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# Proskauer University: Private Credit Building Blocks Series

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- **Program 1 | Wednesday, November 2, 2022**
  - Introduction to Private Credit: Deal Process, Documentation, and Structure Considerations
- **Program 2 | Wednesday, January 25, 2023**
  - Leverage Ratios: Definitional Fundamentals and Pitfalls
- **Program 3 | Wednesday, February 15, 2023**
  - So You Thought You Were First?
- **Program 4 | Wednesday, March 22, 2023**
  - Leakage: Plug The Holes BEFORE The Flood
- **Program 5 | Tuesday, April 18, 2023**
  - Structural Risks: Sneaky Shenanigans
- **Program 6 | Wednesday, May 24, 2023**
  - Key Market Terms and Commitment Letter Basics
- **Program 7 | Thursday, June 15, 2023**
  - Practical Exercise: Tricks to Quickly Spot Issues in Financing Grids

# Introduction to Private Credit: Deal Process, Documentation, and Structure Considerations

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Szeman F. Lam

November 2, 2022

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# Introduction to Private Credit

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- A. Private Credit: An Explosive Market
- B. Deal Process and Documentation: Practical Considerations
- C. Capital Stack and Recovery Priorities
- D. Leveraged Loans and Corporate Structure

# The Private Credit Market

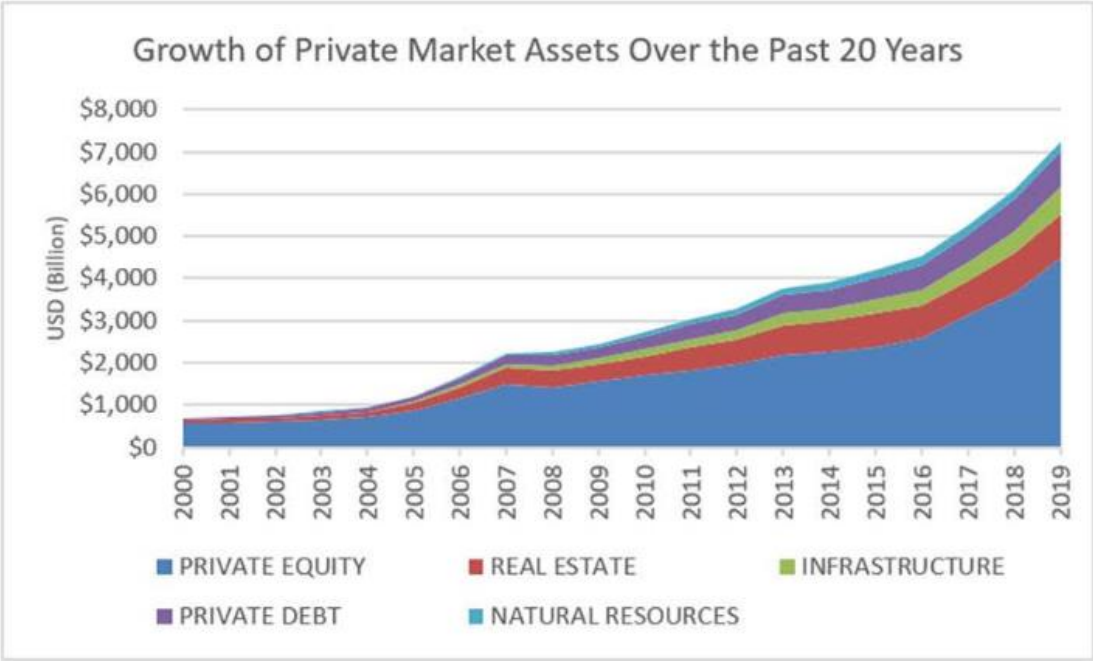
## An Explosive Market

# The Private Credit Market

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- 2008 Great Recession
  - Collapse of Bear Stearns, Lehman Brothers and related systemic financial risks
  - Liquidity freeze
  - Dodd-Frank and other banking regulations
- Private Credit Opportunity
  - Expanded market share
  - Started in the lower middle market and/or junior capital
  - Migrated to upper middle market leveraged loan financing for acquisitions, dividend recapitalizations, refinancings and general working capital growth financing

# The Private Credit Market



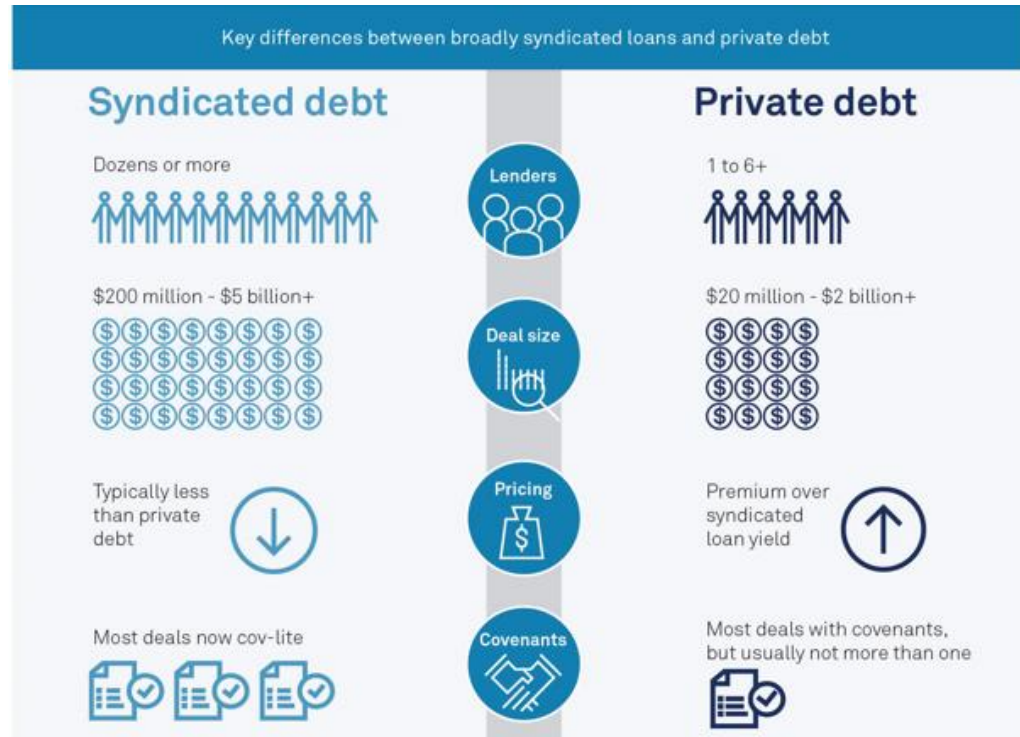
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# The Private Credit Market Today

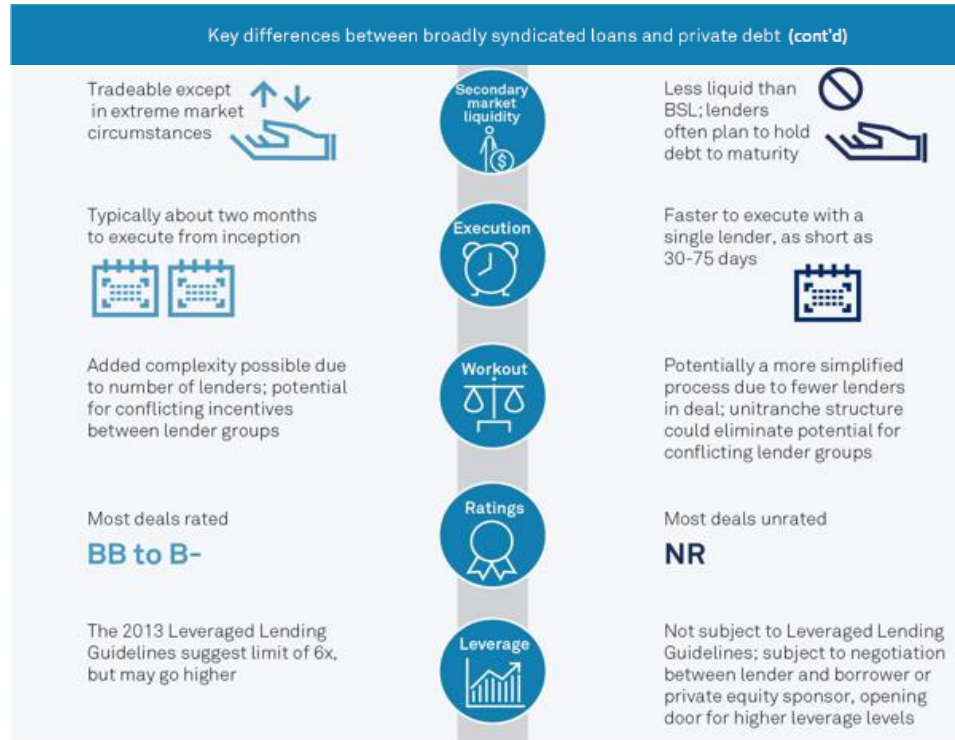
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- Private credit is currently the **third-largest** private capital asset class after private equity and real estate
- Assets under management exceed **\$1.3 trillion** (larger than bank-led syndication market) and are expected to continue growing globally
- Per Proskauer Private Credit Data, over **80%** are sponsor-backed, leveraged finance, senior secured **unitranche** transactions
- Has gone up market: Now over **50** transactions over **\$1 billion**
- Confluence of bank-intermediated syndication market and private credit lending markets
- Global expansion

# Private Credit vs. Syndicated Market: What Makes Private Credit An Attractive Alternative?



# Private Credit vs. Syndicated Market: What Makes Private Credit An Attractive Alternative?



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# Deal Process and Documentation

## Practical Considerations in Closing a Loan

# Deal Process – Committed Deals

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## Financing Grid Responses

- Solicitation of high-level economic terms

## Commitment Papers (Commitment Letter + Term Sheet + Fee Letter)

- Negotiation of substantive legal and business terms, including selection of a **binding precedent**
- Completion of business and legal due diligence
- Signing of acquisition agreement

## Credit Documentation

- Finalization of long-form documentation, including minimal negotiation
- Closing/effectiveness of acquisition

# Deal Process – Non-Committed Deals

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## Term Sheet (Optional)

- Negotiation of high-level business terms



## Credit Documentation

- Negotiation of long-form documentation
- Completion of business and legal due diligence
- If in connection with an acquisition, simultaneous signing of credit documentation and acquisition agreement and closing of acquisition

# Deal Process – Main Legal Documents

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- **Commitment Papers**
  - Commitment Letter, Term Sheet, Fee Letter
  - Acquisition Agreement and Disclosure Schedules
- **Credit Documentation**
  - Closing Checklist
  - Credit Agreement/Loan Agreement/Note Purchase Agreement with Exhibits and Schedules
  - Security Agreement, Pledge Agreement, Guaranty, and IP Security Agreements
  - UCC-1 Financing Statements
  - Corporate, Authorization, and Organizational Documents
  - Legal Opinions
  - Borrowing Notice, Closing Certificate, Solvency Certificate, and Letter of Direction
  - Intercreditor Agreement, Subordination Agreement, and/or Agreement Among Lenders
  - Payoff Letter, UCC-3 Termination Statements, and IP Releases

# Deal Process – Main Legal Documents

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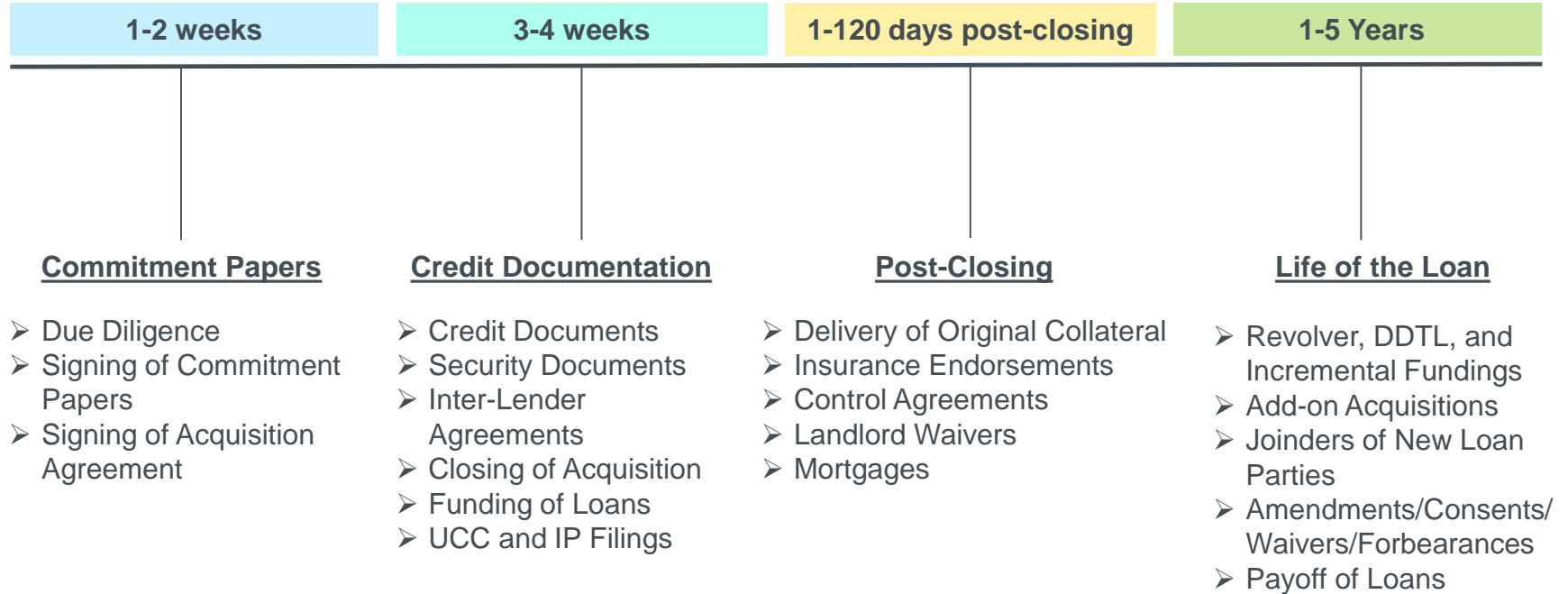
- **Post-Closing**
  - Insurance Endorsements
  - Control Agreements
  - Landlord Waivers
  - Mortgages
  
- **Life of the Loan**
  - Incremental Amendments
  - Add-On Acquisitions
  - Joinder of New Credit Parties
  - Amendments/Consents/Waivers to Credit Agreements
  - Payoff Documents

# Key Business Team Process Management Considerations

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- Diligence
  - Borrower/Lender KYC
- Funding
  - Mechanics
  - Borrowing Notice
  - Funding Memo
  - Letter of Direction
  - Funds Flow
  - Wiring Information
- Pre-Closing
  - Internal Protocols
  - Managing Co-Lenders
  - Lender Allocations
  - Gathering Signature Pages
- Authorization
  - Release of Signature Pages
  - Closing Call
  - CPs Email

# Deal Process – Lifecycle of a Deal

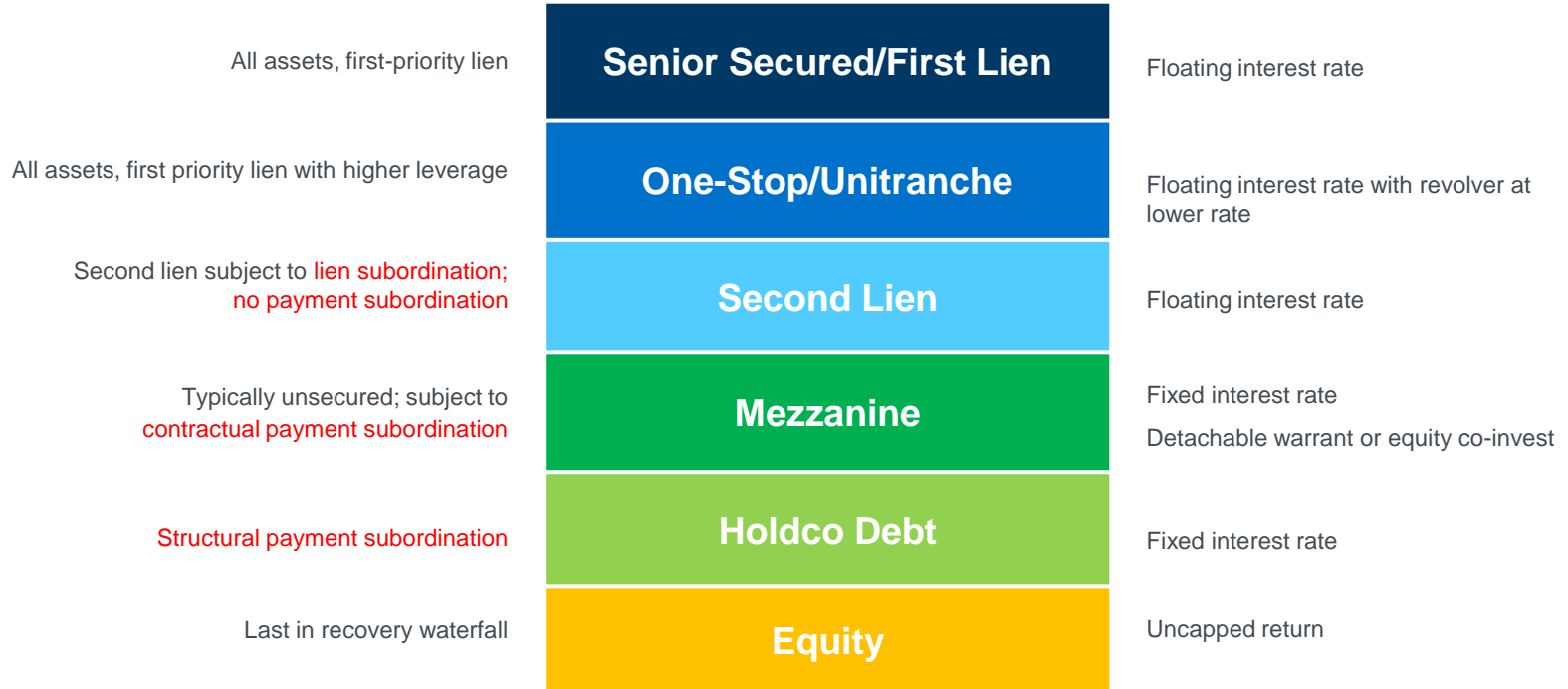


# Typical Layout of a Credit Agreement

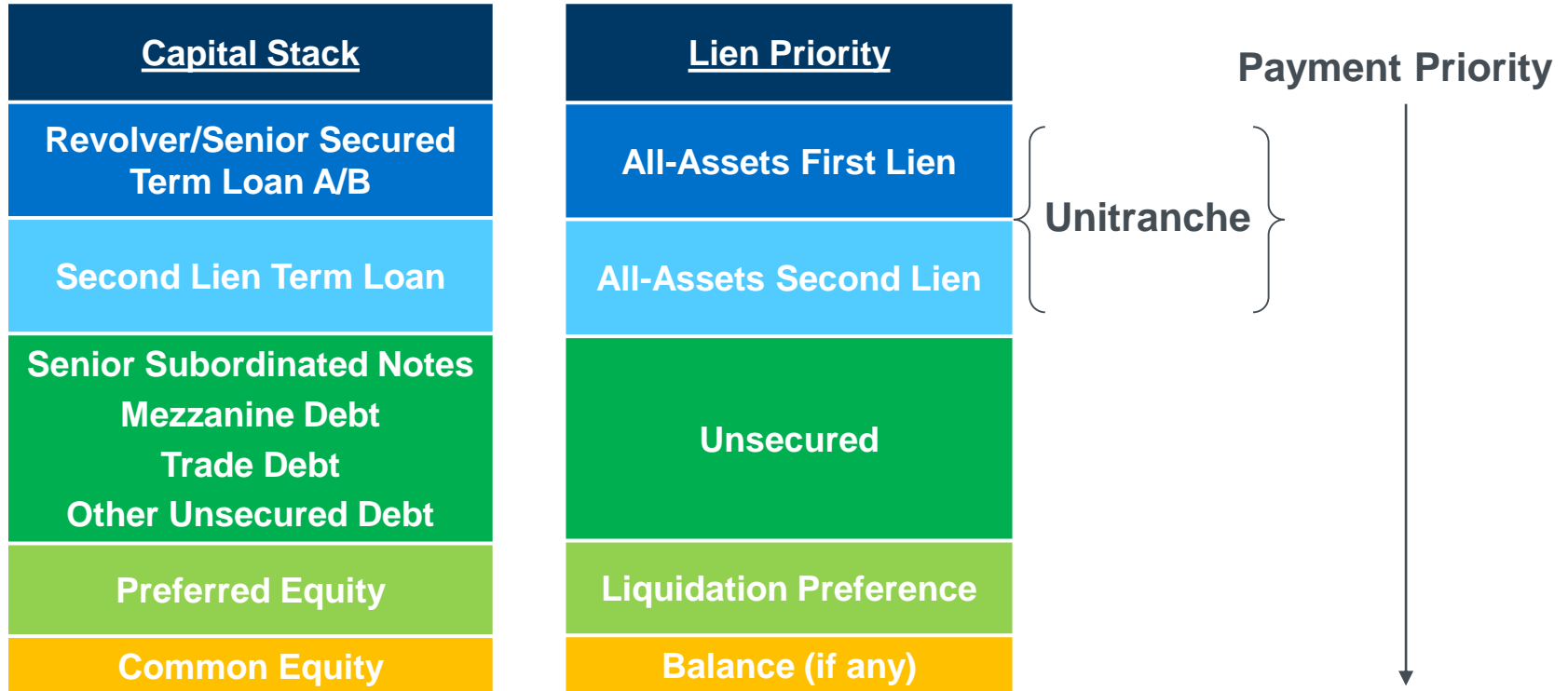
	Table of Contents
Article I	Definitions and Accounting Terms
Article II	Commitments and Credit Extensions
Article III	Taxes, Increased Costs Protection, and Illegality
Article IV	Conditions Precedent to Credit Extensions
Article V	Representations and Warranties
Article VI	Affirmative Covenants
Article VII	Negative Covenants
Article VIII	Events of Default and Remedies
Article IX	Administrative Agent
Article X	Miscellaneous

# Capital Stack and Recovery Priorities

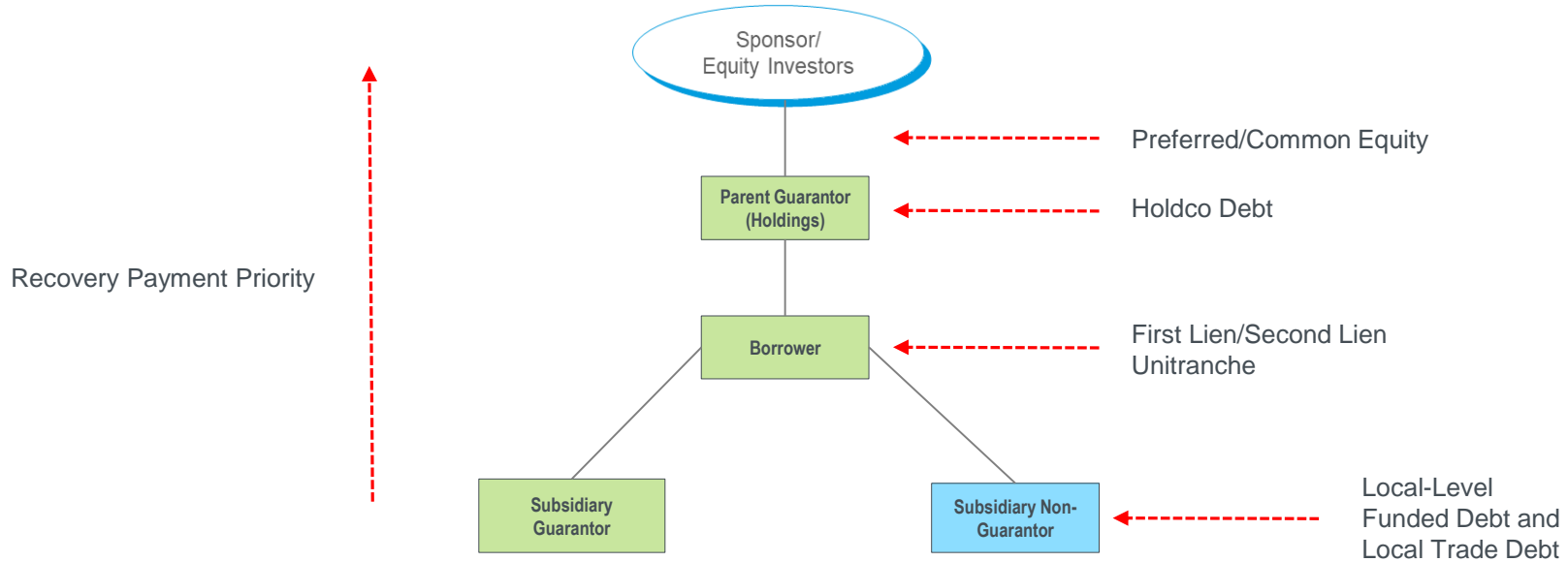
# Capital Stack



# Capital Stack – Lien and Payment Priorities



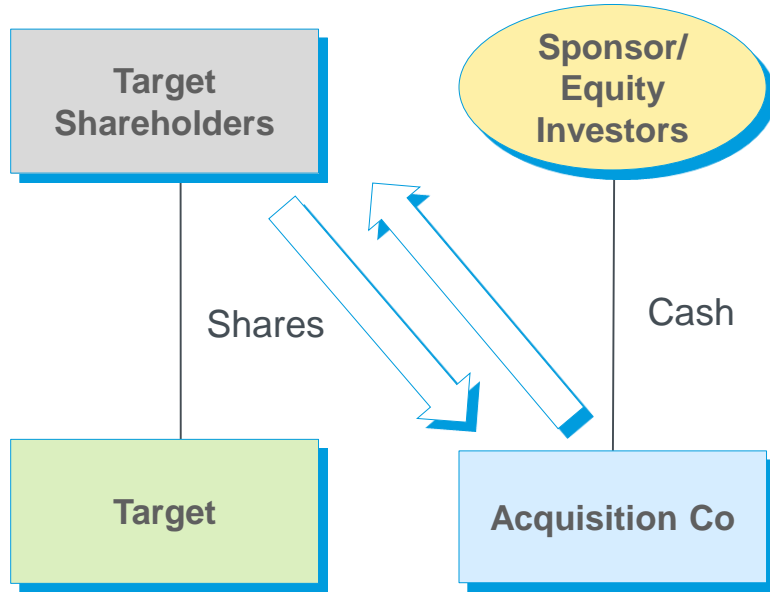
# Loan Structures and Recovery Priorities



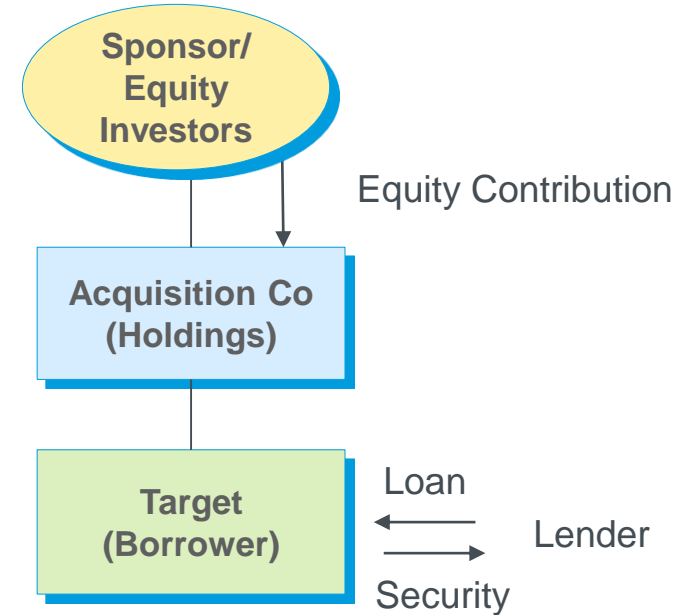
# Leveraged Loans and Corporate Structure

# Stock Acquisition Steps (Simplified)

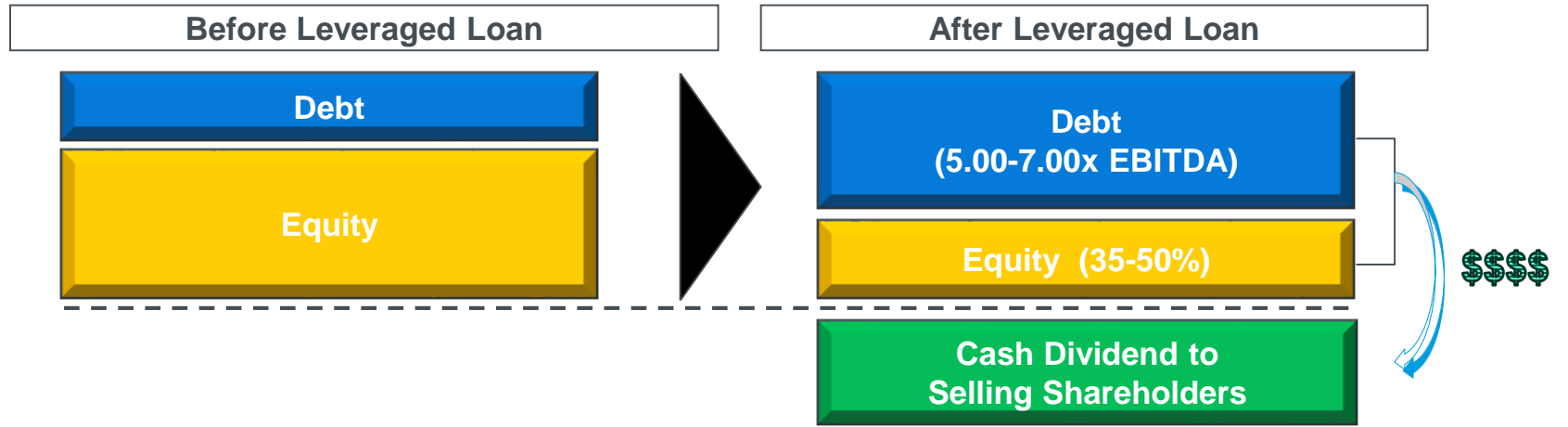
## Pre-Sale



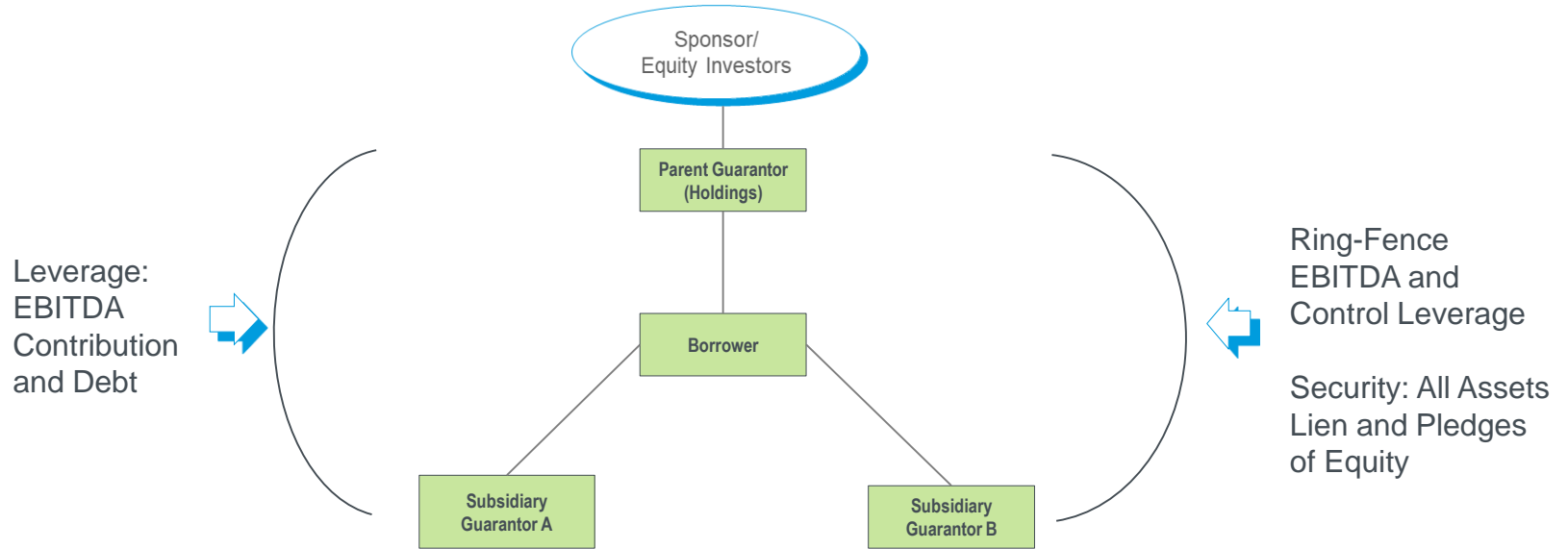
## Post-Sale



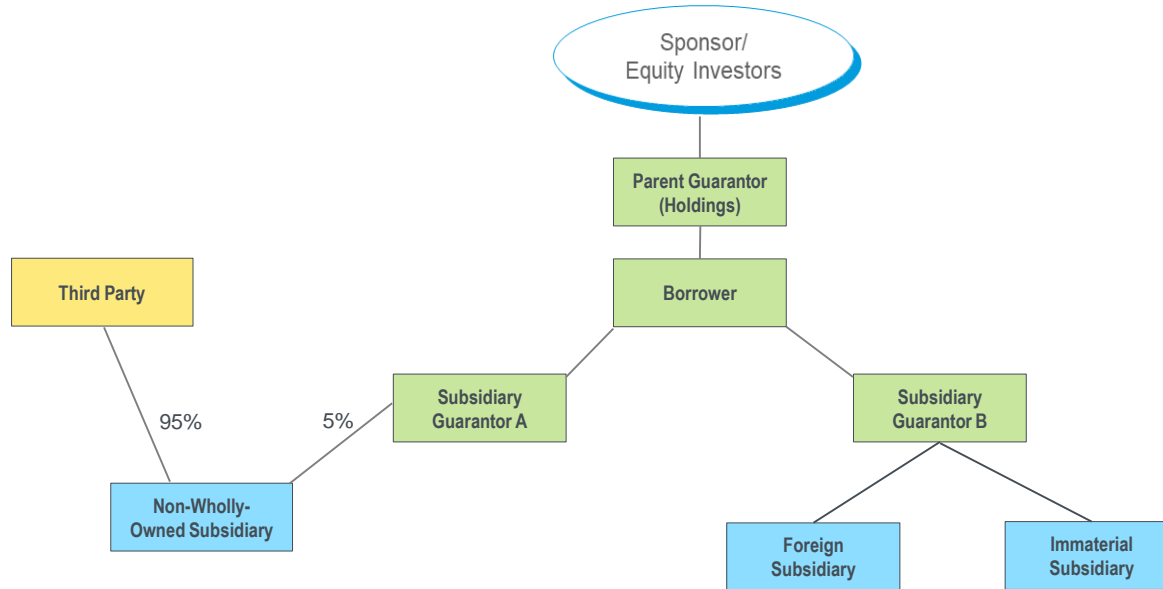
# Leveraged Loan Structure (Generally)



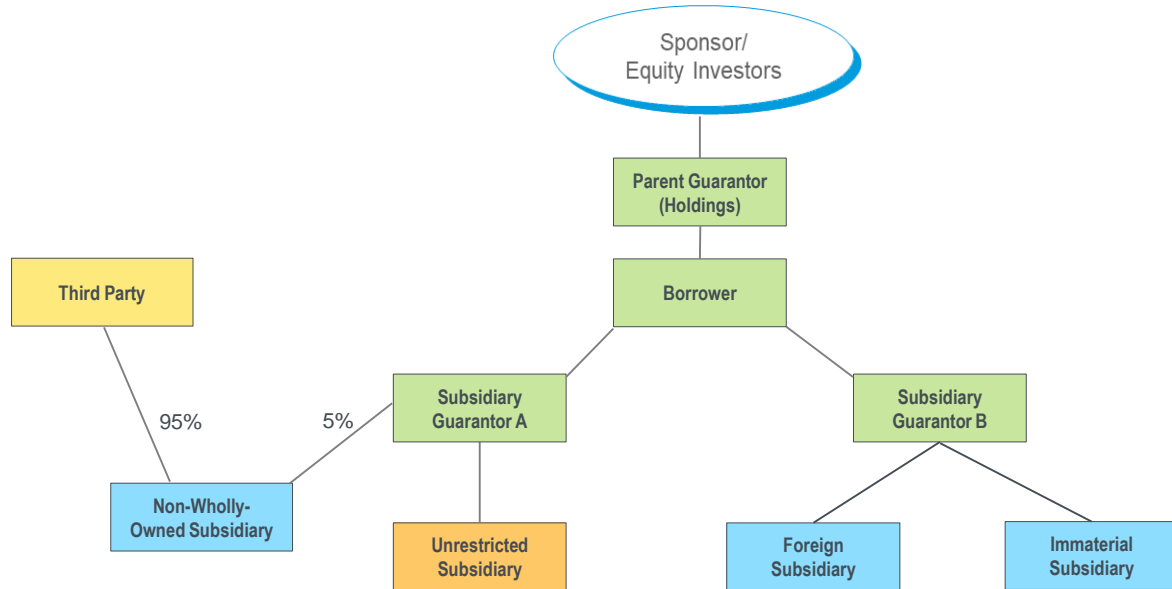
# Corporate Structure – Loan Parties



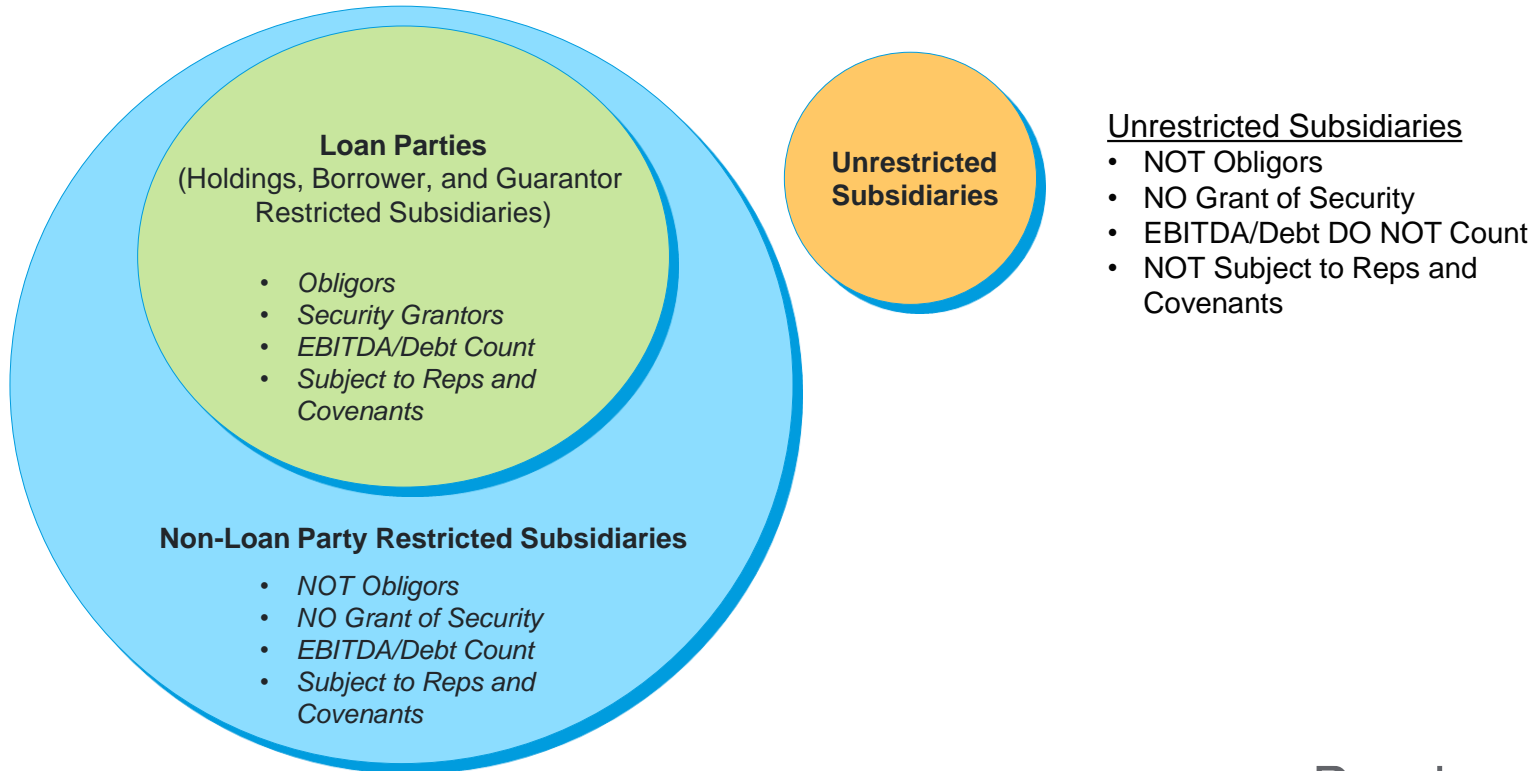
# Corporate Structure – Restricted Subsidiaries



# Corporate Structure – Unrestricted Subsidiaries



# Corporate Structure – Loan Parties vs. Restricted Subsidiaries vs. Unrestricted Subsidiaries



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