Legal Regime and Practice of IP Security Rights in Japan

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Challenges of Technology Finance for a Creative Economy

- Practical Issues on Security Rights in Intellectual Property -

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My experience in IP oriented finance

My experience as a practicing attorney

- During my experience as a practicing attorney from 1987 through 2010, I worked on the design of the finance schemes, documentation and negotiation, and the operation of various kind of finance, in which the financer emphasizes the value of the IP of the business entity that procures the fund.

- They cover from a loan secured by a security right on IP rights to a simple venture capital investment.

- According to my personal experience, equity finance in the form of a simple venture capital investment or an investment partnership is widely used, while the use of an IP debt finance is rather limited.

My experience as a committee member of the SME Support, Japan

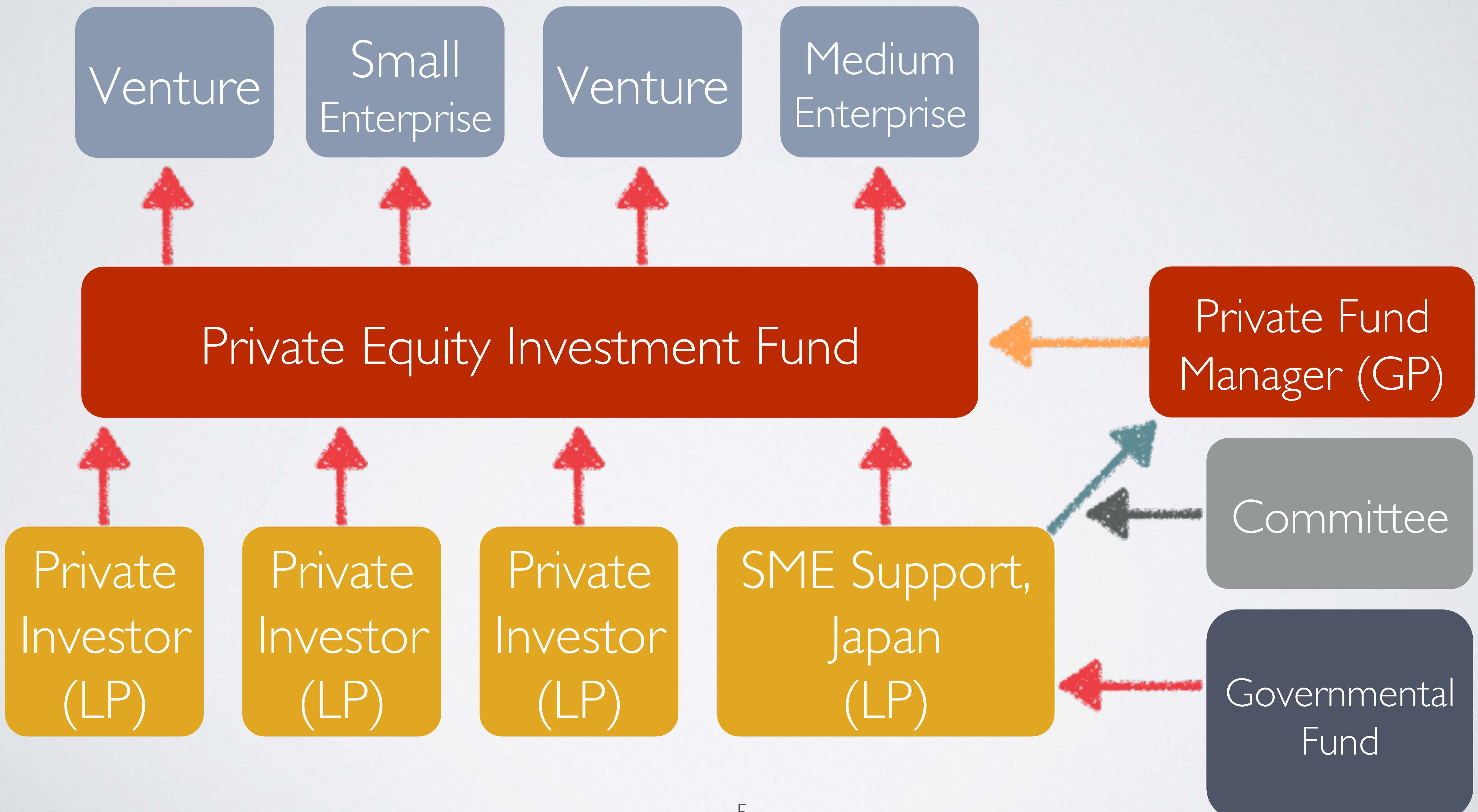
- The SME Support, Japan (Organization for Small & Medium Enterprises and Regional Innovation, JAPAN) is an incorporated administrative agency that is acting to facilitate the business environments for the small and medium enterprises, as well as incubation.

- The committee make advice and makes recommendations to the SME Support, Japan in case it makes investments in venture capital, MBO and other investment funds.

- Private equity investment funds in the form of Limited Partnerships are steadily being established in Japan, and the SME Support, Japan is continuously investing in funds as their limited liability partners.

- A considerable part of investment by these funds is oriented to technology ventures and small and medium enterprises characterized by their technologies.

The Scheme of Investments by SME Support, Japan to Private Equity Investment Funds



Various forms of IP oriented finance in Japan

Debt Finance	with security rights over IP rights	assignments of IP rights for the purpose of security
		pledge on IP rights
		assignments of IP rights to a SPC (a special purpose corporation or a trustee)
	with security rights that are not on IP rights	assignments of receivables of royalties for the purpose of security
		assignments of receivables of royalties to a SPC
	without security rights	aunsecured loans
		straight bonds
Mezzanine Finance		bonds with warrants to subscribe stocks
Equity Finance		stocks
		partnership
		blind partnership (*Tokumei Kumimai*)
Other Means to Supply Funds		a commission agreement to develop IP
		a sale and license back of IP rights

Debt Finance	with security rights over IP rights	assignments of IP rights for the purpose of security
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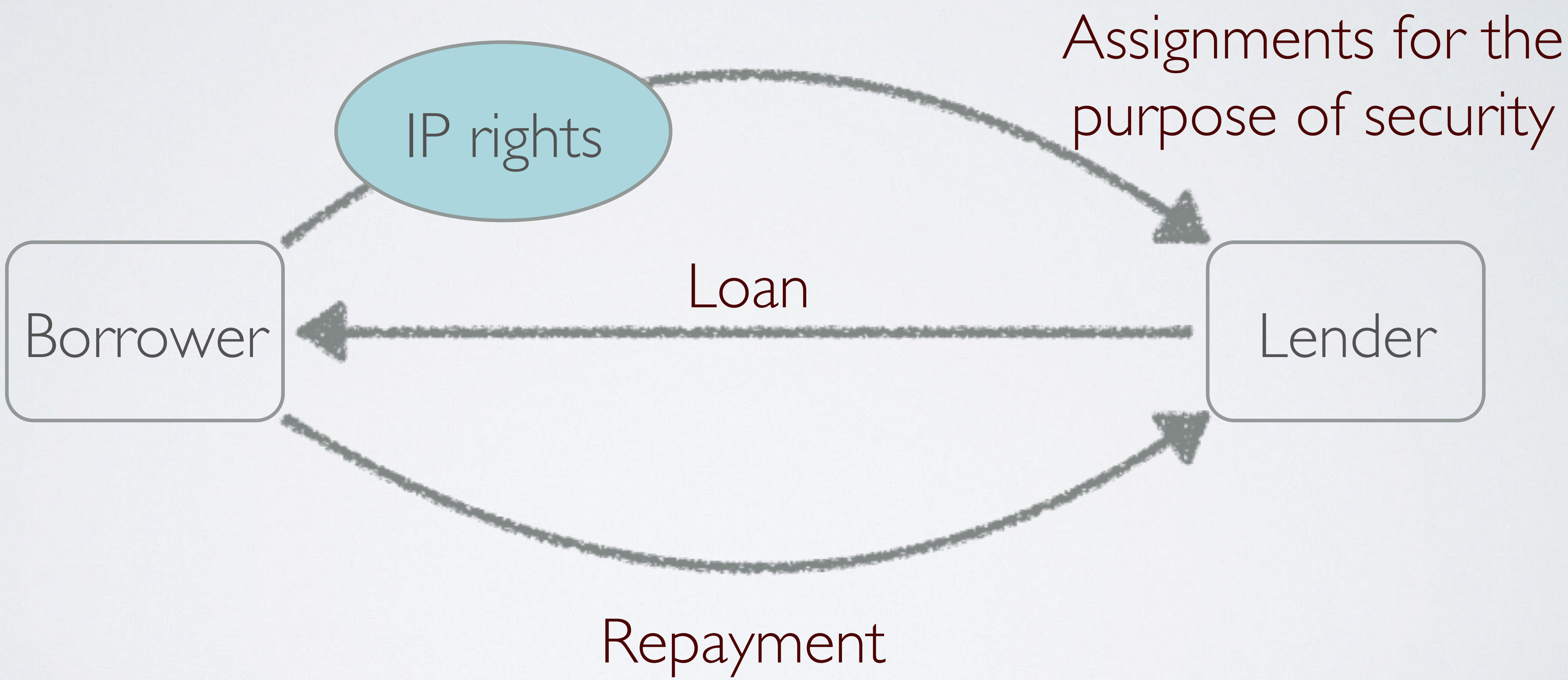
Debt finance with security rights over IP rights - Assignments of IP rights for the purpose of security



- IP rights are assigned back to the borrower upon full repayment.
- Lender may sell IP rights to recoup its funds in case the borrower defaults in repayment.
- There are no specific provisions in the Civil Act and IP laws that regulate assignments for the purpose of security.
- The lender cannot claim its rights to assigned patent rights or copyrights against a third party until the assignments are registered.

Debt Finance	with security rights on IP rights	assignments of IP rights for the purpose of security
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		assignments of IP rights to a SPC (a special purpose corporation or a trustee)
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		assignments of receivables of royalties to a SPC
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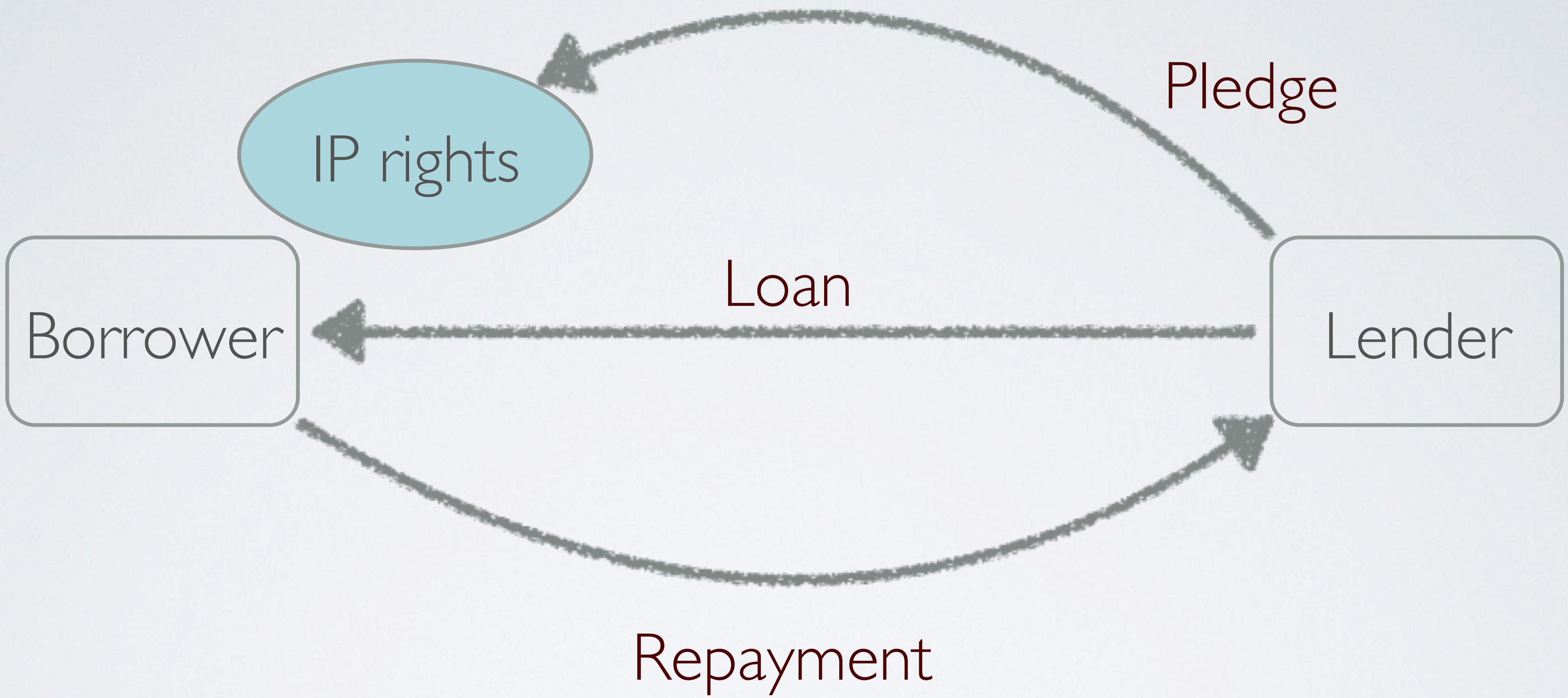
Debt finance with security rights over IP rights - Pledge on IP rights



- Registration of pledge is required by the Patent Act and Copyright Act.
- Pledge rights are also exercisable on royalties.

Debt Finance	with security rights on IP rights	assignments of IP rights for the purpose of security
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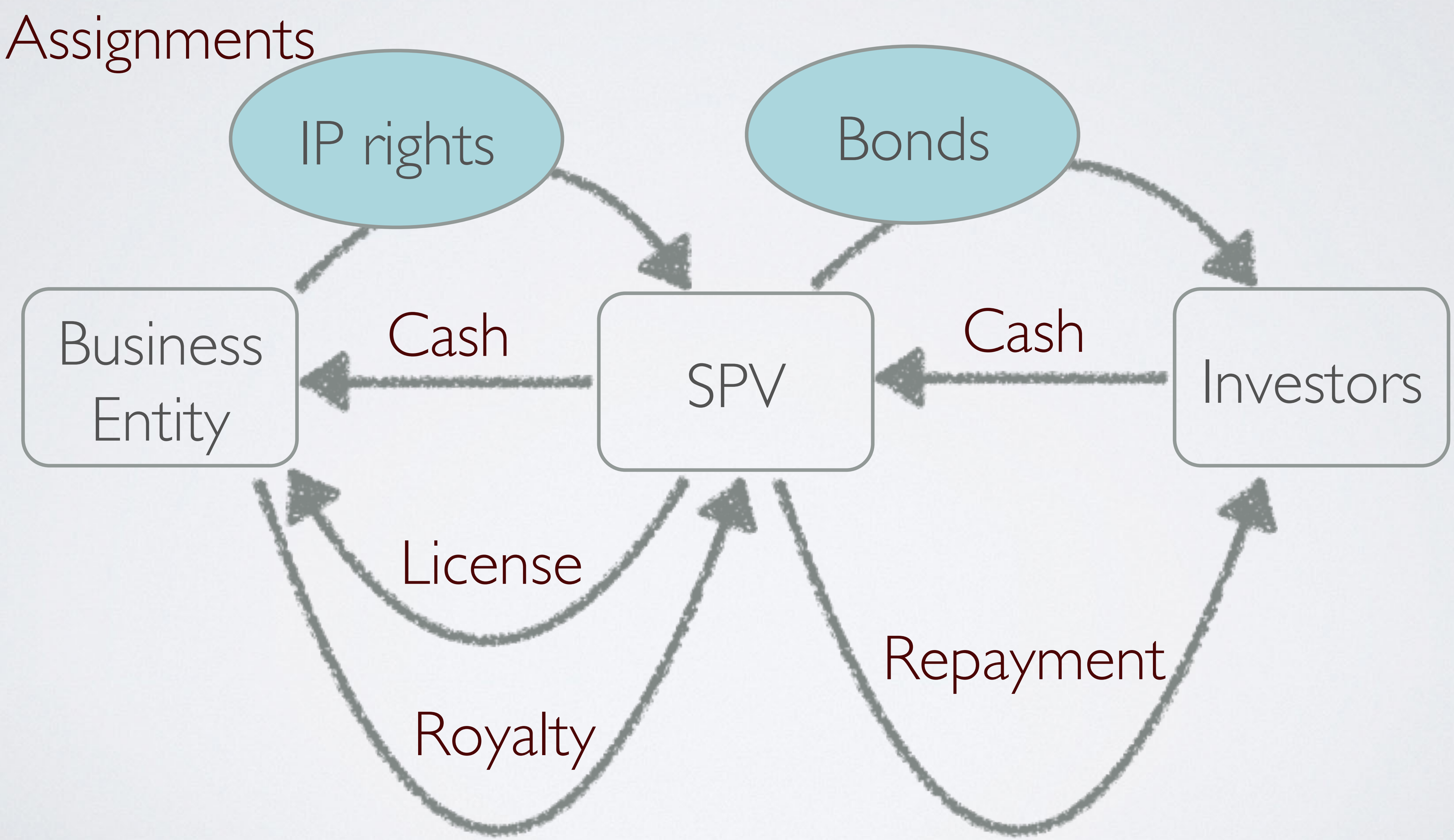
		assignments of IP rights to a SPC (a special purpose corporation or a trustee)
	with security rights that are not on IP rights	assignments of receivables of royalties for the purpose of security
		assignments of receivables of royalties to a SPC
	without security rights	unsecured loans
		straight bonds

Debt finance with security rights over IP rights - Assignments of IP rights to a SPV (a special purpose corporation or a trustee)



Debt Finance	with security rights on IP rights	assignments of IP rights for the purpose of security
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<tr><td rowspan="7">Debt Finance</td><td rowspan="3">with security rights on IP rights</td><td>assignments of IP rights for the purpose of security</td></tr>
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<tr><td>straight bonds</td></tr>
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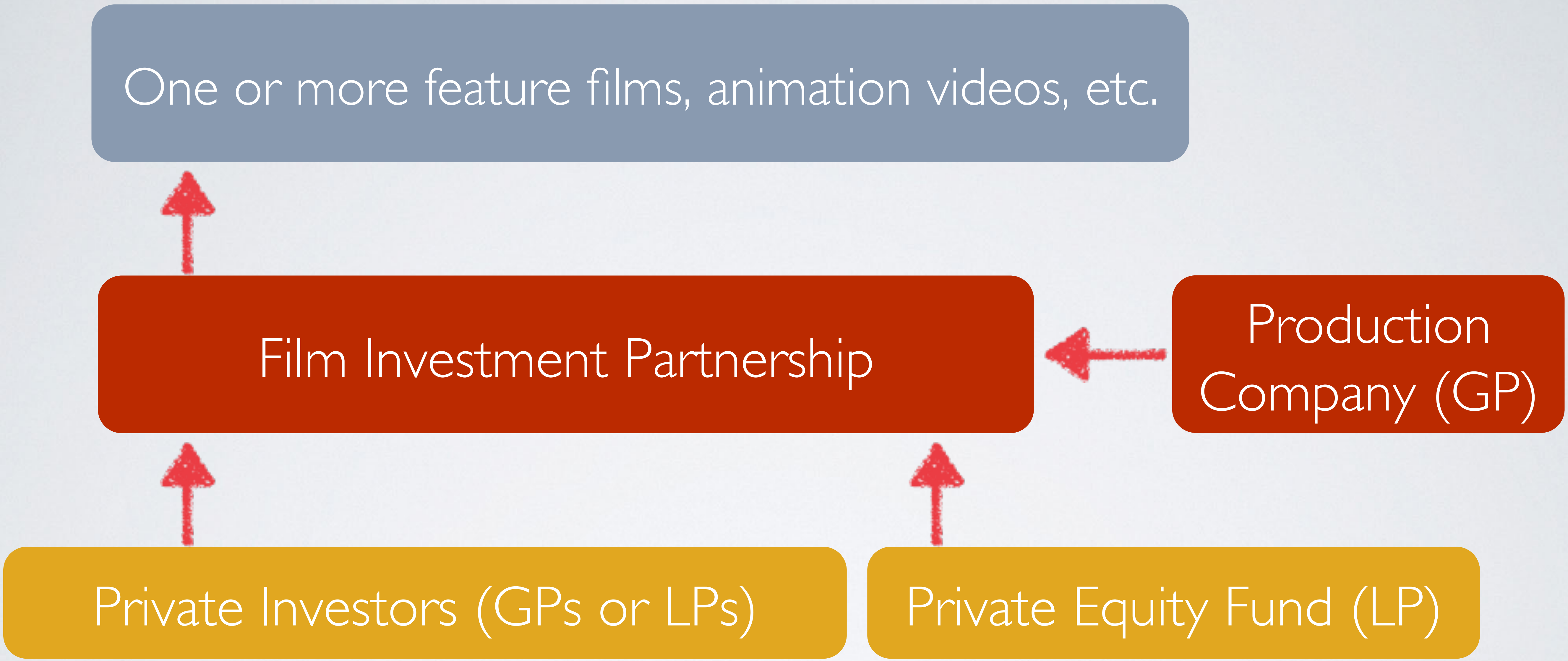
Mezzanine Finance		**bonds with warrants to subscribe stocks**
Equity Finance		**stocks**

- Standard means for venture capital investments
- Intensive due diligence on business plan, human resources, and any other business resources including IP and IP rights.

Mezzanine Finance		bonds with warrants to subscribe stocks
Equity Finance		stocks
		partnership
		blind partnership (*Tokumei Kumimai*)

Equity finance - Partnership

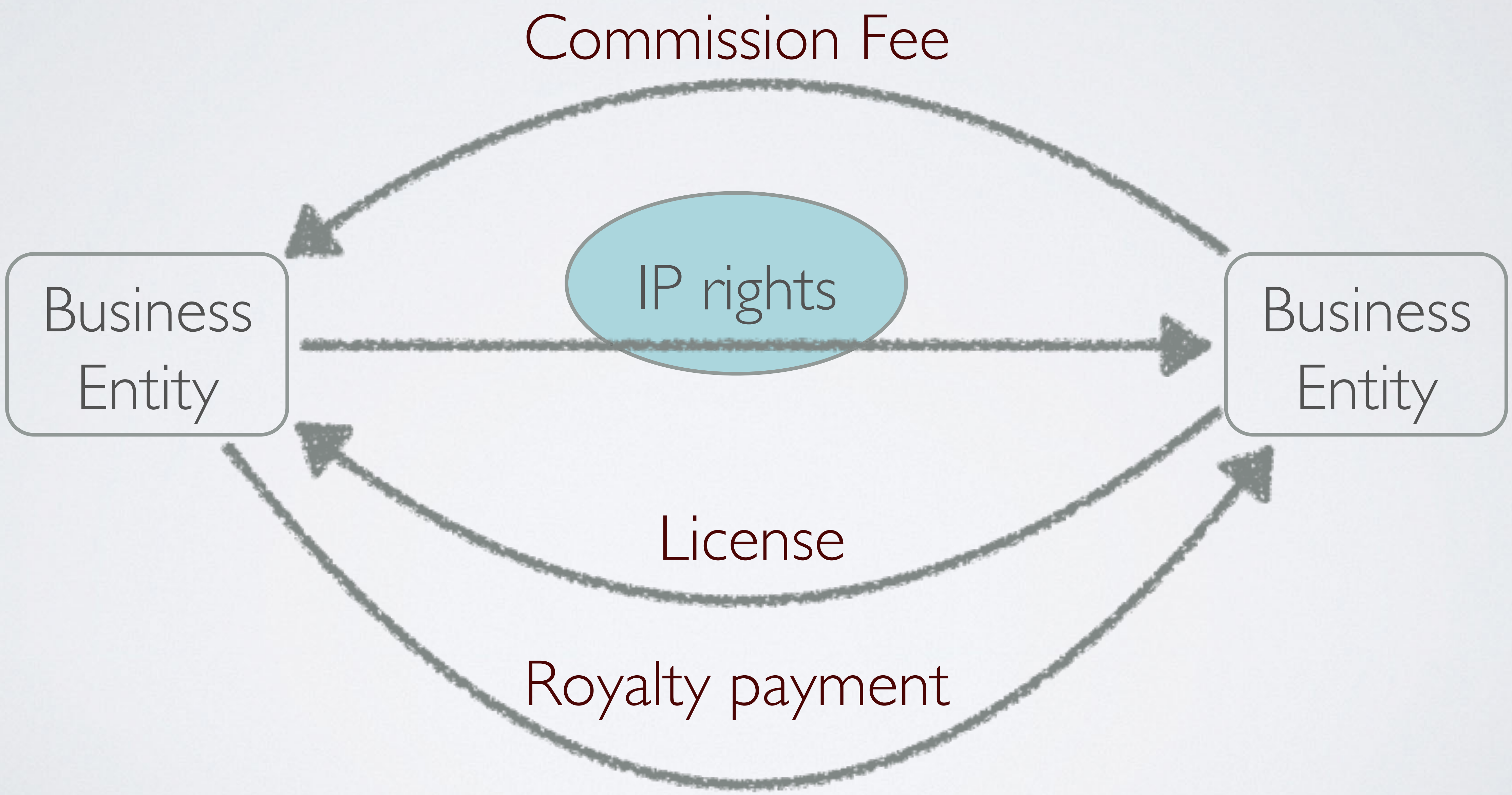


- Customarily employed to finance the production of feature films, animation videos, etc.

Mezzanine Finance		**bonds with warrants to subscribe stocks**
Equity Finance		**stocks**
		partnership
		blind partnership (*Tokumei Kumimai*)

Other Means to Supply Funds		commission agreement to develop IP
		sale and license back of IP rights

Other means to supply funds - Commission agreement to develop an IP



Other Means to Supply Funds		**commission agreement to develop IP**
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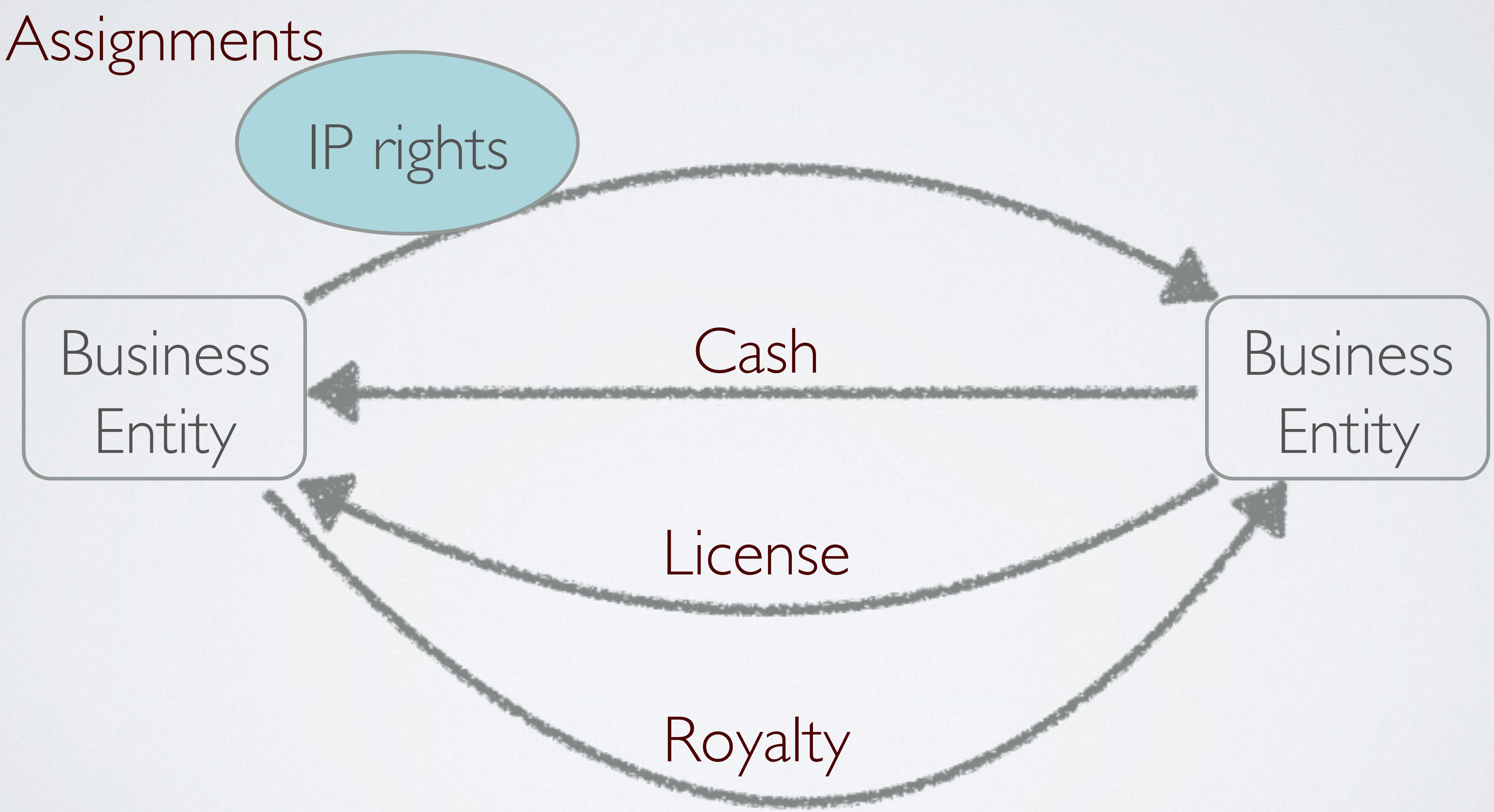
Other means to supply funds - Sale and license of IP rights



Current Situation of IP oriented finance in Japan

- Venture capital finance by means of stocks and mezzanine financing is utilized quite often.
- Investment in films and animations by means of a partnership is also popular.
- The use of debt finance backed by security rights over IP rights is limited.

Why Japanese financers and investors prefer stocks, mezzanine financing and partnerships to debt financing?

How to secure your rights to IP to be developed in the future?

- You cannot establish security rights over the rights to IP to be developed in the future.

- If you make an investment by means of a partnership, you will automatically acquire the joint ownership over the rights to IP to be developed in the future.

Merchantability of IP rights

- In the usual case, the number of IP rights held by small and medium size enterprises is limited. Individual IP rights are not appealing to potential purchasers, that tend to prefer a library (or, a bundle) of IP rights.

- The enterprises owning rich libraries of IP rights don't have to use IP backed finance, because they usually have multiple means to procure funds.

Pricing of IP rights

- Since the examples of the sale of IP rights is limited, both of the potential sellers and purchasers face difficulties in pricing IP rights.
- It is much easier to quote trade examples of stocks and bonds even if the assets of the issuers is substantially limited to their IP, IP rights and/or potential to produce new IP.
- However, the emergence of NPEs (Non Practicing Entities) may change the situation.

Thank you.