FIRST NATIONS
MAJOR PROJECTS
COALITION

Capital Markets 401

Equity Transaction Guide

HANDBOOK FOR LEARNING MODULE #4

Colliers Project Leaders

About Us

The First Nations Major Projects Coalition (FNMPC) is a national 170+ Indigenous nation collective working towards the enhancement of the economic well-being of its members. We understand that a strong economy is reliant upon a healthy environment supported by vibrant cultures, languages, and expressions of traditional laws. With a project portfolio exceeding a combined total cost of over $45 billion, our key area of focus at the FNMPC is to support our members in making informed decisions about their participation in major clean energy, natural resource, and infrastructure projects.

Colliers Project Leaders is a *Sustaining Partner* of the First Nations Major Projects Coalition. Our organizations prioritize the relationship between them, and seek out ways to leverage their two sets of resources to advance mutually beneficial outcomes that contribute to true, lasting, and meaningful First Nations reconciliation in Canada, including economic reconciliation. Colliers Project Leaders supported the Major Projects Coalition in the development of this learning module handbook: *Equity Transaction Guide*.

FIRST NATIONS MAJOR PROJECTS COALITION

Colliers Project Leaders

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Comments, conclusions, and suggestions within this report represent our opinion, which is based on an examination of the documents provided, our analysis, and our experience. This report is limited to general suggestions on typical commercial structuring for major projects and provides no recommendations on project-specific considerations. Best commercial efforts to provide accurate analysis and meaningful advice are consistent with the care and skill ordinarily exercised by management consultants in Canada with the same scope of work and the same source materials. This report has been subjected to internal review and practices of Colliers' Quality Management System. No other representations, and no warranties or representations of any kind, either expressed or implied, are made. Opinions reflected in this report are not intended to be or interpreted as legal advice or opinion.

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1. Introduction

1.1 Purpose of the Module

Capital Markets 401: Equity Transaction Guide provides an overview of the equity purchase transaction in major projects, focusing on the process and considerations for First Nation Investors. It discusses the main transaction documents, considerations for engaging commercial Lenders and financing the equity investment, requisite advisory support at each stage, and the roles and responsibilities of equity owners.

This analysis builds upon the previous learning modules which focused on project finance (*Capital Markets 101*), governance & commercial structuring (*Capital Markets 201*), and financial structuring (*Capital Markets 301*). This learning module revisits several of these topics at a high-level to provide context within the broader equity transaction.

1.2 Scope of this Analysis

This analysis focuses on one model for Indigenous equity participation, which is characterised by an Equity Option Agreement that is exercised at commercial operation date (COD). The COD is the point in a project's timeline when construction is complete, the project begins operations and starts generating revenue.

Equity Option Agreements provide the holder the right, but not obligation, to purchase equity in a project, on or before a given date (typically at or closely following COD) at a price that reflects the project's economics. This model is widely recognized to minimize risk exposure for First Nation Investor(s) by offering protection from. financial, design, and construction risks, since the equity investment is not made until after development and construction are complete. Under this preferred scenario, if the project fails during construction, or if cost overruns and delays are material enough to significantly diminish the financial outlook for the project's investors, the option holder may decline to execute their equity option without penalty. Alternatively, if all goes well and projected returns remain attractive, then the option holder can execute their equity option and purchase their equity allocation.

2. Equity Transaction Overview

This section provides a step-by-step overview of the equity transaction process including the key transaction documents and procedural considerations that First Nation Investor(s) should be mindful of.

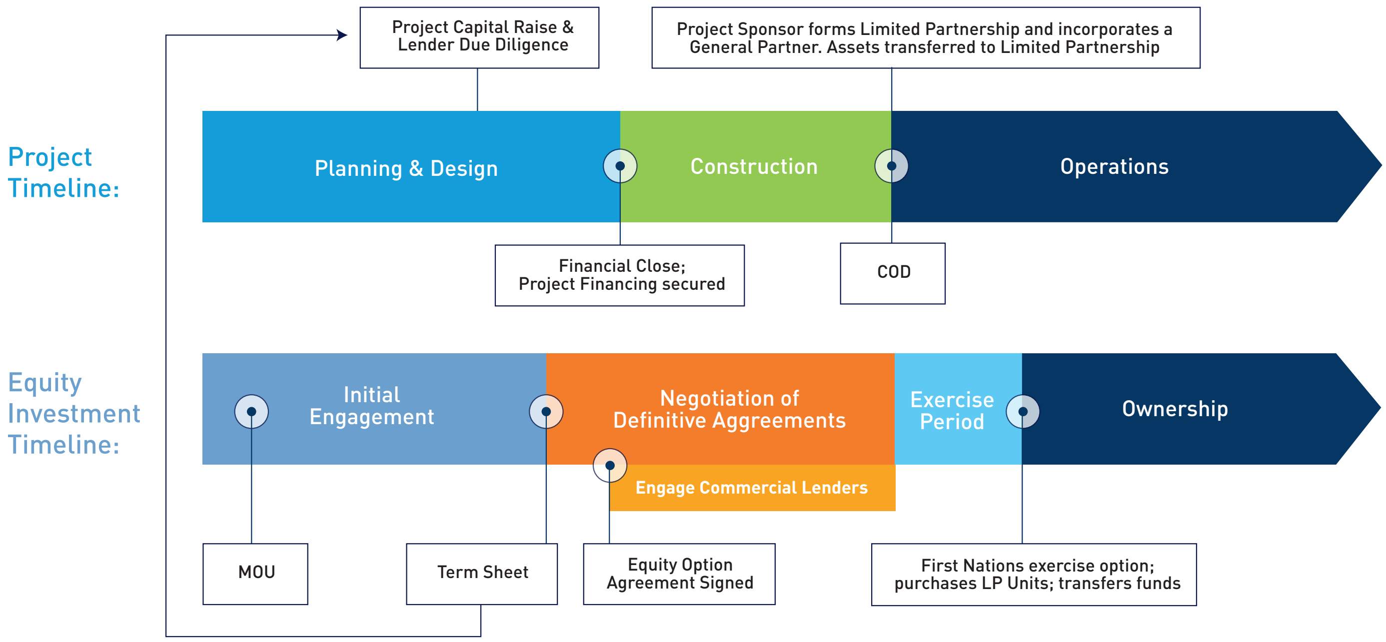


FIGURE 1: EQUITY TRANSACTION OVERVIEW

Figure 1 presents an indicative timeline for illustrative purposes of a post-COD equity investment process along with several of the key milestones relative to a typical project delivery schedule; the timing of these milestones is presented as an approximation and may vary depending on the project.

2.1 Initial Engagement

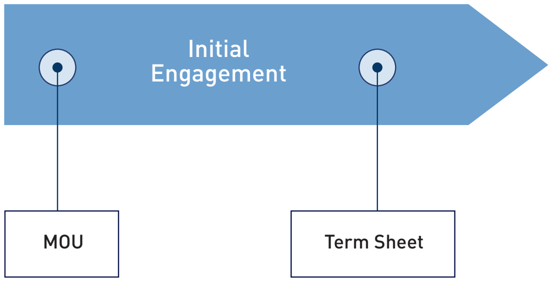


FIGURE 2: INITIAL ENGAGEMENT

2.1.1 Memorandum of Understanding (MOU)

The Memorandum of Understanding (MOU) is a preliminary agreement that outlines the basic intentions of both parties regarding the equity opportunity and establishes the framework to engage in formal negotiations. The MOU serves as a starting point, outlining goals, expectations, and shared interests. The document should establish protocols on collaboration, communications and agreement before decisions are made on key aspects of the equity opportunity.

To allow for meaningful discussion on the terms of the commercial transaction, the MOU will contain provisions related to confidentiality or will be accompanied by a non-disclosure agreement (NDA). Maintaining confidentiality is an important aspect of commercial negotiations, and First Nations should consider how and when Council will be kept informed about the advancement of discussions pertaining to the equity opportunity.

It is recommended that legal counsel and an informed commercial advisor review the terms of the MOU prior to agreement. For example, terms related to exclusivity may unknowingly preclude First Nations from pursuing other opportunities in the same sector.

2.1.2 Heads of Terms

The Heads of Terms (also known as a **term sheet**) is a document that outlines the principal commercial terms of the equity transaction. It covers aspects of the deal such as the structure and timing of the equity option, the ownership share that will be available for purchase, how the price for equity will be determined, and key financial terms. The term sheet will provide an overview of how the project Sponsor plans to develop, construct, and operate the project with the participating First Nation Investor(s). The Heads of Terms acts as a roadmap for formal agreements, laying the groundwork for the legal agreements that will follow, such as the Equity Option Agreement and the Limited Partnership Agreement.

The purpose of the Heads of Terms is to reach an agreement among the parties on the primary characteristics of the deal before proceeding to drafting of the definitive agreements and engaging Lenders. A key function of the Heads of Terms is to articulate the general structure of the transaction to Lenders to raise debt to fund construction activities, and the equity investment of participating First Nation Investor(s). This format allows for ease in documenting changes as terms evolve through the negotiation and debt raising progresses.

The negotiation of the Heads of Terms will typically undergo multiple rounds of revisions. Depending on the alignment of the parties, this process can be lengthy.

WHAT DOES IT MEAN FOR YOU?

Memorandum of Understanding and Term Sheet Negotiation

The equity investment process typically begins with the project Sponsor and eligible First Nation Investor(s) entering into a Memorandum of Understanding (MOU). The purpose of the MOU is to establish the framework for both parties to engage in formal negotiations. This is discussed further in Section 2.2 Negotiation of the Definitive Agreements.

This step is closely followed by the negotiation of the Heads of Terms (term sheet). The term sheet is typically, a non-binding agreement between the Sponsor and the eligible First Nations Investor(s). The outcome of this negotiation sets the broad terms for all subsequent agreements, including the Equity Option Agreement and the Limited Partnership Agreement.

The term sheet for the equity transaction will focus on commercial aspects of the deal and will typically include the following:

- Definition of the core investment (project assets);
- Eligible First Nation investors;
- Project ownership during development;
- Conditions for exercising the equity investment option and timing of Investment;
- Methodology for calculating the purchase price of equity shares;
- Return on Equity;
- Credit enhancements the Sponsor agrees to provide third party financial institutions who are providing financing to participating First Nation Investor(s);
- Responsibilities of Equity Owners pre and post investment;
- Communication protocol;
- Transfer restrictions on First Nation equity shares;
- Approvals and authorities, as well as governing law;
- Where future projects are contemplated, the term sheet may also include provisions to allow the parties to apply the same or similar terms to future projects.

A separate term sheet may be negotiated between the parties to address governance roles during project development, procurement, construction, and any benefits for impacts associated with the project (i.e. Impact Benefit Agreement).

Eligible First Nations Investor(s) should engage experienced legal and commercial/financial advisors during this phase to ensure their interests are protected and that terms are commercially attractive and aligned with industry precedents. First Nations should be mindful of any terms committing them to exclusivity, which may preclude them from participating in other opportunities, or agreeing to terms that limit future flexibility on subsequent transactions.

2.2 Negotiation of Definitive Agreements

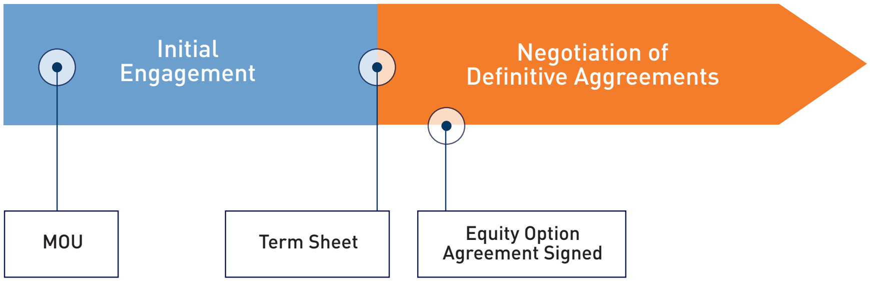


FIGURE 3: NEGOTIATION OF DEFINITIVE AGREEMENTS

2.2.1 Equity Option Agreement

The Equity Option Agreement is a legally binding document that grants the eligible First Nation Investor(s) the right, but not the obligation, to purchase an equity stake in the project. This agreement expands on the Heads the Terms to specify the conditions under which the equity can be purchased, including pricing, timelines, and conditions precedent that must be met before the option can be exercised. The Equity Option Agreement formalizes the opportunity for future ownership without requiring immediate commitment.

An Equity Option Agreement secures the right to purchase equity and codify the terms of that purchase earlier in the project development process. Depending on the Project, the construction phase could last anywhere from two to ten years. First Nations have the greatest bargaining power prior to construction where their support of a project can provide certainty to the Sponsor through regulatory and consultation processes.

2.2.2 Limited Partnership Agreement

The Limited Partnership Agreement is an agreement between the Sponsor and the First Nation Investor(s) that outlines the roles, responsibilities, and financial commitments of all owners in the partnership. In Canada, laws and regulations governing partnerships are established at the Provincial/Territorial level and will vary depending on the location of the Project. In general, a Limited Partnership structure will include General Partner(s) and Limited Partners. A Limited Partnership structure serves to insulate the Limited Partners from liabilities beyond their investment in the project.

- The **Limited Partners**, as shareholders, have the right to share in the profits of the project in proportion to their ownership stake but they are protected from liabilities associated with the partnership (and the project) beyond their investment.

- The **General Partner** is responsible for the business of the project and the limited partnership including the operations and on-going maintenance. Unlike Limited Partners, the General Partner is liable for the debts and obligations of the Partnership. First Nations may or may not be General Partners. Limited Partners should not expect to participate in the management of the project or the business of the partnership as this could affect the liability protection under the Limited Partnership.

The Limited Partnership Agreement typically addresses profit-sharing (i.e. distributions), decision-making, and governance structures, ensuring that all parties understand how they will collaborate once the project is operational. Some of the key terms covered in a Limited Partnership Agreement are summarized below.

WHAT DOES IT MEAN FOR YOU?

Definitive Agreement Negotiation

Once the term sheet is finalized, the parties will proceed to negotiation of the Definitive Agreements, which include the Equity Option Agreement and the Limited Partnership Agreement. These are legally binding agreements that expand on the term sheet, providing greater detail on the transaction and partnership.

As previously mentioned, the Equity Option Agreement establishes the right, but not the obligation, to purchase equity in the project. The Equity Option Agreement will define in precise terms the process for purchasing equity in the project and will include the time period during which the First Nations Investor(s) must make a formal decision about whether or not to proceed with the purchase; this time period is referred to as the **Exercise Period**. Exercise periods can have a duration of anywhere from 3-12 months following the completion of construction.

Some elements to consider when finalizing the Equity Option Agreement include how the purchase price will be set, how the cost and proportional ownership of First Nation(s) Investors will change in the event of cost overruns during construction, whether the Exercise Period provides sufficient time to raise capital and seek the necessary approvals from Council to proceed with the investment.

A commercial/financial advisor can provide support to validate the valuation methodology and investment protocols and confirm that project economics are favourable to the First Nation Investor(s).

The Limited Partnership Agreement sets out the business deal between the partners in terms of how each partner will participate in the investment. It will include how the investment will be managed and what rights the First Nations Investor(s) will have in decision-making. When negotiating the definitive documentation there are five key matters that will need to be addressed: (i) governance and control, (ii) information sharing—transparency, information, and confidentiality, (iii) accepting new partners, transfers and exits, and removal of partners, (iv) sources of funds and (v) distributions of profit and return of capital. These items are discussed in detail in the *Capital Markets 201 Handbook*.

The Definitive Agreements will be an important piece of documentation that Lenders will seek to examine when evaluating whether to finance the First Nation's equity investment. This is discussed further in Section 3: Engaging Commercial Lenders.

2.3 Equity Option Agreement Signing

The Equity Option Agreement signing formalizes the right, but not the obligation, of the eligible First Nation Investor(s) to purchase equity in the project. This Agreement is often signed alongside the Limited Partnership Agreement. At this stage, the eligible First Nation Investor(s) are not yet owners but have secured the right to purchase an equity stake at a later date. The terms of the option, including the methodology for valuing share price and timeframe for exercising the option, will have been finalized during earlier negotiations and documented in the Equity Option Agreement.

2.4 Construction Phase - Capital Raise for Equity Investment

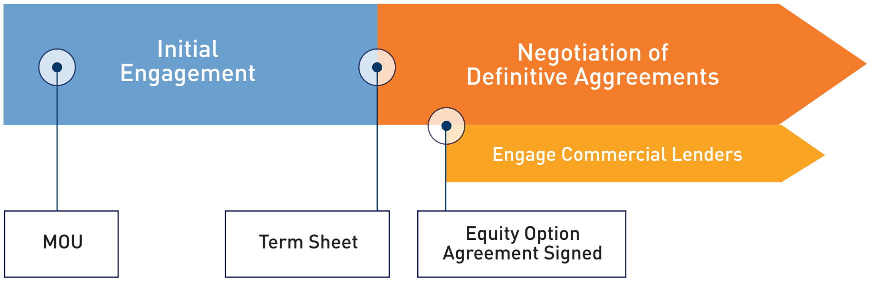


FIGURE 4: CAPITAL RAISE FOR EQUITY FINANCING

In a post-COD investment model, construction will be led by the project Sponsor. The eligible First Nations Investor(s) may have a role in project oversight through advisory boards or committees. For the eligible First Nations Investor(s), the construction phase is a time to prepare for ownership by securing equity investment financing, if necessary, and assessing whether the project remains an attractive commercial opportunity.

As soon as the Definitive Agreements are finalized and the eligible First Nation Investor(s) have signed the Equity Option Agreement, they may proceed to engage with Lenders in initial discussions to secure the necessary capital to make the equity investment. Depending on the size of the investment, this may require borrowing from a financial institution or raising funds through capital markets. The capital raise can be a complex process, particularly if significant financing is required. First Nations may work with financial institutions, private equity firms, or government agencies to secure financing.

Concurrently, as the project approaches operations, the Limited Partnership will be formed by the Sponsor. Once the project reaches COD, the Sponsor will transfer the project assets to the Limited Partnership, along with any related assets required to operate the project (the Vend in Transaction). Limited Partnership shares are issued to the Sponsor based on the valuation methodology described in the Equity Option Agreement, effectively capitalizing the Limited Partnership and creating shares for purchase by eligible First Nation Investor(s). Until the eligible First Nation Investor(s) purchase their allocation of shares, the Sponsor would be the sole Limited Partner and would hold nearly all (typically >99%) of the Limited Partnership shares and the GP would hold the remainder. **Appendix A** visually depicts and expands on this process in greater detail.

2.5 COD (Exercise Period Begins)

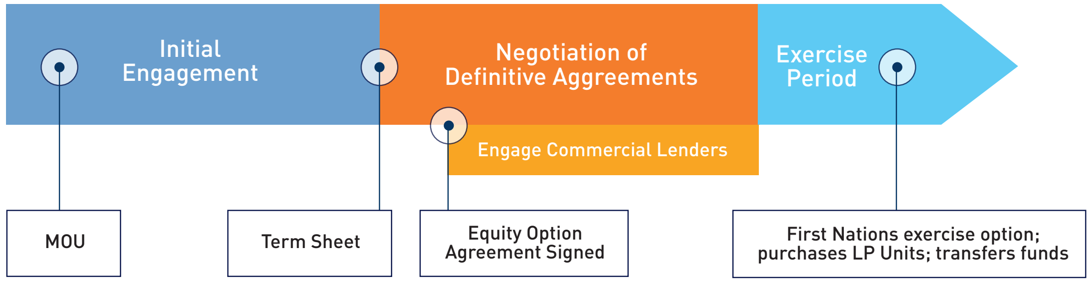


FIGURE 5: EQUITY OPTION EXERCISE PERIOD

The Exercise Period for the equity option typically begins when the asset reaches its COD, which often coincides with the formation and capitalization of the Limited Partnership. The Exercise Period is the defined window of time (i.e. 3-12 months) during which the eligible First Nation Investor(s) can choose to exercise their option to purchase equity in the project (or not). During this period the First Nation Investor(s) should have access to the requisite information required to support their own due diligence and that of potential equity Lenders.

Eligible First Nation Investor(s) should evaluate the opportunity, reviewing key metrics such as the terms and cost of capital (interest rate, recourse vs non-recourse), revenue forecasts, operating costs, and risk factors. If the project is performing as expected and aligns with their strategic goals, the eligible First Nations Investor(s) may wish to proceed to exercise their equity option and purchase their allocation of shares.

Prior to the exercise of the option, the Sponsor will hold all shares in the Limited Partnership and receive all the related equity distributions until the eligible First Nation Investor(s) conclude their equity option transaction. Upon the equity purchase transaction (described below), the Sponsor will sell the agreed upon allocation of Limited Partner shares to the First Nation Investor(s).

2.6 Equity Purchase

After securing the necessary capital, the First Nation Investor(s) proceeds with the equity purchase, becoming a Limited Partner and owner of the project with an entitlement to a share of the profits in proportion to the shares they have acquired. They will receive regular equity distributions from that point onward, so long as there are profits in the partnership, and they retain their interest.

2.7 Ownership

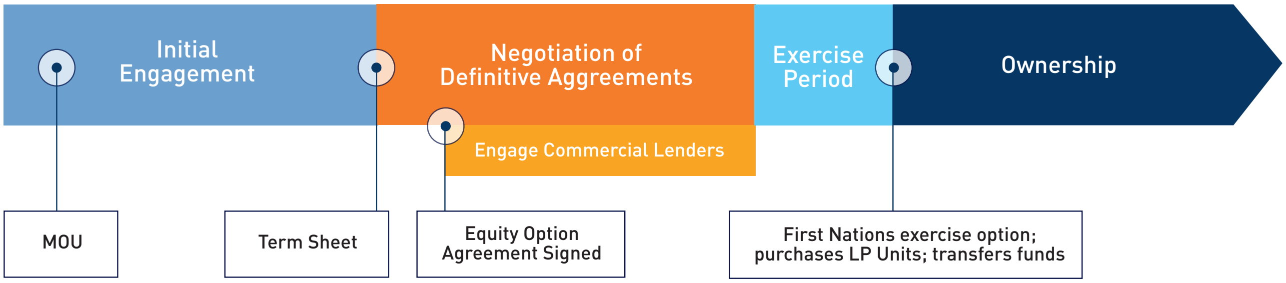


FIGURE 6: EQUITY OWNERSHIP

Ownership provides the opportunity for long-term financial returns, which can support community development, infrastructure, and other initiatives. However, it also means sharing in the risks of the project, such as operational challenges. While the General Partner will be responsible for the management of the project, Limited Partners will have defined governance rights that are executed through partnership votes.

From time to time, the General Partner may need to raise additional funds beyond what was budgeted for in the annual operating plan. This may be the result of unexpected events that require unplanned maintenance or capital investment (for example, uninsured events may destroy a portion of an electrical transmission line which must be rebuilt). If that is the case, the Limited Partnership Agreement will typically empower the General Partner to raise additional debt to fund short term needs. If the General Partner cannot raise the required debt, the Limited Partners may be called upon to contribute more capital.

This process is known as an additional capital call (ACC), and the procedures governing ACCs will be outlined in the Limited Partnership Agreement. In such cases, each First Nations Owner(s) will need to contribute its proportion of the requested capital to maintain its ownership interest and not be diluted. In certain cases, the Limited Partnership Agreement may contain provisions which enable the First Nations Owner(s) to borrow from its partners to fund ACCs. In these cases, the Agreement would define repayment protocols which could involve any cash that would otherwise be distributed to the First Nation as equity distributions going towards the repayment of these borrowings.

WHAT DOES IT MEAN FOR YOU?

Ownership Roles and Responsibilities

As First Nations participate as Limited Partners, their roles and responsibilities during operations will differ from those of the General Partner(s). As described in Section 2.2.2 Limited Partnership Agreement, while Limited Partners provide capital and benefit from the project's success, they are not involved in day-to-day management and decision-making.

As Limited Partners, First Nations do not engage directly in the project's management but will have defined governance roles that are established in the Limited Partnership Agreement. Several of the responsibilities of First Nation Investors are outlined below, focusing on governance, decision-making, and capital calls, all within the context of their limited partner status.

Shareholder or partner approvals

Limited Partners help shape the project's long-term strategy by voting on critical issues such as future investments, expansions, or major structural changes. Their involvement in governance is more about oversight than day-to-day management. Limited Partners are not entitled to take part in the management of the business, but their partnership shares grant them voting rights on certain matters such as:

- Matters that are fundamental to the business including changing the business, and selling all or a majority of the assets owned by the Partnership;
- Material changes to material contracts;
- Entering into new contracts not contemplated by the business of the Partnership;
- Certain decisions that could impact the return of profits; and
- Requiring the partners to make equity contributions that are not contemplated by the budget or reasonably required for the operation or maintenance of the project.

Unit Transfers and Exits

The Limited Partnership Agreement will specify the protocol under which partners may divest or sell their shares. For example, there may be restrictions placed on when the First Nation Investor(s) may sell its shares (i.e. not for the first 5 years). Similarly, other Partners may need to provide their consent if one partner wishes to sell its units to a third party.

Future Contribution Requirements (Additional Capital Calls)

The Limited Partnership Agreement will detail any obligations of Limited Partners related to future contribution requirements (i.e. ACCs). This includes obligations and procedures in the event the business requires additional funds for costs relating to management, upgrades, repairs, refurbishment, insurance, decommissioning, and other liabilities.

The primary financial responsibilities of the First Nation Investor(s) as Limited Partners is responding to ACCs. As Limited Partners, the First Nation Owner(s) must contribute their proportionate share of additional capital as outlined in the Limited Partnership Agreement. Failure to meet a capital call could result in dilution of their ownership stake (and associated proportional entitlement to profits) as well as reduced influence in decision-making.

2.8 Other Agreements

In addition to the agreements discussed above, the following are other agreements relevant to the project that the eligible First Nation Investor(s) may be exposed to.

2.8.1 Project Agreement

The Project Agreement is the overarching contract between the SPV and the entity that will be constructing the Project (for example, a Design-Builder). The Project Agreement defines the asset to be constructed, performance specifications, risk allocation, payment mechanism, and delivery schedule, among other terms. The Project Agreement may also specify any requirements associated with benefits negotiated by impacted First Nations regarding employment opportunities or sub-contracting opportunities that are to be awarded to community-owned businesses.

2.8.2 Lending Agreements

The Lending Agreement is an agreement between a borrower and a Lender that establishes the terms under which a borrower may borrow funds. The SPV will typically enter into a Lending Agreement(s) to finance the project. First Nations may enter into their own Agreement with Lenders if they require financing to purchase their equity stake in the project. This Agreement will detail the terms of the loan, such as interest rates, repayment schedules, any security required and the covenants the borrower must adhere to. Lending Agreements are covered in greater detail in *Capital Markets 301 Handbook*.

2.8.3 Impact Benefits Agreement

An Impact Benefits Agreement (IBA) is common in major project delivery and is negotiated outside of the commercial transaction. It outlines the form of compensation that the First Nation community will receive for impacts to Aboriginal and Treaty rights as a result of the project. The IBA is separate and distinct from the equity opportunity and is not contingent upon the First Nation exercising the equity option. These benefits may include employment opportunities, training programs, business contracts, financial compensation, and community investments.

Outside of compensation for impacts, financial support from Sponsors or government grants is critical to enabling First Nations to undertake the necessary due diligence to assess equity opportunities. As mentioned throughout this learning module, First Nations will require access to a range of independent advisors with financial, commercial, and legal expertise.

IBAs are sometimes referred to as Project Agreements; however, these are separate and distinct from the Project Agreement discussed above in Section 2.8.1, which refers to the contract between the SPV and the entity (such as a Design-Builder) constructing the asset.

2.8.4 Vend-In Agreement

A Vend-In Agreement is an agreement which sets the terms through which the project assets will be transferred to the Limited Partnership. This agreement establishes the purchase price for the project assets, which will be used to calculate the value of equity shares that will be available for purchase.

2.8.5 Operating Agreement

The Operating Agreement governs the day-to-day management and operations of the project. This Agreement is between the Operator and the General Partner and details how the project will be managed on an ongoing basis.

2.8.6 License Agreement

A License Agreement grants one party the legal right to use certain assets owned by the other party (such as land). For example, in the case of a transmission line project, the Limited Partnership would enter into a License Agreement with the Sponsor to provide the Limited Partnership with the necessary rights to access and use the real property on which the transmission line is located to operate the line.

Photo from Unsplash+: American Public Power Association, Anthony Aird, Levi Mer Clancy

2.9 Key Considerations and Risk Factors

This section identifies common risks that may arise while negotiating equity transactions, and approaches for mitigating these risks.

RISK	DESCRIPTION	MITIGATION
Misalignment of Expectations	This can occur when both parties have different understandings of the project's financial returns, governance roles, or long-term goals. For example, a developer may prioritize maximizing profits, while the First Nations may be equally focused on sustainable development or community benefits.	It's essential to **establish clear communication** early in the process. Both parties should openly discuss their objectives and expectations, ensuring that any differences are addressed during negotiations before agreements are finalised. Regular meetings, facilitated workshops, and drafting detailed term sheets that capture these mutual understandings can prevent misunderstandings.
Complexity of Financial Terms	Equity Option Agreements often involve complex financial terms, including pricing formulas, return on investment (ROI) expectations, and revenue-sharing mechanisms. Without a deep understanding of these financial concepts, First Nation Investor(s) may face challenges in evaluating the long-term impact of the investment or assessing the true value of the equity option.	First Nations should **engage experienced legal and financial/ commercial advisors** to help them fully understand the financial aspects of the equity option agreement. These advisors can provide valuable insights into the risks and rewards associated with the investment and ensure that the terms are reasonable and commercially attractive.
Timing and Flexibility Issues	Equity Option Agreements are often tied to specific timelines, such as the project reaching its COD. However, delays in construction or changes in market conditions can create challenges in aligning the timing of when the equity option must be exercised. If First Nation Investor(s) are not prepared to raise capital or make decisions within these timeframes, they may lose the opportunity to invest.	Agreements should **include an exercise period** that is sufficient to allow for the necessary approvals by Council, and sufficient time to secure financing. Both parties should agree on realistic timeframes to exercise the option.

3. Engaging Commercial Lenders

As previously discussed in *Capital Markets 101 and Capital Markets 301*, major projects are often financed using a non-recourse project finance structure. Lenders will rely solely on a project's cashflows to repay any loans. As a result, they will undertake significant due diligence to evaluate the quality of the project's cashflows and exposure to risks when deciding whether to finance a project. Eliminating direct recourse to First Nations and the government funding that is relied on for community programs and services is often raised as an important priority for First Nations.

This section discusses engagement with Lenders at two levels, one at the project level to arrange financing for the construction of the project, and one at the equity level to arrange financing for the First Nation's equity investment.

3.1 Financing the Project

3.1.1 Capital Raise – Project Financing

Leading up to construction (and following a Financial Investment Decision "FID" to proceed), the Sponsor will raise capital to fund construction activities.

The proposed ownership structure will be one aspect of the project that Lenders will be looking to assess when evaluating the project. Lenders may require access to term sheets or definitive agreements as part of their review of the project. First Nation Investor(s) may be asked to participate in conversations with Lenders alongside the Sponsor during the initial capital raise for the project, although the responsibility for raising project financing still falls to the project Sponsor.

Capital markets offer a range of instruments including construction bonds, revolving credit facilities, commercial paper programs and construction loans provided by a group of banks. Bank solutions loans tend to offer flexibility in terms of repayment schedules and interest rates, while bond solutions can provide access to a broader pool of investors at potentially lower long-term rates. Very large projects commonly use bank-and-bond solutions.

The appropriate financial structure for the project may involve several different borrowing instruments, and will depend on the size and nature of the project, risk profile, and the conditions of capital markets at the time of financing. Borrowers can expect that the proposed financing solution will be a function of the amount of financing required, the creditworthiness of the project's anticipated future cash flows, and the timing of specific funding needs.

Several financing instruments are commonly used during construction, each designed to meet specific funding needs. These can include:

- **Revolving Line of Credit:** This floating interest rate line of credit provides flexibility by allowing the project Sponsor to borrow, repay or refinance, and re-borrow funds as needed during construction. For larger capital projects with significant financing needs, this revolving credit facility with the option to repay or refinance can provide improved pricing as financial institutions do not need to commit the full capital cost of the project, which also means the committed capital amount can be relatively smaller and more banks can compete for your business.

  For clarity, once a line of credit loan is fully drawn, it can be refinanced into a short or long-term bond (usually at lower interest rates; the cheaper bond proceeds are used to repay the more expensive bank line of credit. If necessary, the Sponsor can then once again begin to draw on the line of credit for the next phase of construction.

- **Construction Term Loans:** These are traditional loans from a financial institution with a set repayment date and interest rate. The Sponsor may borrow a short-term construction loan with the intent to refinance at construction completion into a long-term facility with a lower interest rate. If the construction schedule is delayed, the Sponsor may need to refinance the construction loan sooner than COD using a mini-perm facility.

- **Mini-Perm Financing:** This short-term loan is designed to bridge the gap between construction financing and long-term financing. It usually matures shortly after COD, when the project is expected to generate steady cash flow, allowing refinancing into more permanent financing.

Once construction financing is secured, Lenders will continue to play a crucial role in monitoring the progress of a project during the construction phase. They oversee construction drawdowns, which is the process of releasing funds in stages as the project achieves specific milestones. Lenders carefully track the project's timeline, cost tracking logs, and financial health to ensure that the funds are being used effectively and that the project remains on schedule.

3.1.2 Refinancing at COD

Refinancing offers an opportunity to improve project economics by lowering the cost of financing. As the project reaches COD, construction loans, which carry a higher interest rate, can often be refinanced into long-term debt, such as a long-term bank loan or bond carrying a lower interest rate. Project risk often diminishes substantially when construction concludes, meaning lower interest rates should be available for the long-term debt.

3.1.3 Credit ratings

Credit ratings are a tool used to provide an indication of the project's creditworthiness. Credit rating agencies evaluate the financial health and risk of a project or borrower, assigning ratings that reflect their likelihood of meeting debt obligations. In this context, the Sponsor may engage a credit rating agency, such Fitch, Standard & Poor, or DBRS, to evaluate the project and assign a credit rating. Credit ratings are a requirement to access public bond markets, and they may be required by some financial institutions.

Higher credit ratings indicate lower risk, which can result in more favourable financing terms. In contrast, lower credit ratings suggest higher risk, often leading to higher interest rates, shorter tenors and stricter loan covenants (discussed further in section 3.2.2 below)

Credit ratings are not typically required for equity financing; however, the project's credit rating may be useful for First Nation Investor(s) in demonstrating the creditworthiness of the project and the risk profile of the equity investment.

3.2 Financing the Equity Investment

3.2.1 Capital Raise – Equity Financing

While Lenders for the project financing will be engaged by the Sponsor during the development phase, Lenders for the equity financing are typically engaged by First Nation Investor(s) as the Exercise Period approaches, usually prior to COD and after the Definitive Agreements are concluded. Engagement in earnest should ideally be underway within six months from when the investment is planned to occur. At this stage, the project has been largely de-risked, the final project costs can be estimated with a high degree of confidence, the financial structure going into operations is known, the Definitive Agreements have been finalized and the approximate size of the equity investment (i.e. the amount of financing that will be required) is reasonably well known.

The process of engaging Lenders typically begins with the preparation of an information package, detailing key aspects of the transaction and project. Lenders will be asked to provide indicative terms and pricing for the equity financing based on their evaluation of the project. The indicative terms will typically include the amount of financing the Lender is willing to provide, as well as the conditions or covenants associated with the loan. These may include the timeframe for repayment (loan tenor), interest rate, security requirements, and lending covenants. These terms will be based on the Lender's evaluation of the project and will be indicative at this stage, meaning they could change if there are material changes to the project.

A financial advisor can support in assessing these offers and recommending a preferred solution as well as additional considerations for points of negotiation with Lenders. These terms will eventually form part of the Lending Agreement between the First Nation Investor(s) and the financial institution and will remain indicative (subject to base rate fluctuation) until Financial Close when rates are locked-in, and financing is secured.

In cases where there are multiple First Nation Investors, it is often advisable that the First Nations act as a single unified entity when arranging equity financing. This can result in improved pricing, by minimizing Lender due diligence obligations, and simplifying the governance structure – which will be a key risk factor that Lenders will examine when pricing the debt. It also increases the size of the equity investment, which may allow the First Nation Investors to access more opportunities for financing (such as bond markets) that may not be available with a smaller financing requirement. These considerations are discussed in the *Capital Markets 201 Handbook*.

3.2.2 Lender Security & Covenants

When a Lender provides financing to a project, they require security or collateral to protect their investment. This could include the project's physical assets, future revenues, or other guarantees that the Lender can claim if the borrower defaults. Lenders look to minimize their risk by being first in line to be repaid if the project encounters financial difficulties. The stronger the lender security, the lower the risk for Lenders, which can result in more favorable loan terms for the borrower.

First Nation Investor(s) that are financing their equity investment can expect to provide Lenders with some form of security. As covered in *Capital Markets 201*, it is recommended that First Nations Investor(s) participate in projects through a non-recourse model, which involves delegating authority to a wholly owned Economic Development Corporation, who would then form a holding company to invest in the project. Any financing would be undertaken by this holding company, limiting recourse to the First Nation's other assets or sources of revenue.

Given this non-recourse structure, Lender's security would include the First Nation Investor's shares in the Limited Partnership. If the First Nation fails to make the required payments on their equity loan, they may be at risk of losing their ownership stake in the project. Failure to meet the terms of the loan will result in escalating rights for lenders that can range from requiring additional security, acceleration of the debt (meaning all outstanding amounts are immediately due and payable) and foreclosure or seizure of the First Nation's Limited Partnership shares.

Legal and financial advisors should be involved in negotiating the terms of agreements with Lenders to ensure the form of security is aligned with market precedents and the First Nation Investor(s) understand the obligations with respect to the loan.

Lenders will also typically include certain covenants, or conditions, for financing. Several common lending covenants are the Debt Service Coverage Ratio and Debt Service Reserve Account.

Debt Service Coverage Ratio (DSCR): The DSCR is the ratio of a projects cashflows that are available for debt service (CFADS)[1] relative to the debt service obligations (i.e. required principal and interest payments). For example, a DSCR of 1.25x means that project cashflows available for debt service (CFADS) are 1.25 times what is required to service the debt in that period. This is a common metric used to evaluate the strength

[1] CFADS are measured as the remaining cash flow generated by the business after paying all costs to sustain operations of the business (e.g. operating costs, maintenance and refurbishment costs).

of project cashflows and is used by Lenders to evaluate the risk that the borrower will be unable to make a debt payment in a given period. As a condition of financing, Lenders may require that the DSCR not drop below a certain number (i.e. 1.25x). Lenders will establish the DSCR requirement based on the risk profile of the project. Less risky projects with a steady and reliable revenue stream may see a minimum DSCR of 1.10x-1.30x, whereas projects with more uncertainty may see DSCRs greater than 1.50x.

Debt Service Reserve Account (DSRA): The DSRA is a reserve account typically funded when the financing is put in place and can be used to supplement CFADS in periods where project cash flows are insufficient to service debt obligations. Lenders may specify the amount of cash that the borrower is required to maintain in this account; this is typically related to the upcoming debt service requirements. Reserve accounts are important forms of protection in project financing that help to prevent the borrower from defaulting on loan repayment.

3.2.3 Pricing from Lenders

The interest rate on the equity financing will be provided as a spread (i.e. risk premium) above a base rate, for example the Bank of Canada rate. The risk premium is determined by factors such as the revenue quality of the project, the financial strength and experience of the First Nation Investor(s), the amount of equity that the First Nations themselves can provide (Lenders might assign a pricing premium if they are to finance 100% of the equity amount), and the project's overall risk profile.

The initial rate offered by a Lender will often be provided as a fixed or indicative spread above the base rate, with the final interest rate locked in at financial close. There is often opportunity to negotiate the terms of the loan, for example: the tenor (length of time from a loan's issuance to final payment), cash sweep (where a percentage of equity distributions automatically go towards repayment of the loan), reserve requirements and repayment schedule.

3.2.4 Loan Guarantees

Loan guarantees are a form of credit enhancement that can provide improved pricing for First Nation borrowers. A loan guarantee is a commitment from a guarantor to repay all or a portion of the loan's principal and/or interest in the event the borrower is unable to meet loan repayment obligations (i.e. in event of default). Loan guarantees can enable the borrower to secure financing at reduced interest rates, typically at or near the rate of the Guarantor. Loan Guarantees offer a critical form of credit enhancement for First Nation investors who may otherwise be unable to secure access to affordable financing to make their equity investment.

Loan guarantee programs have been established at the Provincial level in Alberta, Ontario and Saskatchewan. In 2024 as a result of strong advocacy and lobbying by the FNMPC and others, the province of British Columbia and the Federal Government also announced the creation of Indigenous loan guarantee programs.

3.2.5 Financing fees

In addition to interest charges, borrowers will encounter additional financing fees. Financing fees most commonly include arrangement fees and commitment fees.

Arrangement, or underwriting fees cover the Lenders cost of assessing the project and structuring the financing and are typically in the order of 0.5-1% but can vary based on the complexity of the project. The arrangement fee is a one-time fee charged at the beginning of the loan.

Commitment fees are paid on the available but undrawn portion of the debt. These fees are typical of construction loans which are committed up-front and drawn down slowly over time as the asset is being constructed, but the Lender is required to set-aside or commit the full value the loan at the outset. Since the Lender does not earn interest on the unused balance, the commitment fee compensates the Lender for keeping the funds available. Commitment fees may amount to 1% on unused credit balance.

A financial advisor should be engaged to assist in analyzing the impact of different lending offers. Even small changes in interest rates can significantly impact large-scale projects. As shown in **Figure 7**, a 0.50% rate increase from 3.5% to 4% on a $500 million project decreases cumulative equity distributions from $268 million to $236 million, or a 11.8% reduction.

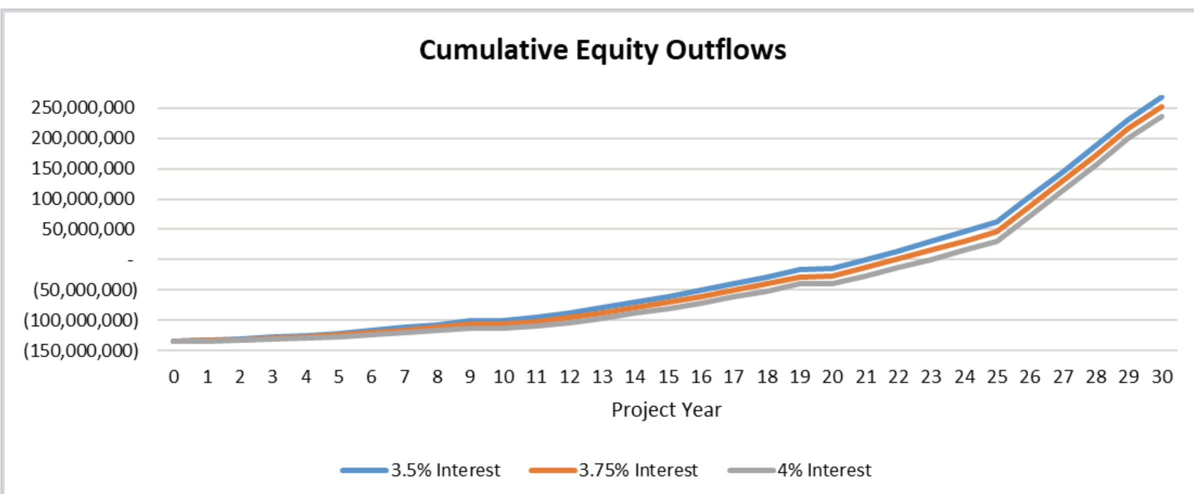


FIGURE 7: COMPARISON OF NOMINAL INTEREST RATE CHANGES

It is advisable that First Nation Investor(s) engage with multiple Lenders to increase the competitive tension and potential for improved offers to optimize financial outcomes.

3.2.6 Maximizing Returns through Loan Amortization

The structure of debt repayments can also vary. **Annuity-style debt repayments** involve fixed, constant payments over the loan's life, providing predictability in cash flow management. Similar to a mortgage, the borrower would make a fixed payment each period that would serve to pay both the principal and interest portions of the loan. During the initial period, payments will go primarily towards paying interest and the DSCR would fluctuate based on the project cashflows.

Alternatively, **debt sculpting** involves sizing the loan's repayment to a project's cashflows. Under a sculpted debt repayment model, the borrower makes higher payments during periods of strong cash flows and lower payments when cash flow is weaker. A minimum DSCR is maintained, and payments are structured such that any surplus revenue (in this case equity distributions) would go towards the repayment of the equity loan. This amortization approach can be structured to allow for a minimum distribution to the First Nation Investor(s), with any excess cashflows above the minimum DSCR and distribution to First Nation going to repay the equity loan. Sculpted repayments help align the debt burden with the project's cash flow streams, reducing financial strain during low-revenue periods.

Adjusting the **amortization period** of a loan (i.e. the loan duration) offers another opportunity to optimize financial performance. Shortening the amortization period can increase the total net equity distributions by accelerating debt repayments, such that less interest is paid over the life of the loan. Under this approach more of the equity distributions go towards repayment of the loan in the early years of operation resulting in lower net equity distributions to the First Nation Owner(s) in the early years of ownership.

Conversely, lengthening the amortization period reduces short-term repayment obligations, improving net distributions in the initial stages but extending the overall debt burden. First Nations Investors must carefully balance the desire for higher short-term returns with the long-term financial implications of different amortization schedules.

As shown in **Figure 8**, the cumulative equity distributions are higher for the earlier stages of the $500 million project when amortizing under a 30-year loan, but total distributions over 30 years are $44 million, or 16% lower than the 25-year loan option. When performing due diligence, these distributions should be evaluated using a net present value to see what is most beneficial to the First Nation.

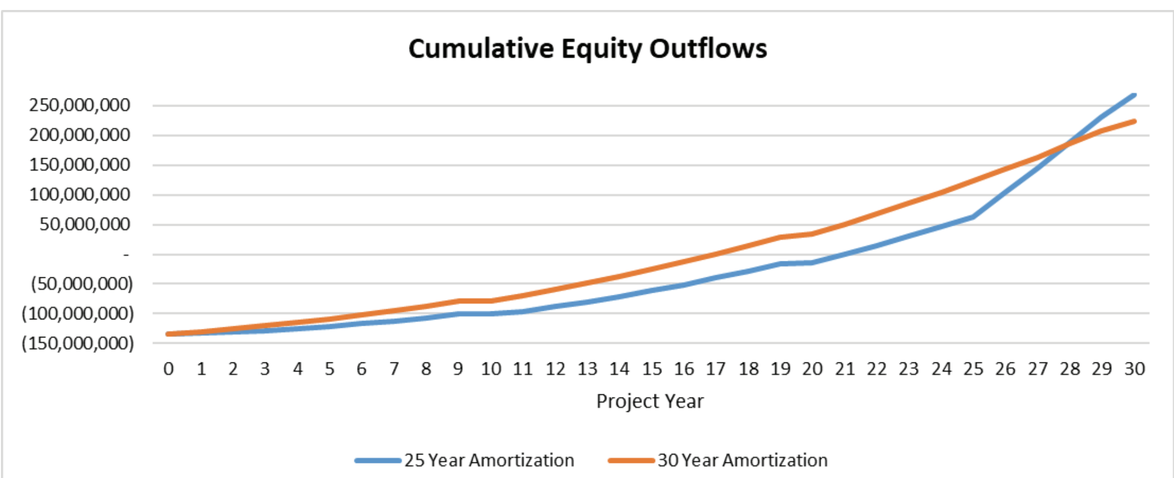


FIGURE 8: COMPARISON OF AMORTIZATION PERIODS

It is also possible to structure the equity loan such that it will not be fully repaid during the loan tenor; often referred to as a balloon structure, as it requires a portion of the unpaid loan to be refinanced. This approach allows for increased net distributions to the First Nation Investor(s) during the initial loan tenor, but it does expose them to refinancing risk. Furthermore, there are few precedents for government bodies to provide a loan guarantee on a refinancing, as most programs target greenfield (new) infrastructure.[2]

3.3 Determining Equity Loan Value

During initial negotiations, the eligible First Nation Investor(s) have an indication of the anticipated value of the equity investment based on the pricing methodology described in the Equity Option Agreement and the estimated project cost. As a project reaches COD, project costs become known and the value of the Limited Partner units can be calculated along with and the corresponding equity investment. It is important to align the timing of equity financing with the end of construction, once the total project costs can be estimated with a high degree of certainty.

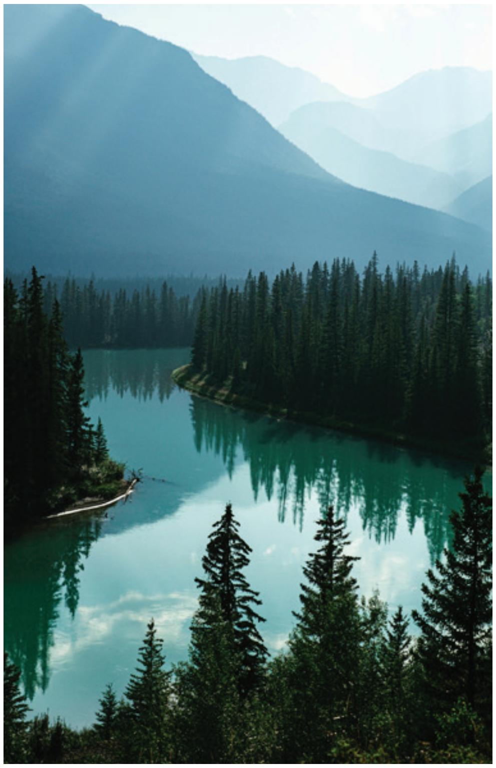


Photo from Unsplash+: Ampersand, Jason Mavrommatis, Matthew Henry

[2] AIOC backed Frog Lake FN in refinancing their equity investment in the Lindbergh cogeneration facility.

Conclusion

Building on FNMPC's Capital Markets 101, 201 and 301, the 401 learning module has provided an overview of the equity investment process, emphasizing the participation of First Nations in major projects. We have explored the critical stages from the negotiation of term sheets and equity agreements to the operational phase, highlighting the importance of effective governance, decision-making, and the financial responsibilities that come with ownership.

Key transaction documents, such as the MOU, Equity Option Agreement, and Limited Partnership Agreement have been discussed, offering insight into the legal and financial frameworks that guide equity investments. Additionally, the analysis examined the pivotal role of commercial Lenders and how capital markets influence equity returns, including the impact of construction events on target versus actual equity share value.

Finally, the responsibilities of equity owners during operations—ranging from governance to capital calls—were covered, illustrating the ongoing commitments needed to ensure the project's success. By understanding these processes and best practices, First Nations can make informed decisions that maximize their participation and influence in major projects, ensuring long-term benefits for their communities.

While the opportunities available to First Nations to become equity owners in major projects have been increasing in recent years, there remains a limited understanding of First Nations equity participation in capital markets. As both sides continue to evolve and more First Nation equity opportunities are realized, it is expected that the complexity of these transactions and the associated risk assigned by Lenders and First Nations alike will reduce, leading to improved access to capital for First Nations.

Appendix A

Overview of the Equity Transaction

The following presents an overview of an equity transaction, in which the eligible First Nation Investor(s) enter into Equity Option Agreement for their respective allocation(s) and can choose to exercise said option to purchase equity at COD.

At the onset, the project Sponsor is responsible for developing the project, securing construction financing, and seeking regulatory approvals for the project. Development is often delivered through a SPV, a new legal entity. The structure illustrated below is established at inception up until construction completion. The SPV commercial structure is illustrated below.

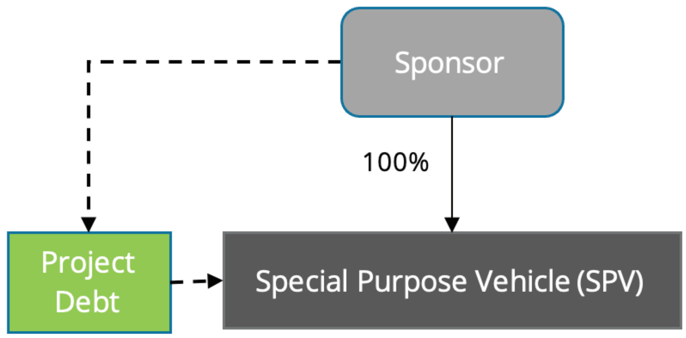


FIGURE A1: SPECIAL PURPOSE VEHICLE STRUCTURE

Construction cost overrun risk, delay risk, , penalties arising from construction are retained by the project Sponsor. Prior to construction completion, the project Sponsor forms a Limited Partnership (LP) and incorporates an entity to act as General Partner (GP) with 0.10% of LP units assigned to the GP; the project Sponsor holds all remaining units. The figure below illustrates the GP and LP structure created approaching construction completion.

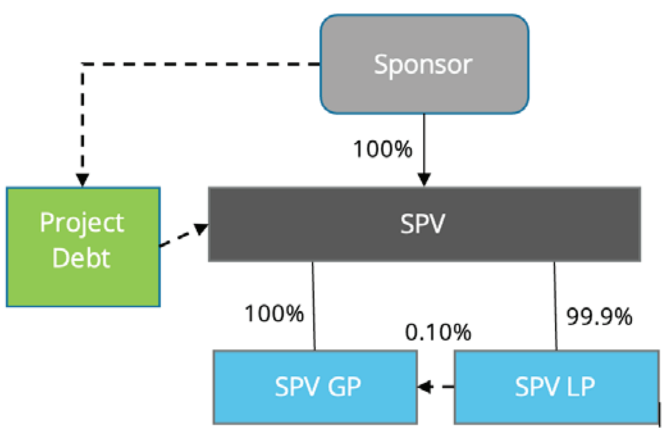


FIGURE A2: GP AND LP STRUCTURE

After satisfying conditions to achieve operations, the SPV transfers all assets into the Limited Partnership (SPV LP) in exchange for SVP LP units. With this Vend-in Transaction, SPV LP is capitalized, and the price of SVP LP units is known. The figure below illustrates the commercial structure following the transfer of debt and assets to the LP.

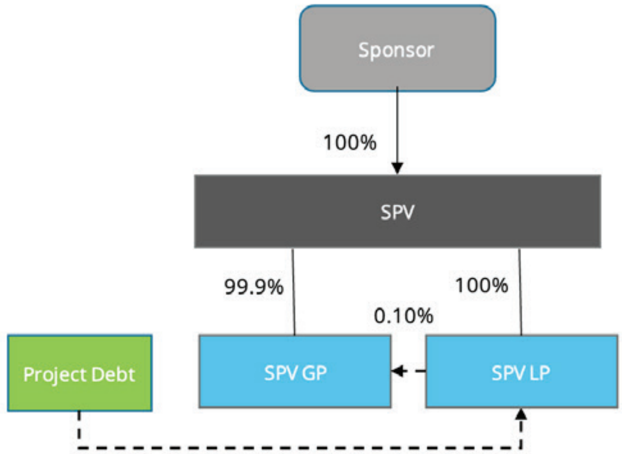


FIGURE A3: PROJECT DEBT TRANSFER STRUCTURE

Participating First Nations may execute the option to purchase their individual allocation of LP units at face value to an aggregate maximum of 49.95%. This equity purchase transaction is repeatable for all First Nations.

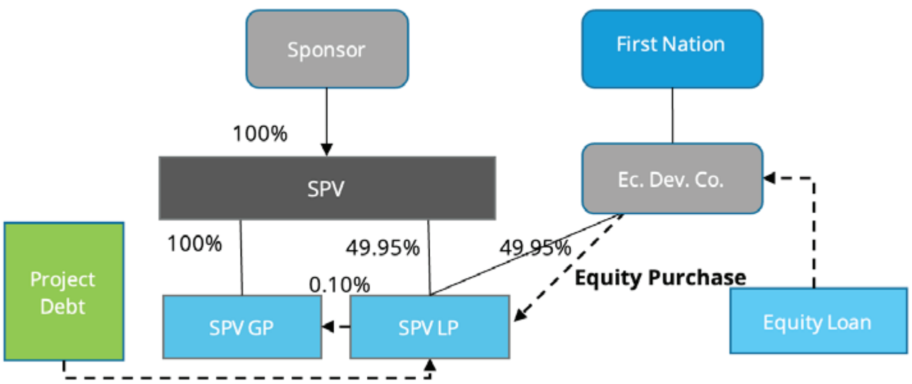


FIGURE A4: COMPLETE GOVERNANCE OVERVIEW

Figure A4 above depicts the commercial structure where there is a single participating First Nations participating through its Economic Development Corporation (Ec. Dev Co.).

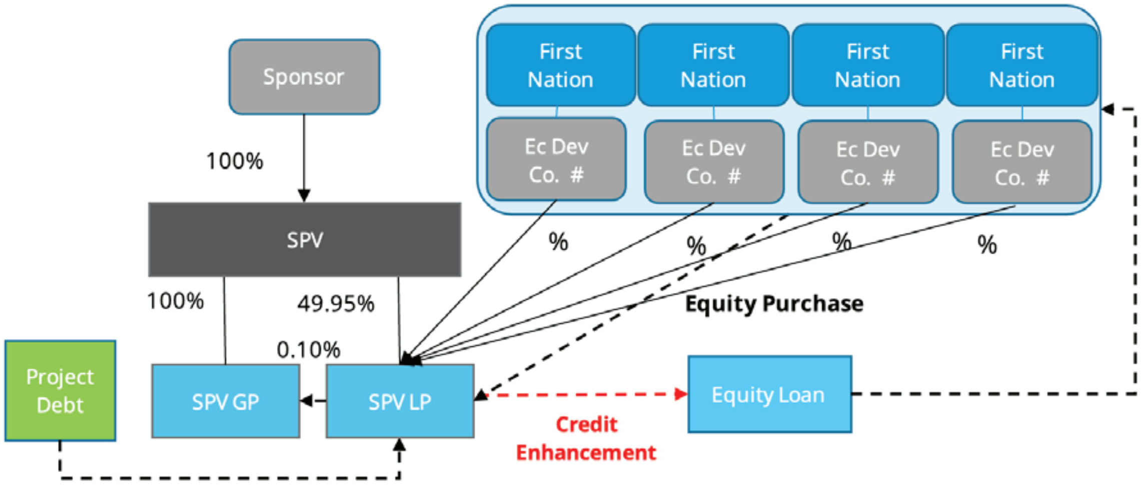


FIGURE A5: STRUCTURE WITH MULTIPLE INDEPENDENT INDIGENOUS GROUPS

In Figure A5 above, there are multiple First Nation Investors, each participating independently. A **single equity loan** is attained by the group of investors, but equity shares are held directly by the individual First Nations. A Credit Enhancement, such as a loan guarantee, is provided to the First Nations Investors, reducing their cost of borrowing. The FN shares in the SPV LP are pledged as security for the equity loan. This commercial structure is preferred by Lenders.

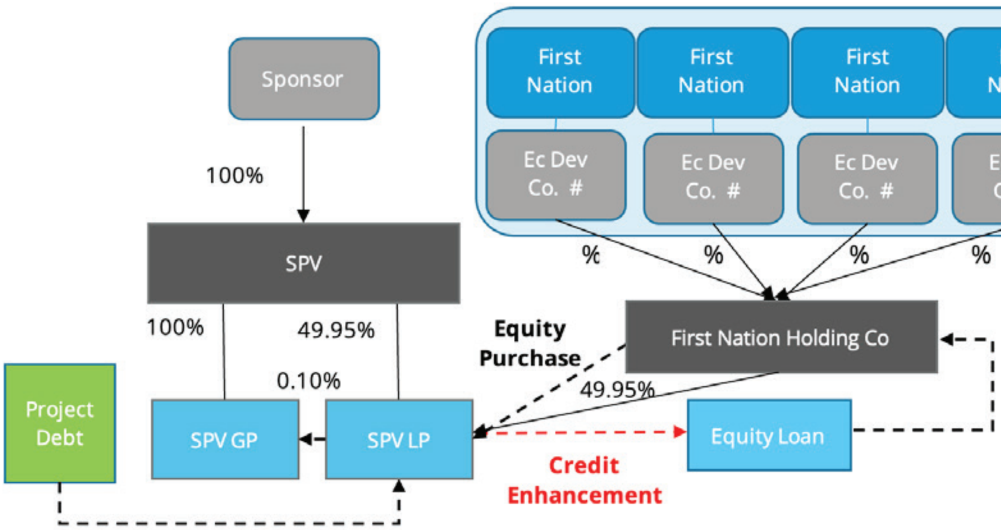


FIGURE A6: STRUCTURE WITH AN AMALGAMATED FIRST NATION HOLDING CO.

Under the final configuration, the participating First Nations have formed a separate First Nations Holding Company through which to participate in the transaction.

The Capital Markets Learning Module Series

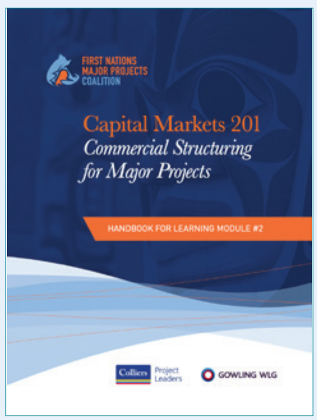
The FNMPC supports its First Nation members across Canada by providing capacity support related to commercial deal-making, including securing financing for major projects for First Nations to acquire equity ownership in major projects.

This Capital Markets 401 module is the fourth in a series of modules aimed at supporting First Nations' navigation of financing major projects. The Capital Markets Learning Module Series was developed in response to the FNMPC's First Nation members identifying a need to understand capital markets among leadership, community staff, and membership. The learning modules provide information to First Nations intended to build an understanding on how to navigate capital markets for the purposes of financing participation in major natural resource and infrastructure projects. The modules are grounded in industry standards of practice, leveraging current market information and expertise from accredited agencies.

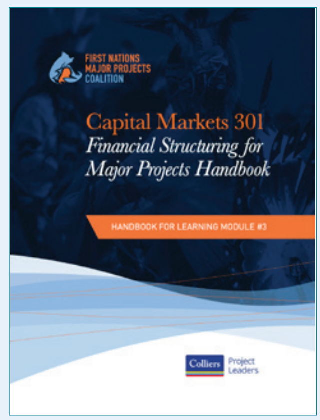
Explore the full module series at: https://fnmpc.ca/tools-and-resources/economic-tools/

Other Module in the Capital Markets' Series

Capital Markets 101:
Financing First Nations'
Participation in Major Projects



Capital Markets 201:
Commercial Structuring
for Major Projects



Capital Markets 301:
Financial Structuring for
Major Projects Handbook

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