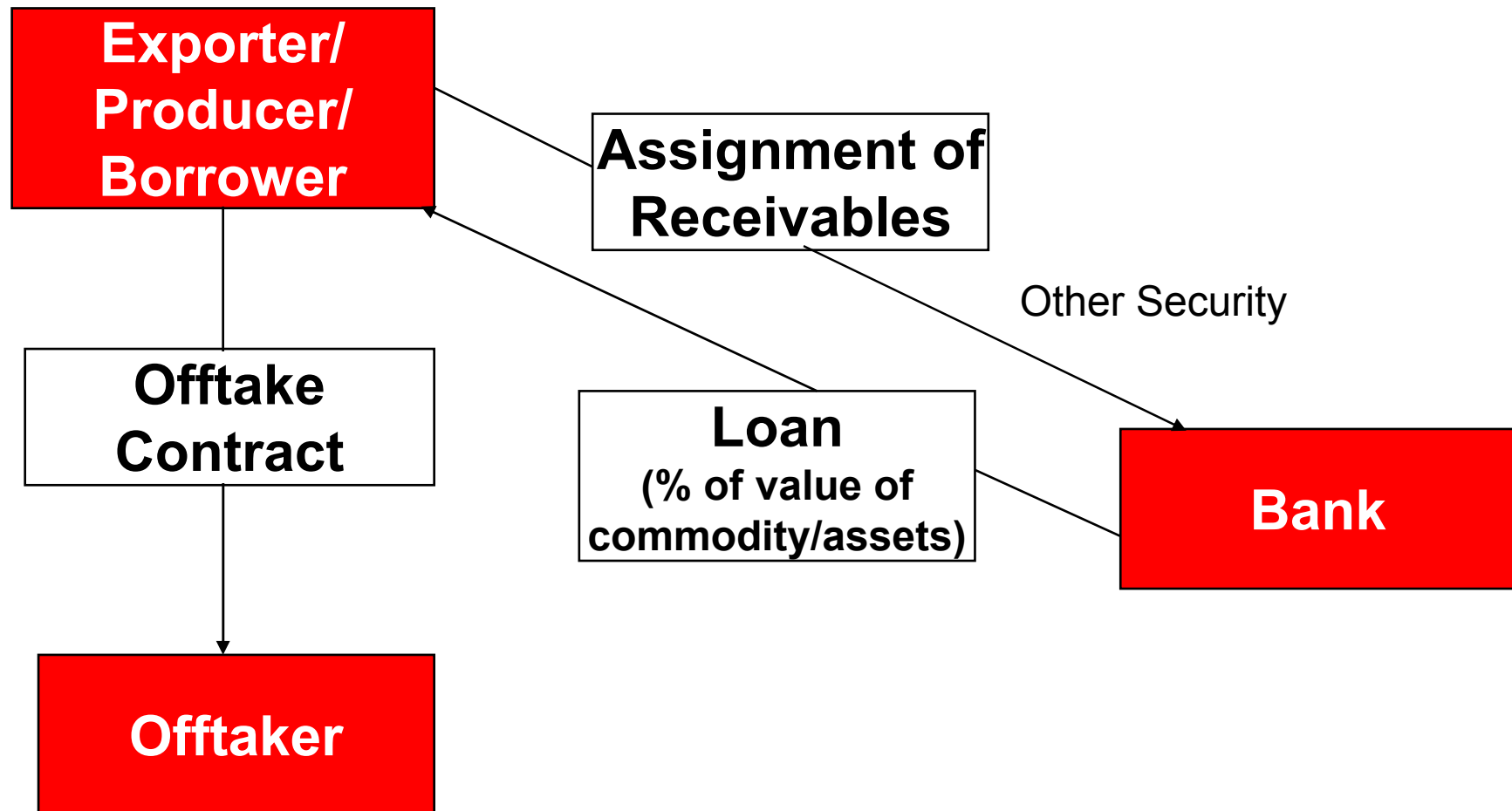
Pre-payment finance



Pre-payment finance - Legal issues

- Facility documentation / full recourse / limited recourse
- Assignment over the Exporter's rights to receive payment from the Buyer
- Payment Guarantees

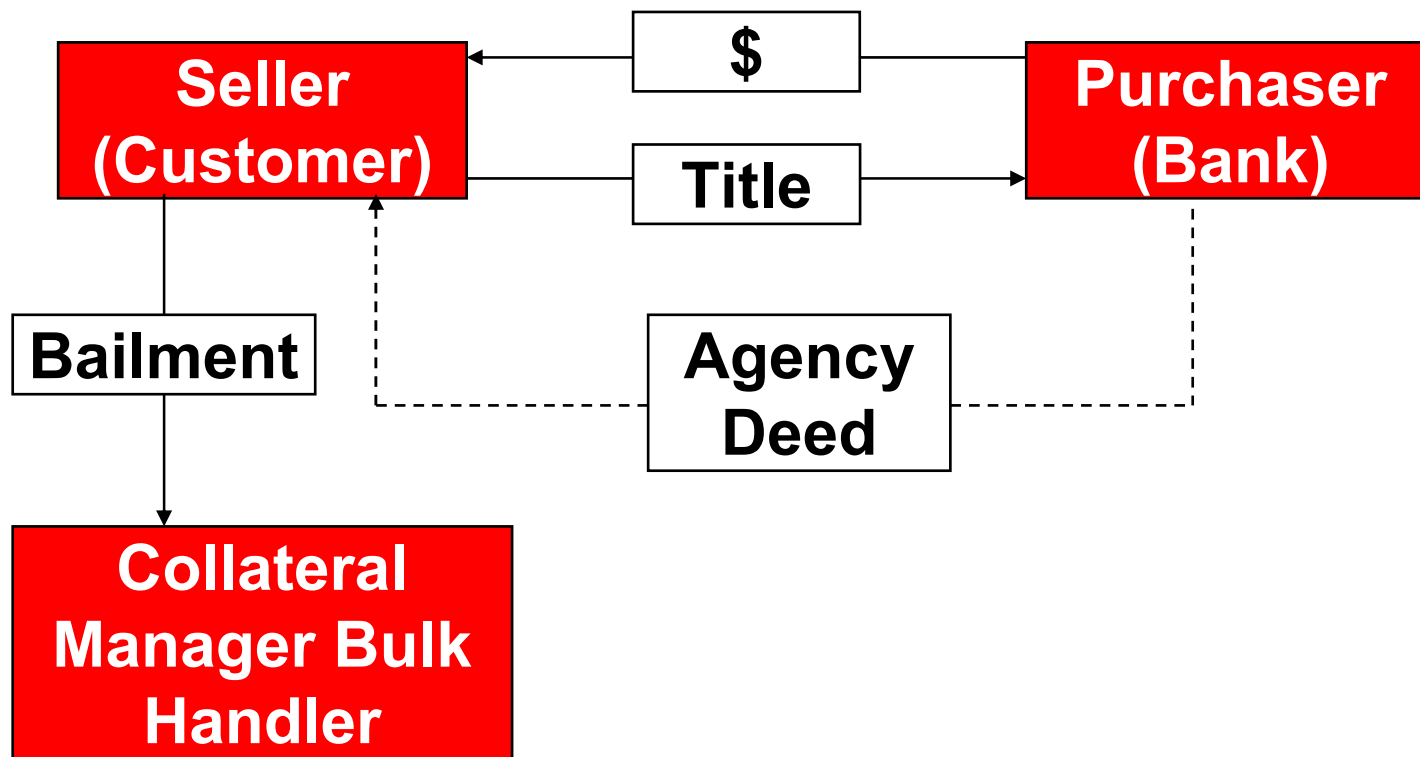
Borrowing base lending



Borrowing base lending – Legal issues

- Drafting appropriate Borrowing Base trigger for top ups, etc
- Issues around security over receivables

Sale and repurchase (Repos)



Sale and repurchase (Repos) - Legal issues

- True sale vs Assignment by way of security
- GST complications
- How to control the commodities: agency issues / bulk handling agreements
- Fungible nature of commodities – who owns them and how does it work when they are co-mingled

Disclaimer

The purpose of this presentation is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of Norton Rose Australia on the points of law discussed.

No individual who is a member, partner, shareholder, director, employee or consultant of, in or to any constituent part of Norton Rose Group (whether or not such individual is described as a “partner”) accepts or assumes responsibility, or has any liability, to any person in respect of this presentation. Any reference to a partner or director is to a member, employee or consultant with equivalent standing and qualifications of, as the case may be, Norton Rose LLP or Norton Rose Australia or Norton Rose OR LLP or Norton Rose South Africa (incorporated as Deneys Reitz Inc) or of one of their respective affiliates.