

Claw Backs: Threats and Opportunities

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New Regime Vs Old Regime

(from 15th March 2005)

(until 14th March 2005)

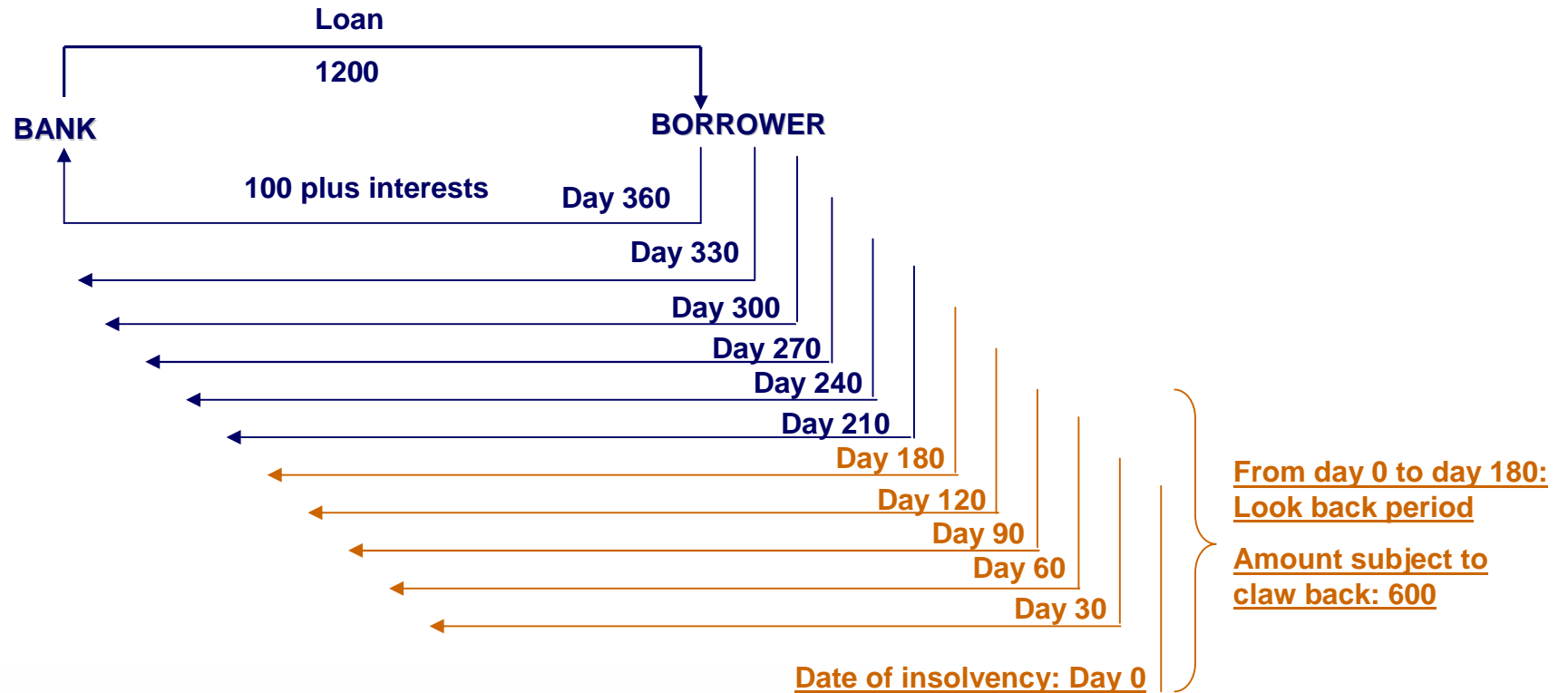
	Look back period: if a transaction took place in this period it is at risk of claw back	Transactions	Comment/Burden of proof
Abnormal acts	2 year before the opening of the insolvency procedure	1. Gratuitous transactions	Automatic inefficacy
		2. Payments due on the day of insolvency declaration or thereafter if such payment is made at any time during the 2 years before insolvency declaration	Automatic inefficacy
	1 year before the opening of the insolvency procedure (Old regime 2 years)	3. Transactions in which the value of obligations owed by the insolvent company are greater than a quarter of the value of the obligation owed by the counterparty (Transaction in which the activities carried out or the obligations undertaken greatly exceed the relevant consideration)	Clawed back unless creditor can show it had no knowledge of the company's insolvent state
		4. Payments of debts, due and enforceable on the date of insolvency declaration, not performed with money or other normal payment systems	
		5. Giving of security for a debt not due	
Normal acts	6 months the before opening of the insolvency procedure (Old regime 1 year)	6. Giving of security for a debt due and enforceable	As above
		7. Payment of a debt due and enforceable	Clawed back if the liquidator can show that the creditor had knowledge of the company's insolvent state
		8. Transaction for a value	
		9. Giving of security for debt originating at the same time as security	

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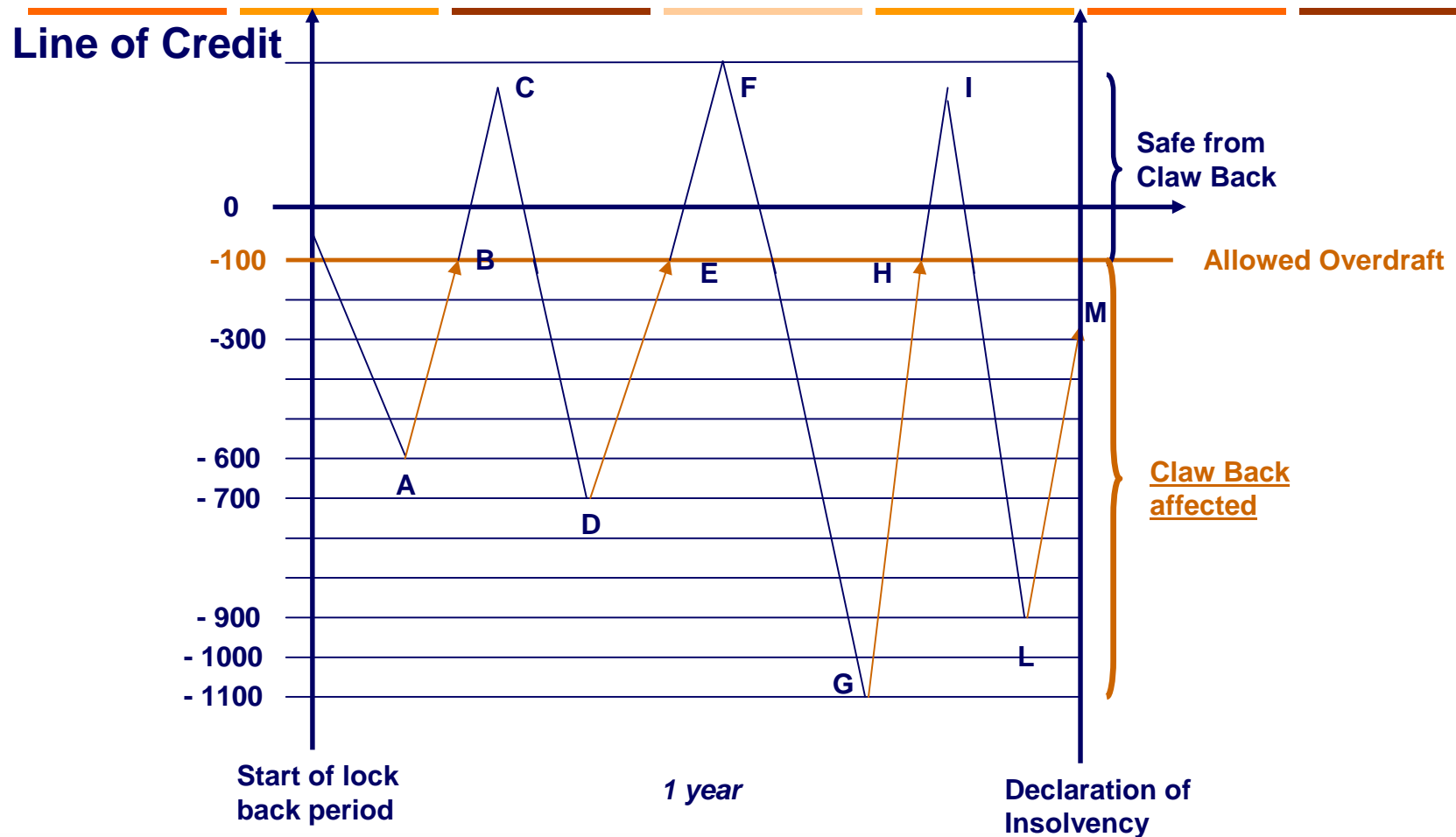
New Regime Provide for exemptions

Payment of a dept due and enforceable: Bank remittances

Term Loan



Payment of a debt due and enforceable: Bank remittances – old regime

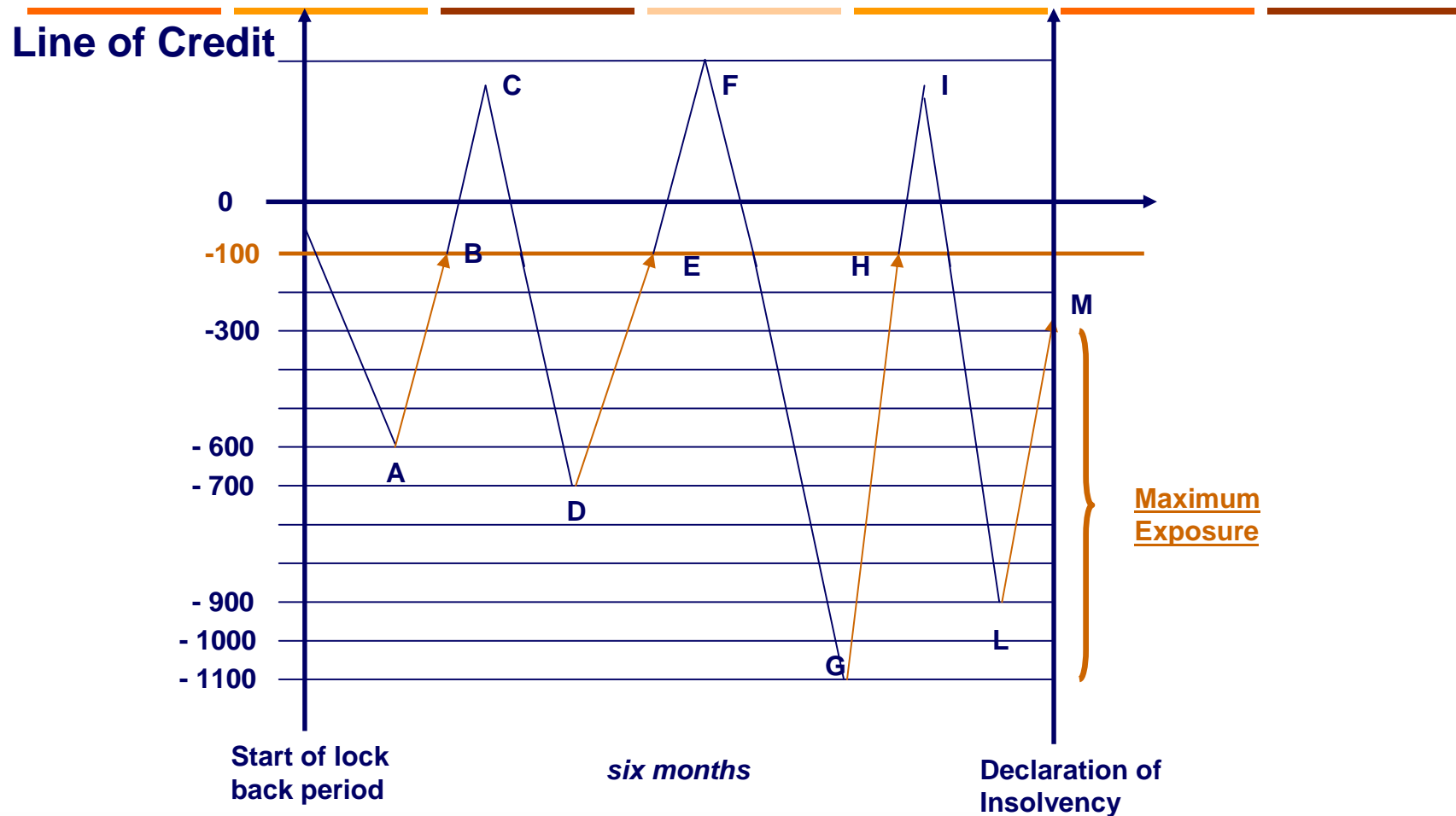


AB=500 DE=600 GH=1000 LM=600

2700 Amount subject to claw backed = CUMULATIVE EFFECT

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Payment of a debt due and enforceable: Bank remittances – new regime



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GM= 800 Amount to be claw backed = MAXIMUM EXPOSURE

Claw backs are assets in insolvent compromise with creditors

(New Regime starting from 16th July 2006)

- Benefit of claw back actions may be transferred to a third party
- Secured creditors must be offered an amount resulting from the proceeds of the “secured” assets
- Flexibility for unsecured creditors
- Consensual restructuring:
 - no voting rights for secured creditors;
 - majority by value of unsecured creditors
- Creditors division into classes and cram down available