



Legal Framework for Social Success Notes in India

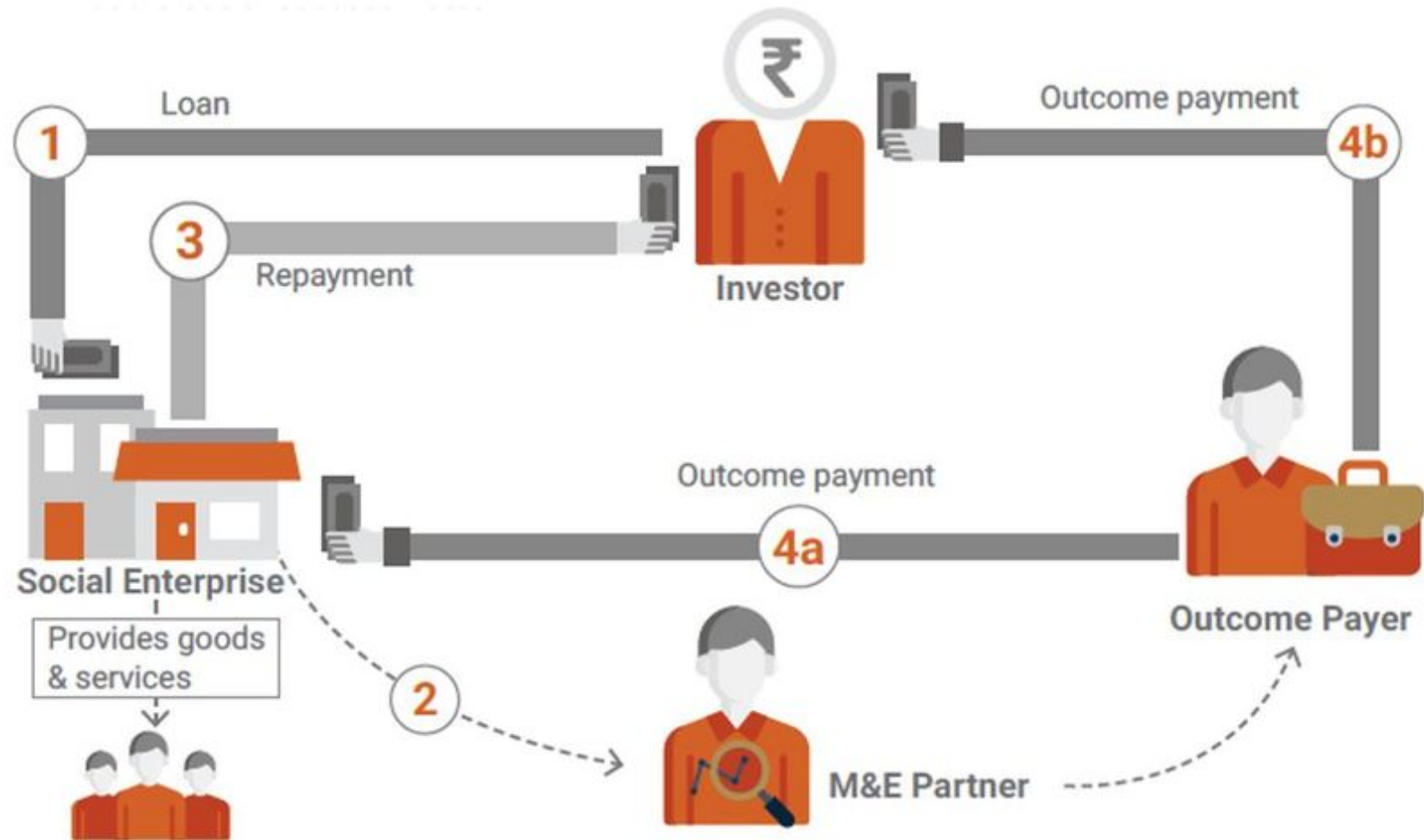


Agenda

- 1 An Overview of Social Success Notes
 - 2 Key Funding Instruments for Investors
 - 3 Indian Regulatory Regime
 - 4 Negotiating and Structuring Transaction Documentation
 - 5 Q&A
-

Takeaways: An understanding of the Indian legal regime on foreign lending and investments, and key contractual and legal aspects to take note of to implement Social Success Notes

What are Social Success Notes?



SSNs help align all stakeholders on a common mission to scale impact



Affordable mission-aligned debt funding for social businesses



Sustainable impact reaching vulnerable populations at scale

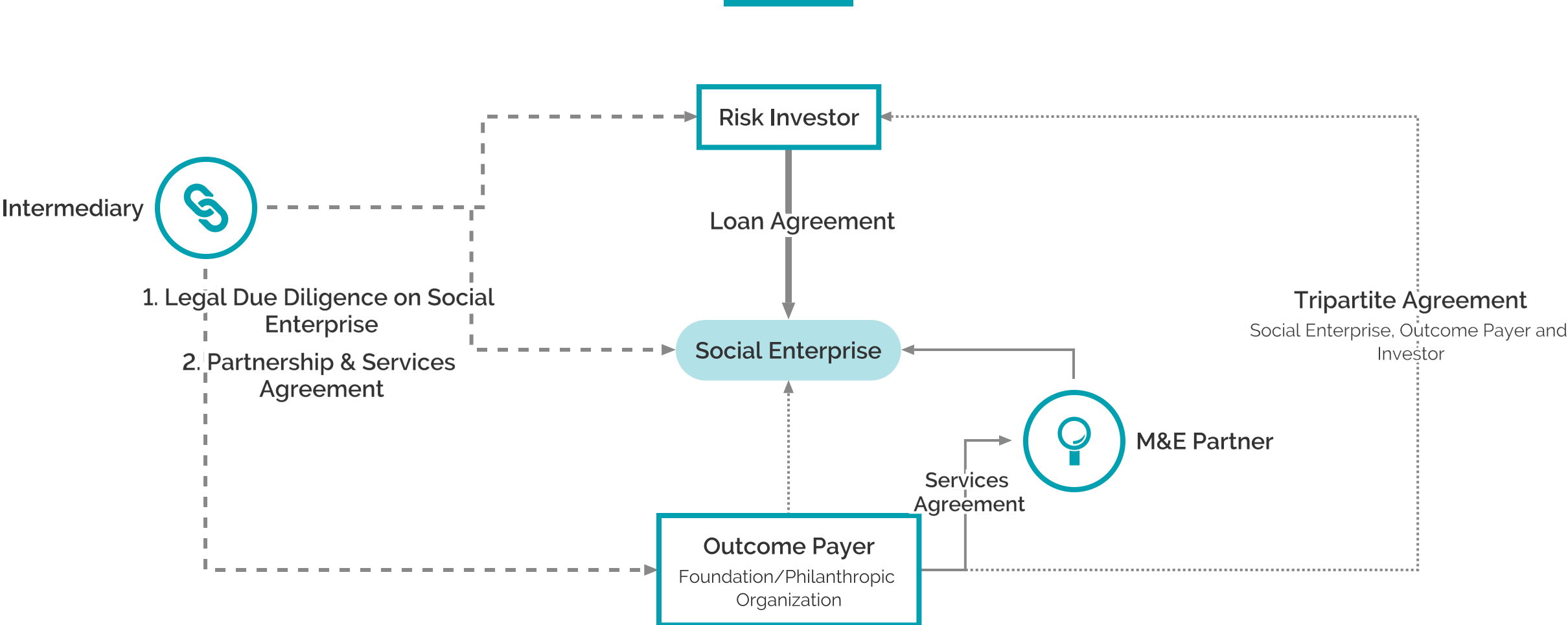


Making investing for real impact attractive for commercial investors



Effective use of philanthropic donor capital

Structure of a Social Success Note - Legal Aspects



A row of five conical mounds of powder in different colors (orange, green, blue, pink, and purple) sits on silver plates against a black background. The lighting is dramatic, highlighting the texture of the powder.

Social Success Notes

The Indian Legal Framework



Fundraising Options

How Indian Entities can access Funds

Equity

- Equity shares
- Compulsorily Convertible Preference Shares

Debt

- Loans
- Non-Convertible Debentures

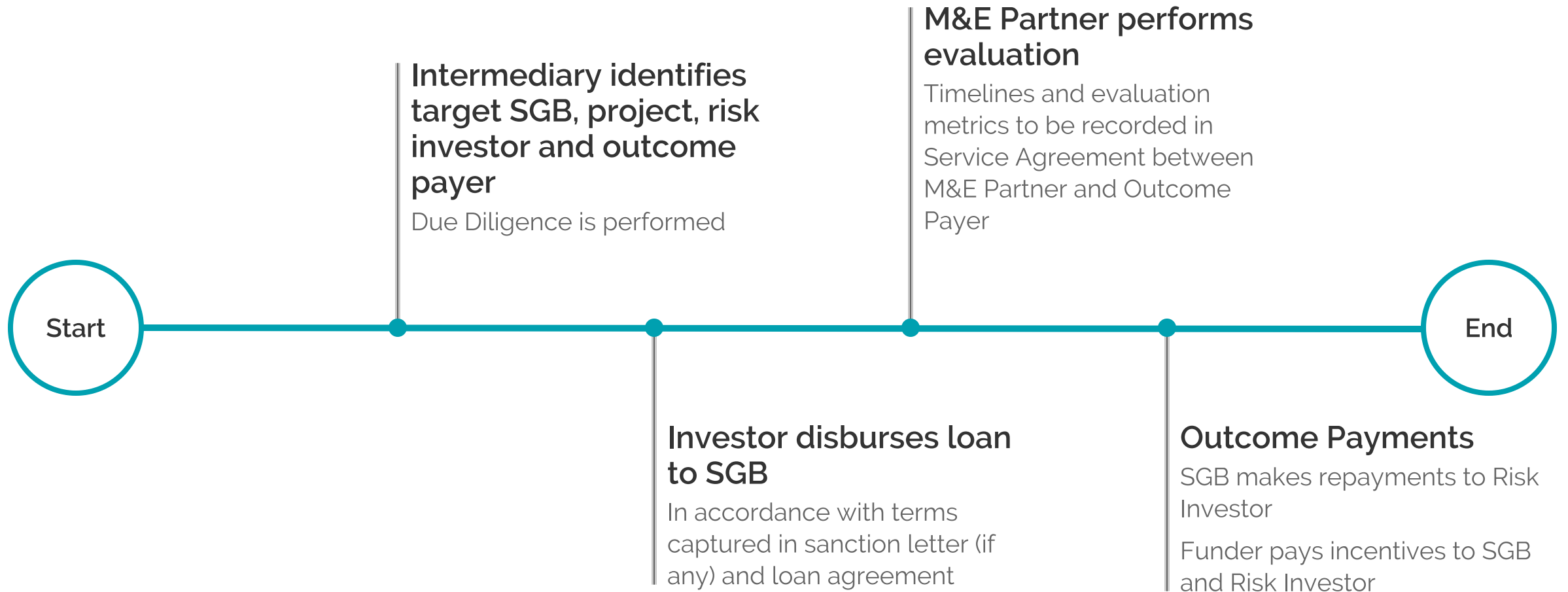
Donations and Grants

FCRA relevant when donor is outside India

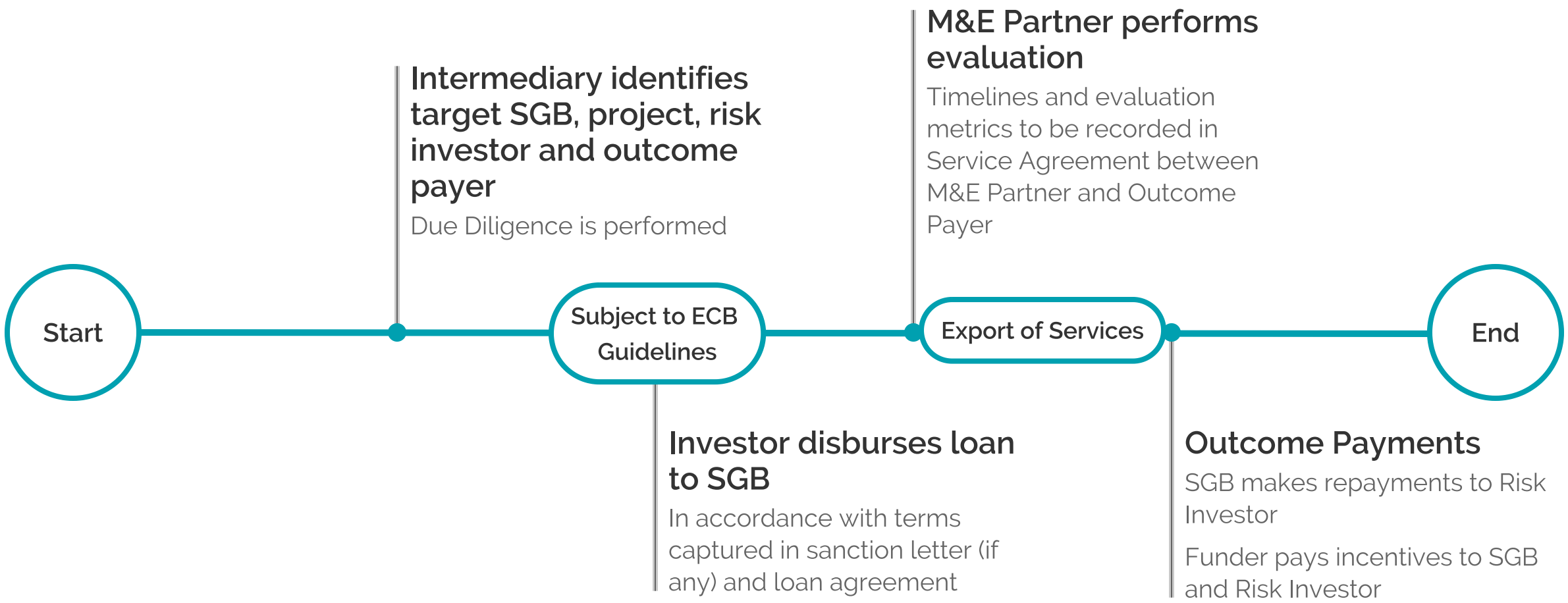
Hybrid Instruments

- Convertible Notes
- Compulsorily Convertible Debt

Process Flow for SSNs in India



Process Flow for SSNs - Foreign Counterparties



RBI External Commercial Borrowings (ECB) Master Directions

Either Foreign Currency Denominated or Rupee-Denominated



- Any Indian entity **borrowing** from a non resident entity must comply with ECB Guidelines
Up to USD 750 Million per year under the automatic route
- All entities eligible to receive FDI are **eligible borrowers** under ECB Guidelines - Private Limited Companies, LLPs etc
- Filing of **Form ECB** with Authorised Dealer bank
- Minimum average maturity period for ECBs - 3 years
- Reporting requirements include procuring a **loan registration number** from Bank prior to drawing down, reporting of any change in repayment terms (crucial for an SSN structure), and filing monthly returns

Foreign Contributions (Regulation) Act

Any donations made to an Indian entity from a foreign source

- Requires registration with the Ministry of Home Affairs through the filing of **Form FC3A**
- Any person receiving foreign contributions must have an 'educational, cultural, economic, religious, or social' objective
- **Eligible 'persons'** are an individual, an HUF, a society, a trust or a Sec. 8 Company.
- To ensure that a transaction **does not have FCRA implications**, payment must be in lieu of goods or services (Explanation 3 to Sec 2(h) of the FCRA)



Pre-transaction Procedures and Timelines

Financial and
Commercial Due
Diligence

Finalization of
commercial terms **(1-2
weeks)**

Execution and
Investment

**Legal Due Diligence (1 -
2 Months)**

Legal Counsel of the
Intermediary, or of the Investor
Coordinated by in-house
functions of all Parties

**Negotiation of
Commercial Documents
(1-2 Months)**

Legal counsel and in-house
legal teams of all counterparties

Legal Due Diligence

Indicative Pre-transaction Checklist

1

Corporate Governance

Constitutional documents, governance structure, details of Board

2

Audit Processes

Risk Management and Compliance, Business Continuity Protocols

3

Statutory Registers, Meetings, Returns

4

Details of Shareholding Structure and Debt, if any

5

Business Plan and Key Licenses & Contracts

6

Human Resource Details

Key contractual aspects in structuring SSN Documentation

Loan Agreement



Recording of loan size, interest rate, and outcome payments

Size of loan, tranches, coupon rate - circumstances in which these clauses vary

Tripartite Agreement

Size of outcome payment: fixed, or varies with level of outcomes?

M&E Services Agreement



Outlining project evaluator roles

Project design to ensure that target recipients, geographies, goals are feasible and measurable

Documentation to address stage of the project at which they get involved, and their specific deliverables (Outcome evaluation or ongoing evaluation?)

All Documents



Termination and consequences

Events of default
Parties' rights to terminate
Consequence of *force majeure* (How would an event like COVID19 affect the contract?)

All Documents



Standardized Terms across Documentation

Governing law and Dispute Resolution mechanism to be common across contracts
Co-terminous nature of contracts

Key contractual aspects in structuring SSN Documentation

Tripartite Agreement & Loan Agreement



Consequences of failure to meet targets

Capital protection such as an investment guarantee, if applicable, to be recorded

Early termination triggers in the event of incapacity to meet outcomes on an ongoing basis

Tripartite Agreement & Loan Agreement



Covenants on SGB

Documents must place:

- Reporting requirements
- Requirements to retain human resources assigned to the project, addressing key man risk
- Covenants against mission drift
- Cure periods

Tripartite Agreement & M&E Services



If Government is the Outcome Payer

In India, Govt partnerships effected through: bidding (tendering process)/negotiation in response to a call for proposals from the Govt., or MoU based partnerships

Standard-form contracts likely, with limited negotiation over certain clauses. Eg. sovereign immunity

State-wise differences in public procurement of goods and services

Clauses of relevance to each Stakeholder

Negotiation of Legal Documentation

SGB

- Alignment of repayment schedule with loan servicing capabilities
- Events of default and consequences of default
- Rights available to Lender (prior consent for management changes)
- Reporting Obligations

Investor/Lender

- Payment schedule for SGB as well as outcome payer
- Permissible assignment
- Reporting and oversight rights
- If applicable, rights to revise commercial terms such as coupon rate

Outcome Payer

- Payment triggers and timelines
- Measurable definition of outcomes
- Independent measurement of outcomes, if required

M&E Partner

- Outlining of roles and responsibilities
- Frequency and mode of deliverables
- Ongoing evaluation or outcome evaluation?
- Payment mechanics, and consequences of termination of other docs.





A Comparative View of Funding Instruments

	SSN	Other Results Financing Models (DIB/SIBs)	GRANTS	LOAN	EQUITY
Regulation in India	ECB Guidelines	Depending on instrument	FCRA	ECB	FDI and FEMA
Outcome Measurement	Yes	Yes	No	No	No
Legal Cost	High	High	Relatively low	Relatively low	Relatively low
Time	6 months to 1 year	6 months to 1 year	1-2 months	~ 1 month	1-3 months
Players Involved	Intermediary, SGB, M&E Partner, Investor and Outcome Payer	Intermediary, NGO/NonProfit, M&E Partner, Outcome Payer and Investor	Donor and Recipient	Lender and Borrower	Investor and Investee
Access	Any entity eligible to receive FDI	Depending on instrument	Trust, societies, S.8 Cos.	Companies, LLPs,etc	Any Company

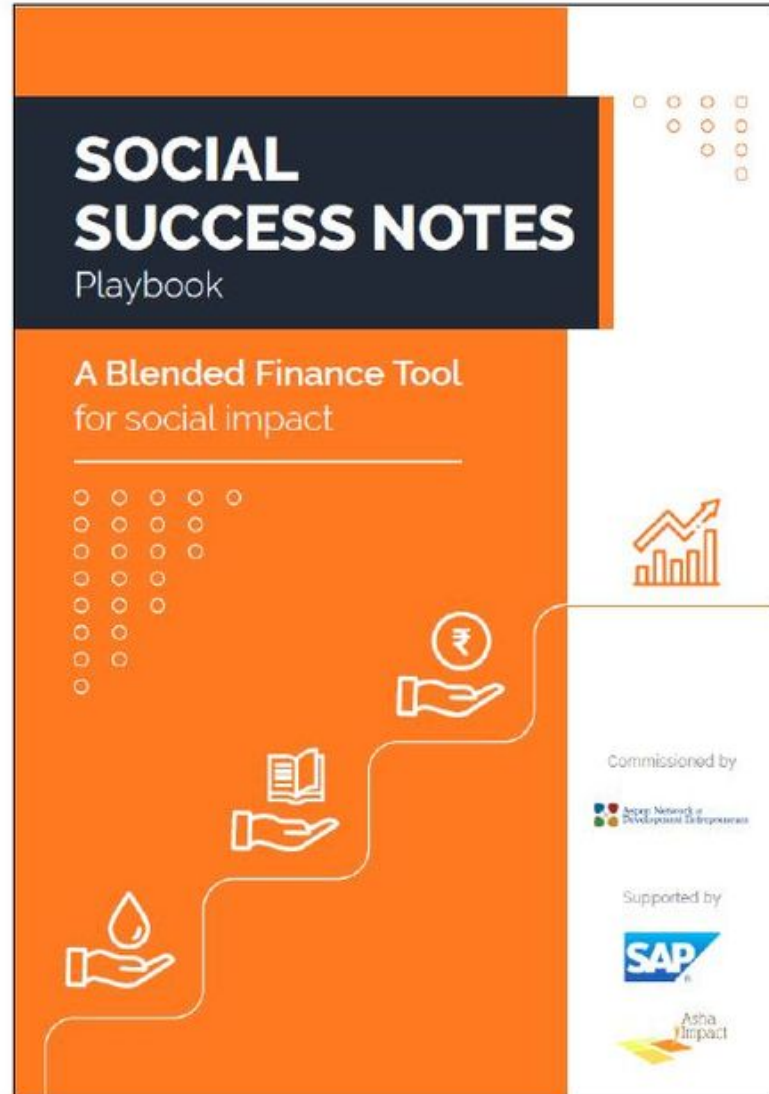


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