



SECURITIZATION

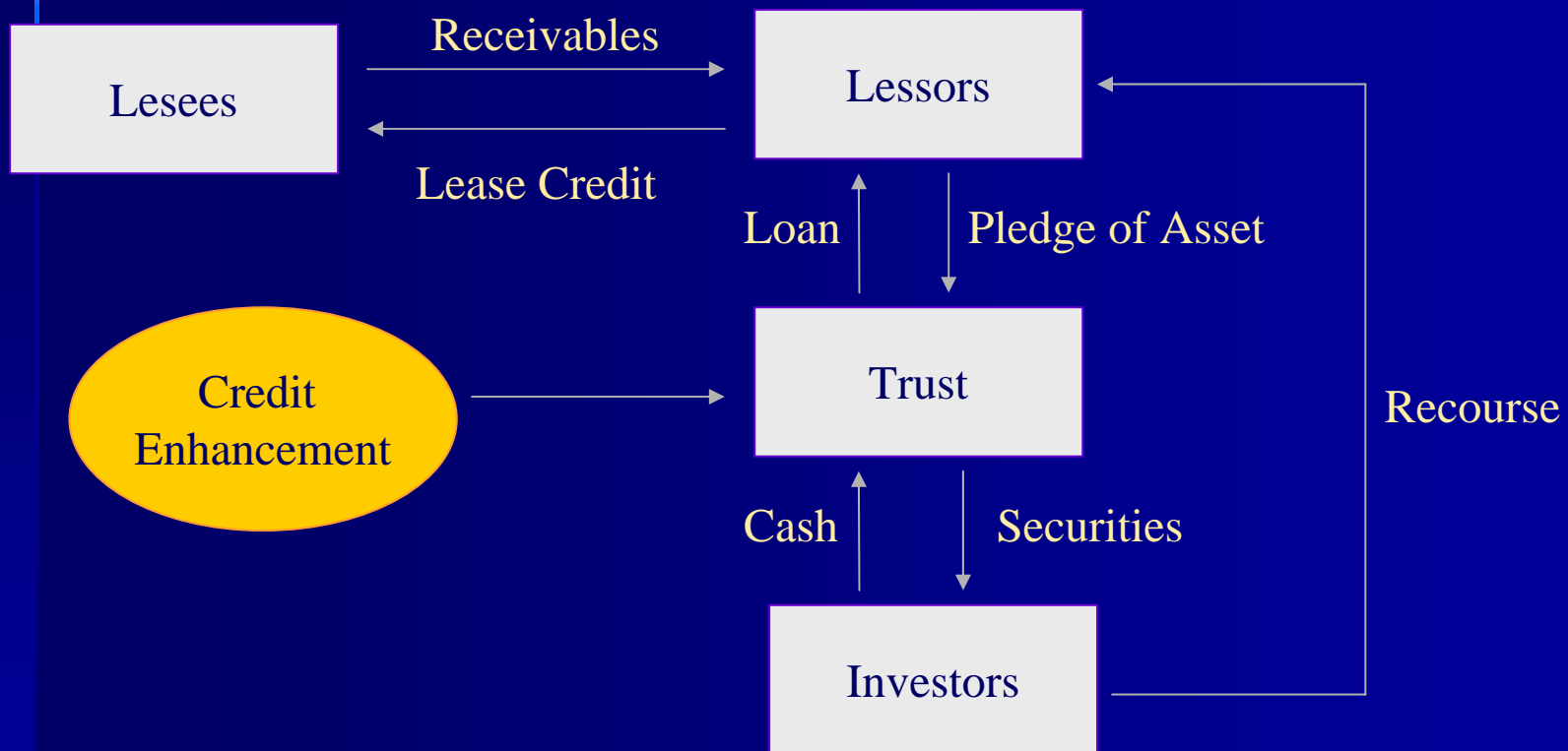
by

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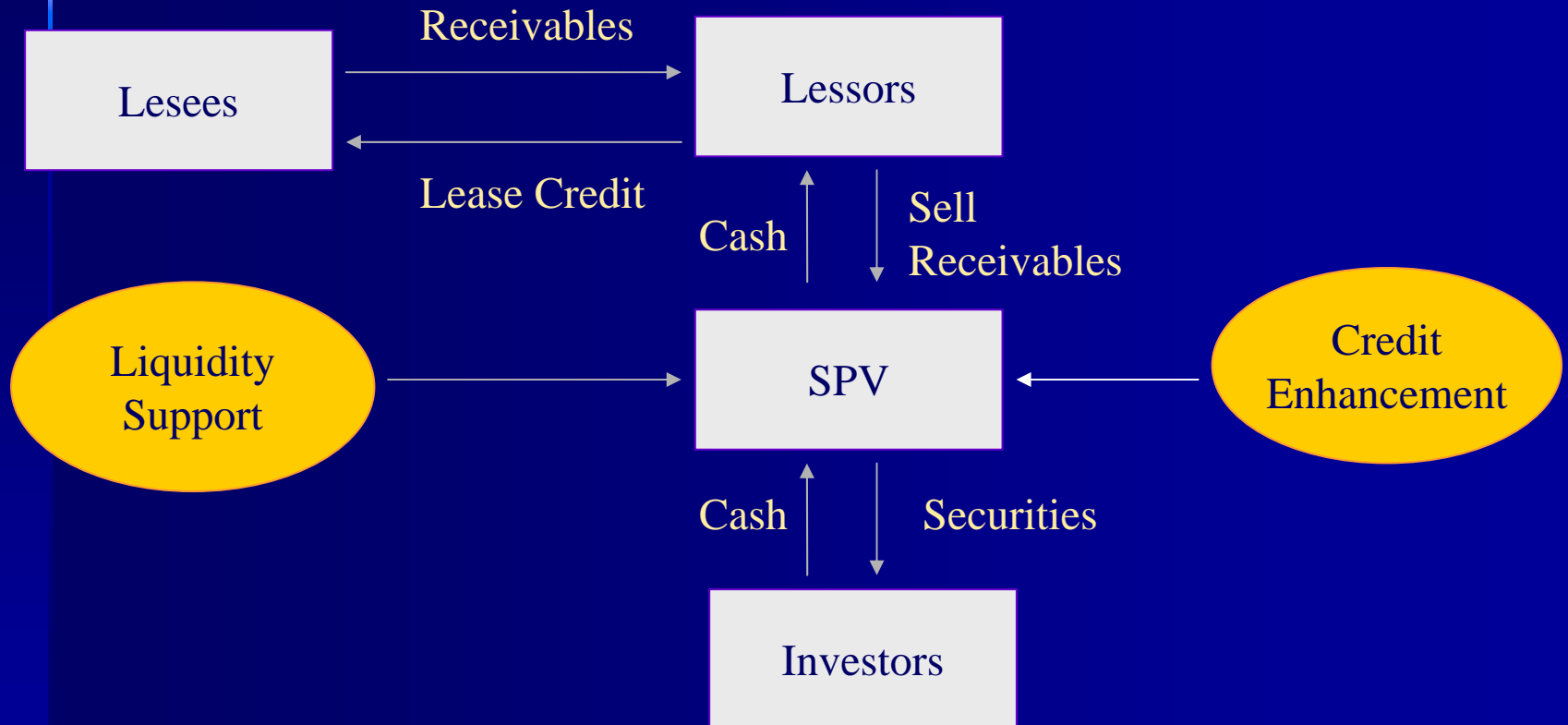
Partner

NITHYA PARTNERS

Current Model in Sri Lanka (Lease Backed Lending)



Model of Securitization



Types of Legal Risks

- ◆ *Originator / Receivable related legal risks*
- ◆ *SPV related legal risks*
- ◆ *Transaction related legal risks*
- ◆ *Bankruptcy related legal risks*

Originator / Receivable related Legal Risks

- ◆ *Does the Originator has the right to transfer / assign*
- ◆ *Is the financial asset transferable or assignable*
 - *contractual provisions*
 - *common law provisions*
 - *public finance provisions*
 - *statutory restrictions*
- ◆ *Receivables with continuing obligations on Originator*

SPV related Legal Risks

- ◆ *SPV single purpose entity*
- ◆ *Financial stability of Trustee*
- ◆ *Multiple transactions on one trust*

Transaction related Legal Risks

A Securitization would normally involve a true sale of the financial asset.

The following questions need to be asked in this regard.

- *intent of the parties*
- *recourse of the Originator*
- *substitution / cash collateral*
- *irrevocability*
- *accounting and tax treatment*
- *continuing involvement of Originator*

Other Transaction related Legal Risks

- ◆ *Partial assignment*
- ◆ *Commingling of receivable with Originator's other assets*
- ◆ *Customer's right of set-off against receivable*
- ◆ *Retaining beneficial entitlement in the underlying asset*

Bankruptcy related Legal Risks

In a Bankruptcy the following legal issues would arise:

- ◆ *Is the transfer a true sale*
- ◆ *Is the transfer a fraudulent preference in insolvency*
- ◆ *Can the liquidator disclaim the property on account of the contracting being onerous*
- ◆ *Enforcement of the beneficial entitlement in the underlying assets*