Session 2 Summary & Comment

Investors' Perspective: Examining their Motives

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Setting the Theme

Part I:
Competing Forms of Finance
Joseph McCahery

Part II:
Developments in Singapore
Ronnie Quek Cheng Chye

Forms of Finance

Debt

Asset-Backed Securitization

Equity

Debt

Loans
= *DEBT*

Ownership

Adverse Selection

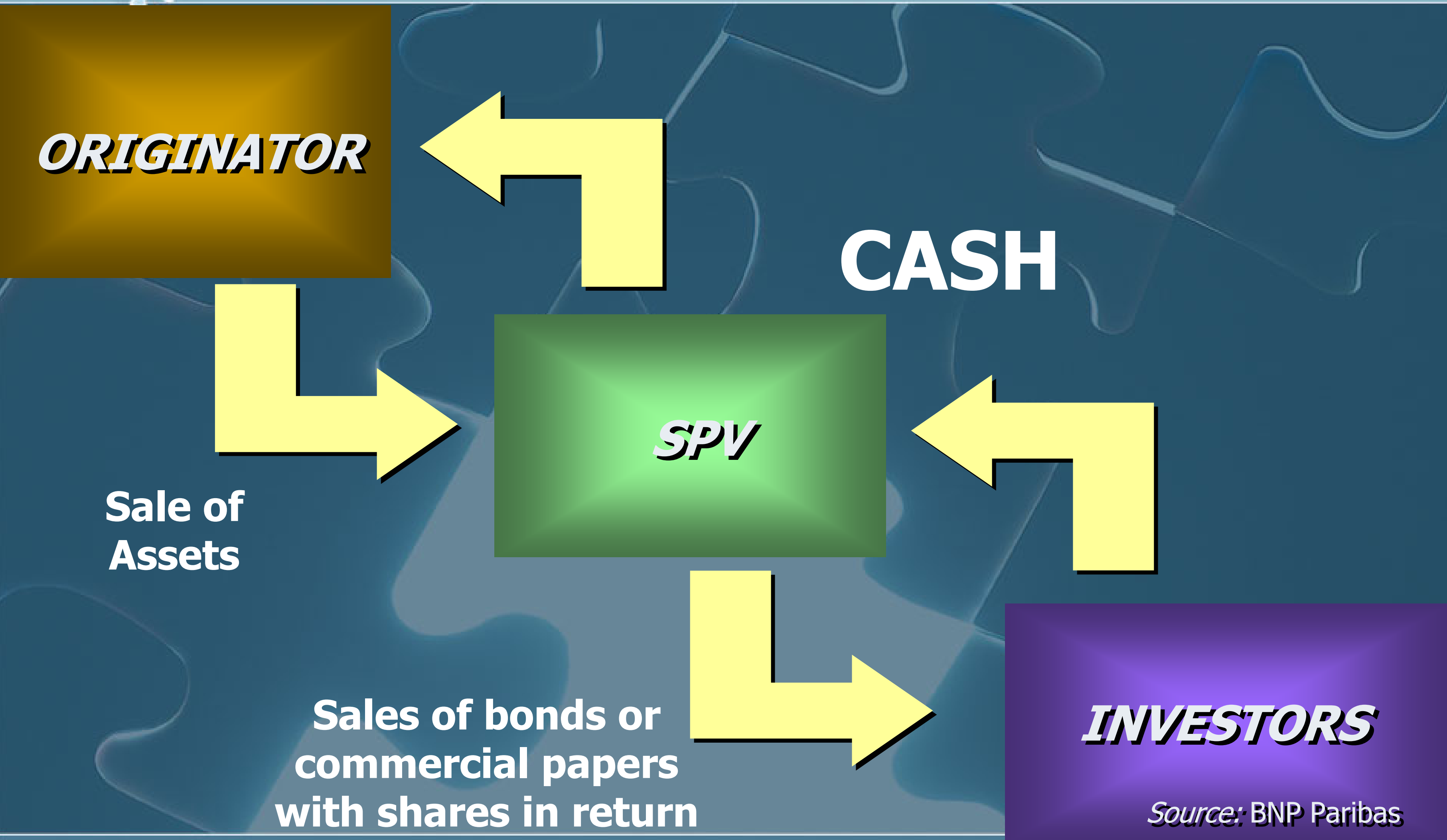
Moral Hazard

Entrepreneur

Collateral = loss of ownership

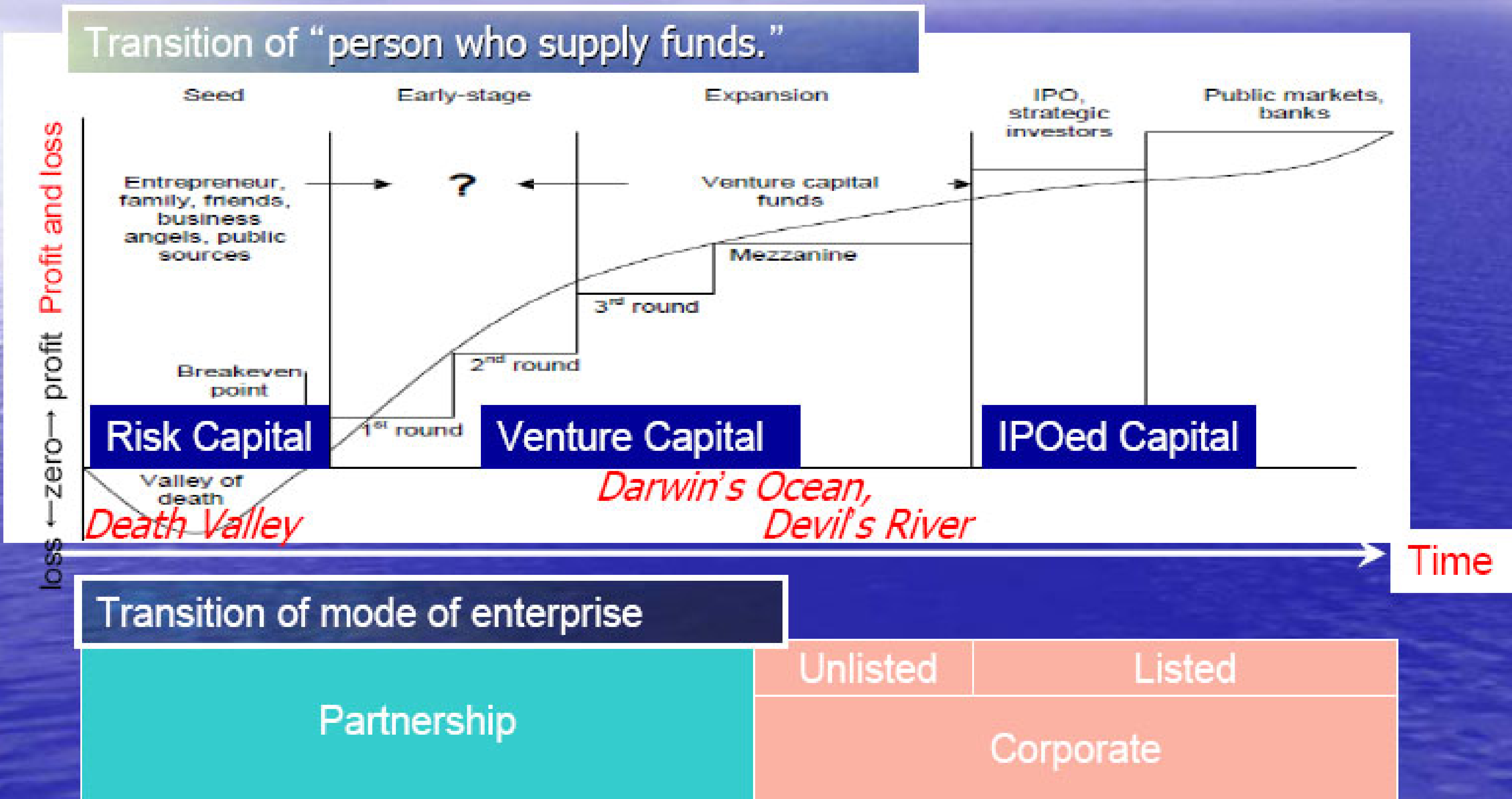
Payback + interest
Bankruptcy +
minimum capital (?)

Asset Securitization



Source: BNP Paribas

Equity-Finance



Empirical Analysis

- Kaplan and Stromberg(2003)
- Hellman(1998)
- Lerner and Merges(1998)

etc.…

"separately allocate cash flow rights, board rights, voting rights, and other control rights." (Kaplan and Stromberg)

My argument

- informed entrepreneur or workers who has special knowledge

⇒ too strong (ex post) bargaining power

⇒ investors should have more control rights

however, investors have only "formal" control rights

Importance of Human Capital

- Human capital is a key factor for innovation
- Allocation of formal control rights is important
- Public company is the best?

  One share/one vote?

  strong formal control rights?

partial public company

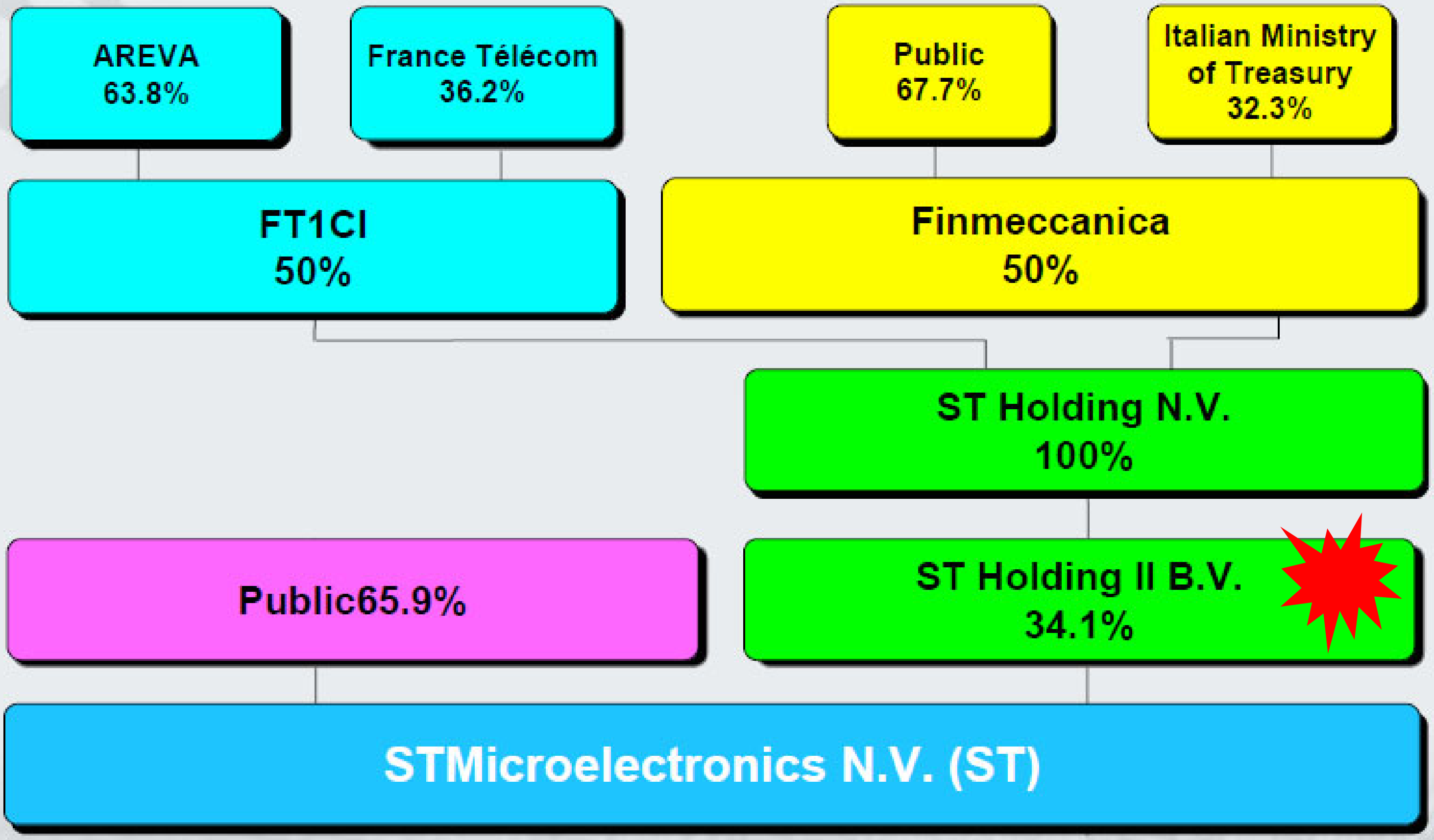
In Japan, we should reconsider

- meaning of “listing”,

and

- merit and demerit of closed (non-listed) companies.
- We should examine “partially public companies “.

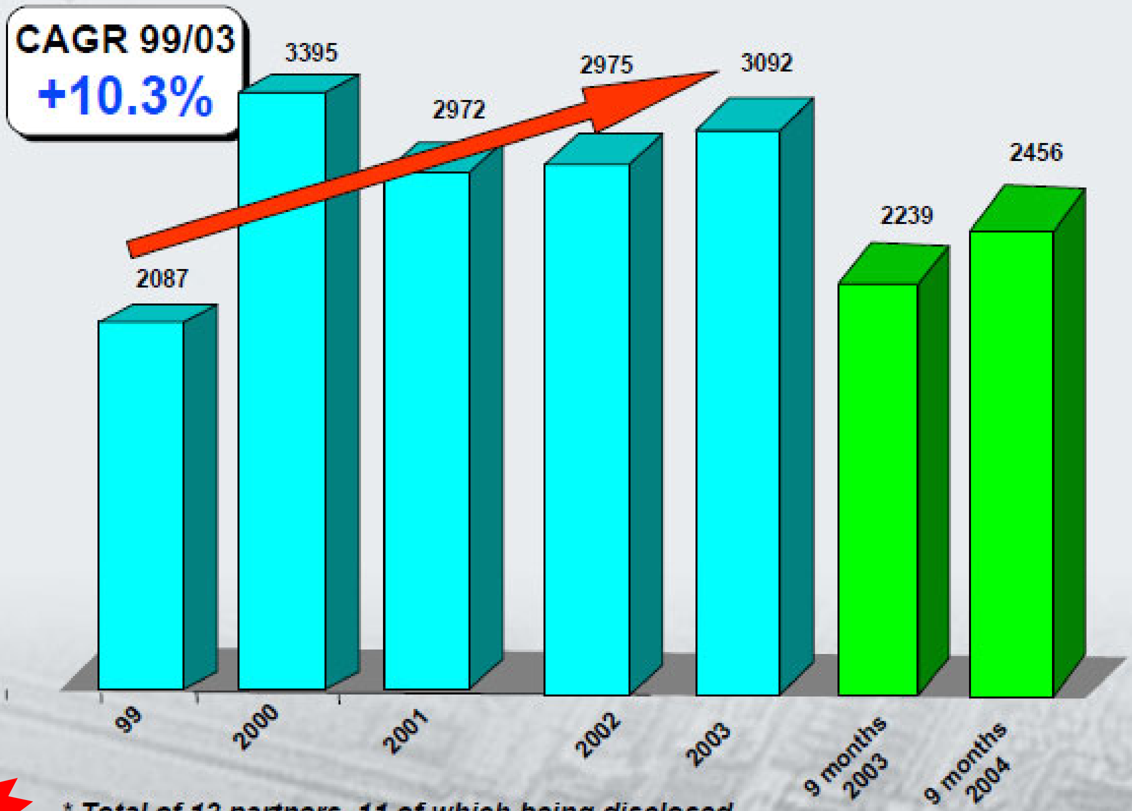
Shareholding structure*



*On September, 30th,, 2004
- FT1CI and Finmeccanica currently share 50/50 voting rights in ST Holding N.V.
- Shares owned by Areva, France Telecom and Finmeccanica directly or indirectly through ST Holding II BV
- New York Stock Exchange, Euronext, Paris and Borsa Italiana, Milano

Global strategic alliances

Revenues from Strategic Partners* (MUS$)



Communications
- Alcatel
- Nokia
- Nortel Networks

Automotive
- Bosch
- Marelli
- Siemens VDO

Computer
- HP (printers)
- Seagate
- Western Digital

Consumer
- Thomson
- Pioneer

** Total of 12 partners, 11 of which being disclosed*

Advantages of Singapore LLP

- Advantages of Singapore LLP

  Limited liability

  Privacy

  Pass through taxation

Accounts and Records

- The LLP is required to
  - Keep such accounting and other records as will sufficiently explain the transactions and financial position of the LLP and enable profit and loss accounts and balance-sheet to be prepared from time to time which give a true and fair view of the state of affairs of the LLP S25(1)
  - They must be open at all times to inspection by the partners S25(3)

Comparative Table

	Japan LLP	Singapore LLP
Corporate Status	No	Yes
Limited Liability	Yes	Yes
Partnership Agreement	Required to be filed	No need. Privacy
Management	All partners must manage partnership affairs	No need.
Taxation	Pass Through	Pass Through
Equity Transfer	All partners must agree	No transfer but can instead provide for admission of new partner on retirement.

Features of J-LLC

- Because J-LLC is an incorporated entity,

it is likely to be taxed as a corporation (and its members are double-taxed).

On the other hand,

Members of J-LLC enjoy LL,

And almost unlimited flexibility of governance structure

Features of J-LLP

- Partners of J-LLP enjoy both LL and pass through status

→ In exchange of those benefits, J-LLP is "handicapped" in terms of its legal status and inflexible governance structure

- Legal status: J-LLP is not incorporated, not an "entity" (legally its is "aggregate" of its members)
- Governance structure: all partners MUST manage partnership affairs (LLP, Art 13) ← a mandatory rule

J-LLP not as corporation

- Registration (e.g., real property): cannot be registered not in the name of J-LLP. Must be registered as all partners jointly own such property
- J-LLP cannot convert/ merge into corporations (J-LLC or stock corporations)

In order to change its organization status, partners must set up new corporation and contribute assets/debts of J-LLP into the corporation

← capital gain realized and taxed

Mandatory participation in partnership management

- J-LLP Act, art.13

If any partner does not participate in management,

There is a risk that LLP agreement is made void, and all partners have unlimited liabilities for partnership debts.

Why mandatory participation?

- To prevent “unfair” avoidance of tax?

  Cf. IRS sec.469 (passive loss rules)

If partners share profits/losses of businesses, is it unfair for them to deduct the losses from their income?

Thank you!