

# The ABCs of Orphan SPVs

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# About the presenters



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## **Barnabas Finnigan is Partner in the London Corporate practice.**

Barnabas' practice encompasses all aspects of corporate finance and banking law, with a particular focus on aviation and shipping finance transactions.

He advises a broad range of clients in connection with the entry into complex cross-border and multi-jurisdictional transactions including asset finance, project finance, structured finance, cross border financing, merger and acquisitions, and Cayman Islands stock exchange listings. Barnabas has worked on a number of market leading ABS transactions and has advised lessors on portfolio acquisitions and transfers as well as working on structured solutions for clients across the aviation industry in connection with the acquisition, financing and leasing of their aircraft. He also regularly assists Cayman Islands issuer vehicles in connection with the establishment and entry into repackaging and note issuance programs and other structured finance transactions.

# About the presenters



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**Terry-Ann Arch**  
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## **Terry-Ann Arch is Senior Vice President of Conyers Governance (Cayman) Limited.**

Terry-Ann specialises in providing directorship and administrative services to Cayman Islands vehicles within the structured finance space, including SPVs related to both asset finance and capital markets securitisations.

She has extensive experience acting as a lawyer on a diverse range of structured finance, corporate, capital markets and secured lending transactions. She also has experience with Sharia compliant Islamic finance transactions, having previously worked in the Middle East.

Terry-Ann also has specialist expertise in asset finance, including financing and leasing structures for aircraft, ships and related assets. Her clients in this context have included aircraft and ship owners, airlines, major operating lessors and financiers.

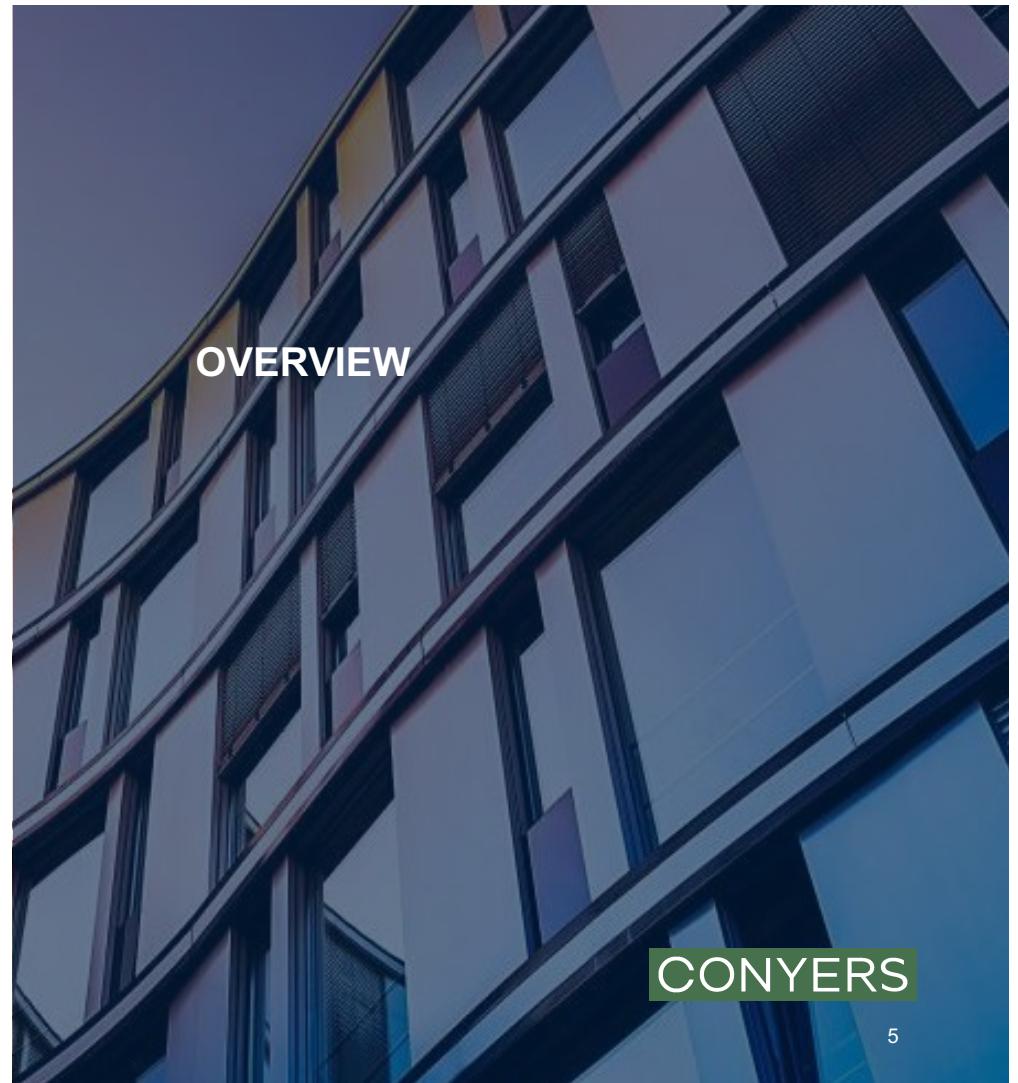




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# What is an SPV?

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# WHAT IS AN SPV?



An entity that has been established for a specific purpose (e.g. a specific transaction or to hold a specific asset)



“Special Purpose Vehicle”



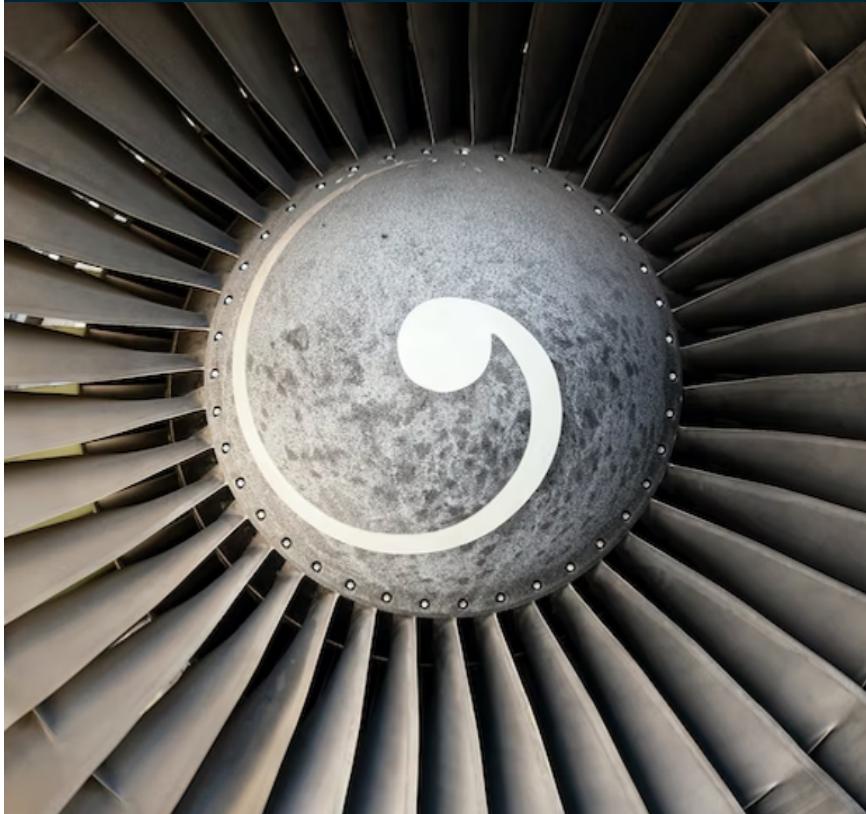
Enable an asset to be held within a corporate structure

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# Why use an SPV?

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## KEY REASONS FOR UTILIZING SPVS



Limit Liability

Tax efficient structuring

Facilitate Registration

Operational efficiencies

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# SPVS IN SECURED FINANCING TRANSACTIONS

Separate owner from asset

Offer financiers greater control over the company/asset

Provide more flexible security options

- Mortgage over underlying asset
- Security over other assets/income streams of SPV
- Share Security

Simplify enforcement of security

Bankruptcy remote structuring

# SPVS IN SECURED FINANCING TRANSACTIONS

Ijaara

Sukuk

Shariah-compliant  
aircraft leasing fund

Cayman  
Islands

Ease, Speed, Cost

Sophisticated Off Shore Centre

Tax Neutrality

Trust Regime

Reliable, 'Tried and Tested' Legal System

Dual Foreign Name

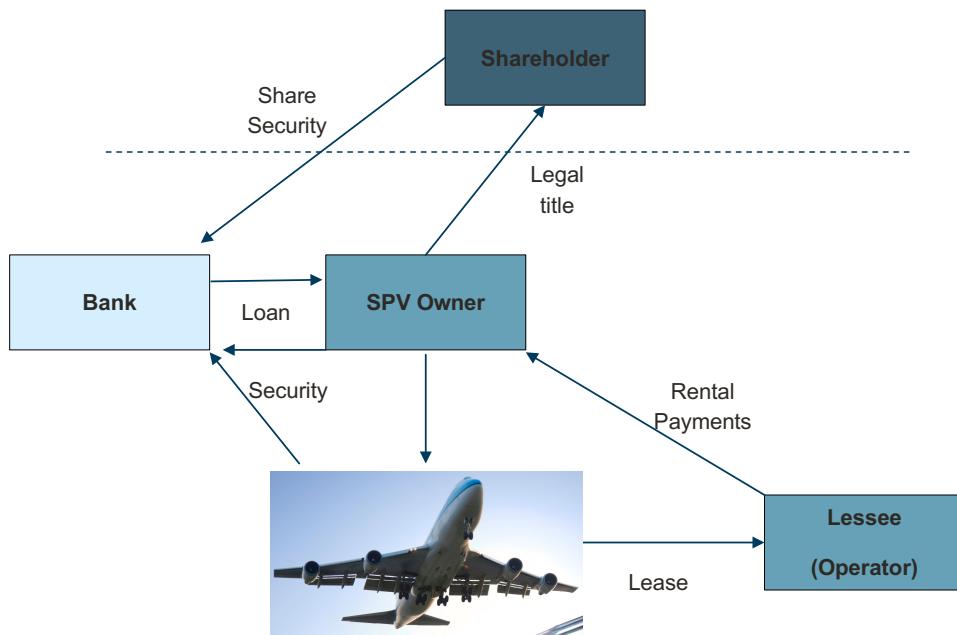
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# Structuring SPVs

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# ASSET FINANCE SPV



Can be structured as either direct or “orphan” ownership structures

Enables effective limitation of liability between an owner/operator and the underlying asset

Allows lenders/financiers to take effective security over the underlying asset by way of a share charge

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# “ORPHAN” SPVS VS. WHOLLY OWNED SPVS

## Wholly owned SPV

Owner retains control of SPV

SPV will be a wholly owned subsidiary forming part of the owner's group

## “ORPHAN” SPV

Bankruptcy remote, off-balance sheet “Orphan” structure

Transaction parties have no direct control over the SPV

Shares held in a charitable trust structure (e.g. orphan trust, STAR trust, purpose trust)

SPV does not form part of the group of any of the other transaction parties

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# Bankruptcy Remote / “Orphan” SPVs

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# BANKRUPTCY REMOTENESS | AN OVERVIEW

Avoid assets of SPV from being pulled into bankruptcy proceedings of the parent or another transaction party

Legal independence from other transaction parties

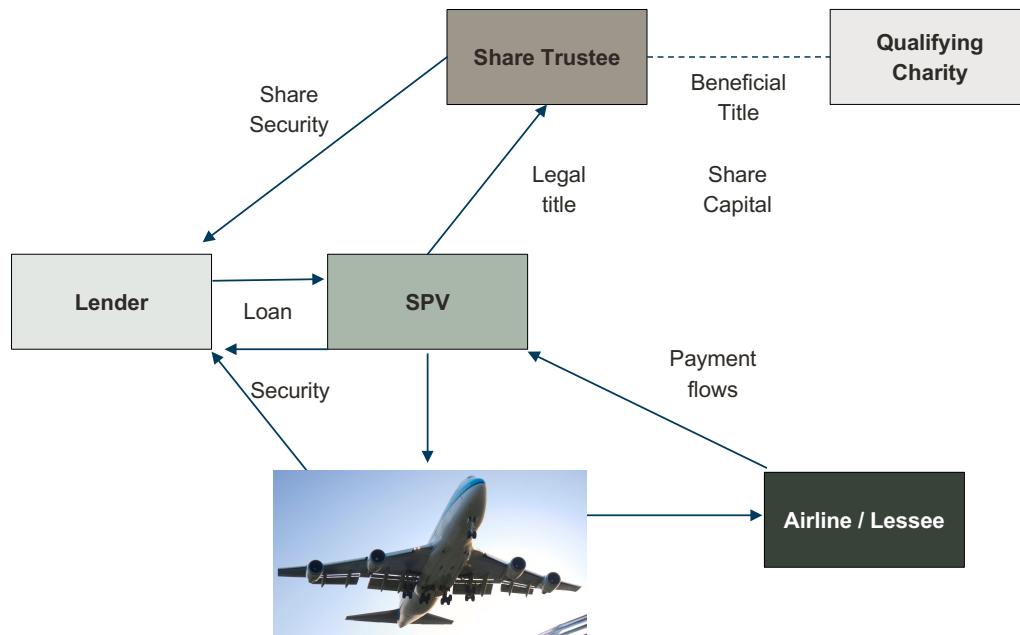
Contractual restrictions on liquidation

Contractual restrictions on issue/transfer of shares

Limited Recourse

Non-Petition

# ORPHAN SPV/OFF BALANCE SHEET STRUCTURE



- “Orphan” ownership
- Share Trustee/Administrator
- Declaration of Trust
- Contractual restrictions on dealings with shares
- Limited recourse / non-petition language
- Independent directors
- Share security often required

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# “Orphan” SPVs – The Director’s Cut

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# **Key issues to be aware of in structuring an SPV from a director's perspective**

**Limited Recourse/Non  
Petition Language in  
Documents**

**Fees**

**Representations /  
Warranties**

**Obligations  
of SPV**

**Indemnities**

**Regulatory  
Considerations**

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# Key issues to consider in structuring SPVs

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## KEY ISSUES TO CONSIDER



CHOICE OF  
JURISDICTION



STRUCTURING  
REQUIREMENTS



SECURITY  
STRUCTURE

# Thank You

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