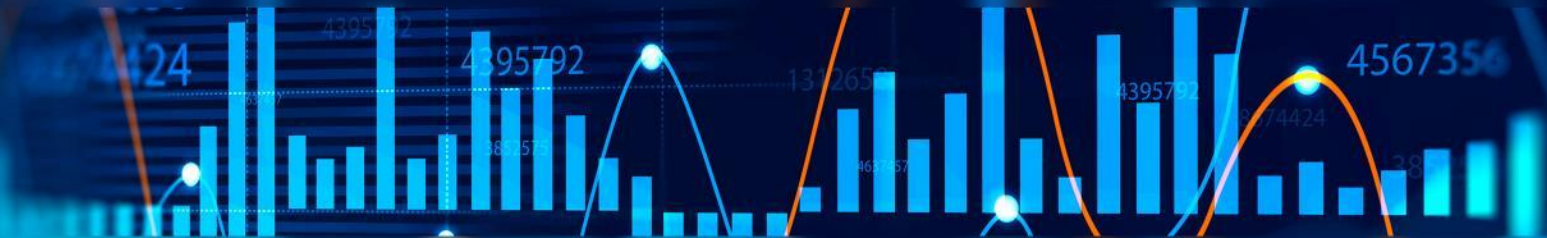
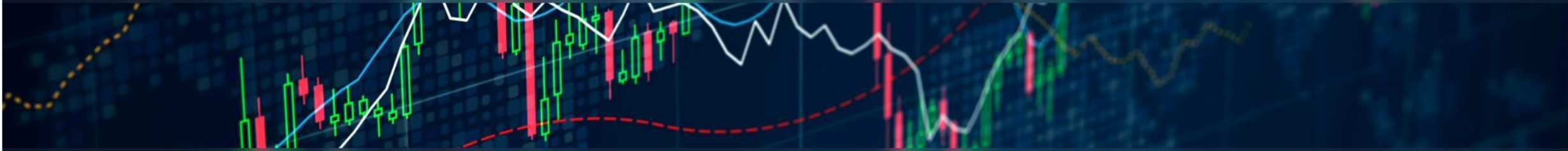


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FUNDAMENTALS OF FINANCIAL MARKETS
SINGAPORE | TUESDAY, 3 SEPTEMBER 2024

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SECURED LENDING

JERVIS CHAN AND SACHIN KINGER

SINGAPORE | TUESDAY, 3 SEPTEMBER 2024

INTRODUCTION TO SECURED LENDING



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SECURED LENDING



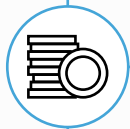
Why do Lenders take security?



What security should the Lenders look to get?



What security enforcement strategies are available to Lenders (going concern/liquidation)?



What issues should Lenders consider in cross border transactions?



How can security be defective/attacked and how can Lenders mitigate such risks?



What issues should Lenders consider in amendment exercises?

SECURED LENDING

WHY DO LENDERS TAKE SECURITY

Why take security?

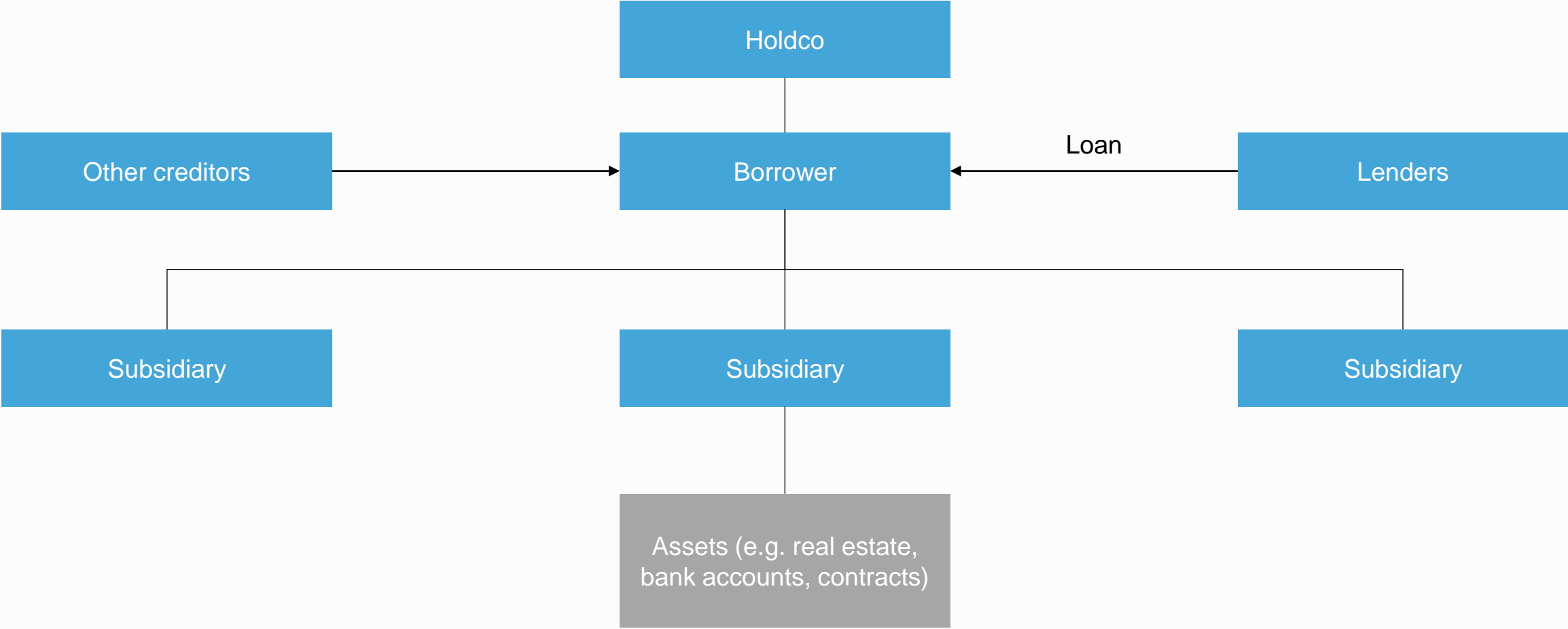
- Credit value/protective/enforcement issues
- Priority in insolvency scenario

Other forms of credit protection

- Negative pledge
- Guarantee
- Right of set-off
 - Legal set-off
 - Equitable set-off
 - Banker's set-off
 - Insolvency set-off
 - Contractual set-off

STRUCTURED LENDING

STRUCTURING EXAMPLE



SECURED LENDING

WHAT SECURITY (AND WHAT TYPE) SHOULD LENDERS LOOK TO GET



Shares

- Charge vs Mortgage
- Listed shares held in a custodian account
 - where necessary, notification of charge
- Shares in a private company
 - share certificates
 - share transfer forms

Choses in action

- Assignment
 - notification/acknowledgement requirements

SECURED LENDING

WHAT SECURITY (AND WHAT TYPE) SHOULD LENDERS LOOK TO GET (CONTINUED)

Bank Accounts

- Assignment or charge
 - notification/acknowledgement requirements

Book Debts

- Assignment
- Fixed charge
- Floating charge

Land

- Mortgage
 - registration with land authorities (e.g., Singapore Land Authority)
- Assignment of rental proceeds
 - notification/acknowledgement requirements

SECURED LENDING

ENFORCEMENT STRATEGIES

What to enforce

What strategy to take depending on the secured asset

Enforcement of security

Entitlement to enforce

Modes of enforcement

— Court

— Power of sale – private/auction

— Appropriation

— Interim management e.g. share security

— Power of attorney

— Set-off

Receivers

Preservation of value

SECURED LENDING

CROSS BORDER ISSUES

Documentary requirements:

- Form
- Formality
- Law
- Language
- Tax

Maintaining Perfection

Perfection of security:

- Possession
- Registration
- Notice

Capacity issues

- Borrower/security provider incorporated overseas

SECURED LENDING

HOW CAN SECURITY BE DEFECTIVE/ATTACKED

Legal/documentary considerations for the business

- Power/authority
- Breach of contract
- Perfection requirements
- “remittance” (bringing the funds home)
- Enforcement process

Insolvency

Insolvency (winding-up/bankruptcy)

- clawback periods under Singapore law
 - transactions at undervalue: 3 years
 - unfair preferences: 1 year (for unconnected persons) or 2 years (connected persons)
 - extortionate credit transactions: 3 years

Other considerations – for example:

- Difficult counterparties:
 - challenges from borrower/minority shareholders/creditors
- Undue influence/duress on surety
- Cost/benefit analysis
- Financial assistance
 - when a company helps a person with the purchase of its own shares or the shares of its holding company

SECURED LENDING

AMENDMENTS

Types of amendments

increase in credit facilities/upsized to facility limit

amendments which are beneficial to the borrower

other financial amendments

amendments that increase the likelihood of an event of default occurring

Security/guarantee confirmations

Supplemental security (i.e., “new” security)

PLEASE GET IN TOUCH AND CONTINUE THE CONVERSATION

Feedback Survey



Client Portal Subscription



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