

Commercial Structuring for Major Projects

CASE STUDY FOR LEARNING MODULE #2

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Project
Leaders

AGENDA

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SECTION 2

Case study: First Nation equity participation in a pipeline

SECTION 3

Understanding the Opportunity

SECTION 4

Making a Decision to Participate

SECTION 5

Establishing the Commercial Vehicle

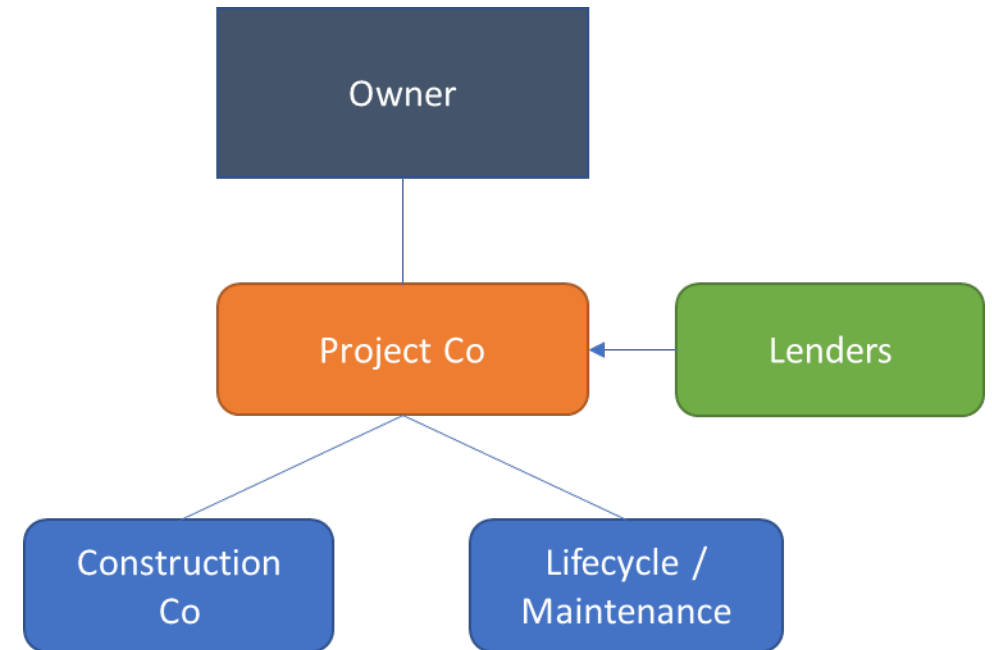
SECTION 1

What is Commercial Structuring?

Commercial Structuring?

A project's commercial or transaction structure refers to how the participants in a major project have organized themselves to deliver the project

Major projects are often delivered through a special purpose vehicle (also known as a **Project Company**), which is a legal entity established with the sole purpose of delivering the project.



SECTION 2

Case Study

Commercial Structuring Case Study

First Nations equity ownership in a pipeline

Scenario: A proposed natural gas pipeline will cross the traditional territory of 15 First Nations communities

- The project sponsor (owner) offers each of the 15 FNs an opportunity to collectively purchase up to 15% of the equity in the pipeline via *Indigenous Set Aside*, a percentage of the total project equity set aside to give FNs an economic participation opportunity.
- The 15% equity stake would be divided equally among the 15 FNs. Should a FN opt to not participate; their share will be divided equally between the participating FNs.



Commercial Structuring Case Study

What Next?

- Each FN must assess the opportunity and reach a decision on participation
- Those that wish to proceed must begin readying themselves to participate in the transaction
- This process involves:
 - Researching the opportunity & evaluating the pros and cons of participation
 - Determining whether to engage in the process, once the deal is understood, and whether to do so independently or as a group with the other FNs
 - Establishing the commercial vehicle and structures through which to invest in the project
 - Sourcing the financing required to make the equity purchase

SECTION 3

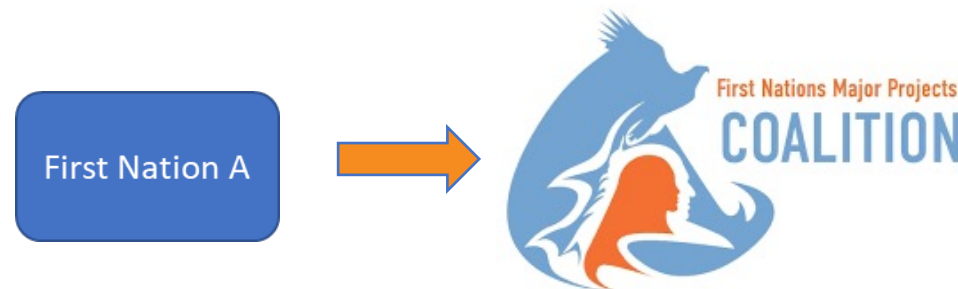
Understanding the Opportunity

Commercial Structuring Case Study

What Next?

- FNs are usually approached separately, with no forum for them to work together, pool their resources, find common ground and collectively assess the opportunity
 - As a result, some of the FNs act independently to undertake their own research, leading to duplication of effort
 - Other FNs simply do not have the capacity or the funds to hire advisors to assist with the required due diligence, and will be forced to decline to participate

Scenario: One of the FNs, First Nation A, is a member for the FNMPC and engages the FNMPC to support them in evaluating the equity purchase opportunity



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FNMPC Support

- The FNMPC provides First Nation A with access to a team of advisors to support them in evaluating the opportunity.



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FNMPC Support

- As the understanding of the opportunity progresses, the FNMPC facilitates information sharing sessions with the other 14 FNs, limiting duplication of effort
- These sessions create a forum for the FNs to aggregate and have discussions regarding the opportunity.
- This results in a shared understanding of the project, and the benefits and risks of participation
- Impacted First Nations receive regular updates to stay informed on developments in the process, including legal implications or impacts that everyone should be aware of
- FNs that may not have otherwise been able to afford or find the time to perform project due diligence are now included



SECTION 4

Making a Decision to Participate

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Making a decision to participate

Scenario: Once the opportunity is understood, 10 of the 15 First Nations, including First Nation A, decide to pursue the opportunity; 5 opt to decline

- FNMPC continues to work for First Nation A and support all FNs pursuing the transaction
- The 10 First Nations enter into a non-binding partnership agreement to continue pursuing the equity opportunity, and to take steps to organize into the ideal structure to participate in the project.
- This partnership agreement provides:
 - The 10 participating First Nations with the option to purchase their pro-rata equity share at the proposed transaction date (they may also decline to participate at any time prior to that date)
 - The remaining 5 First Nations have the option to come on board at any time before the transaction date

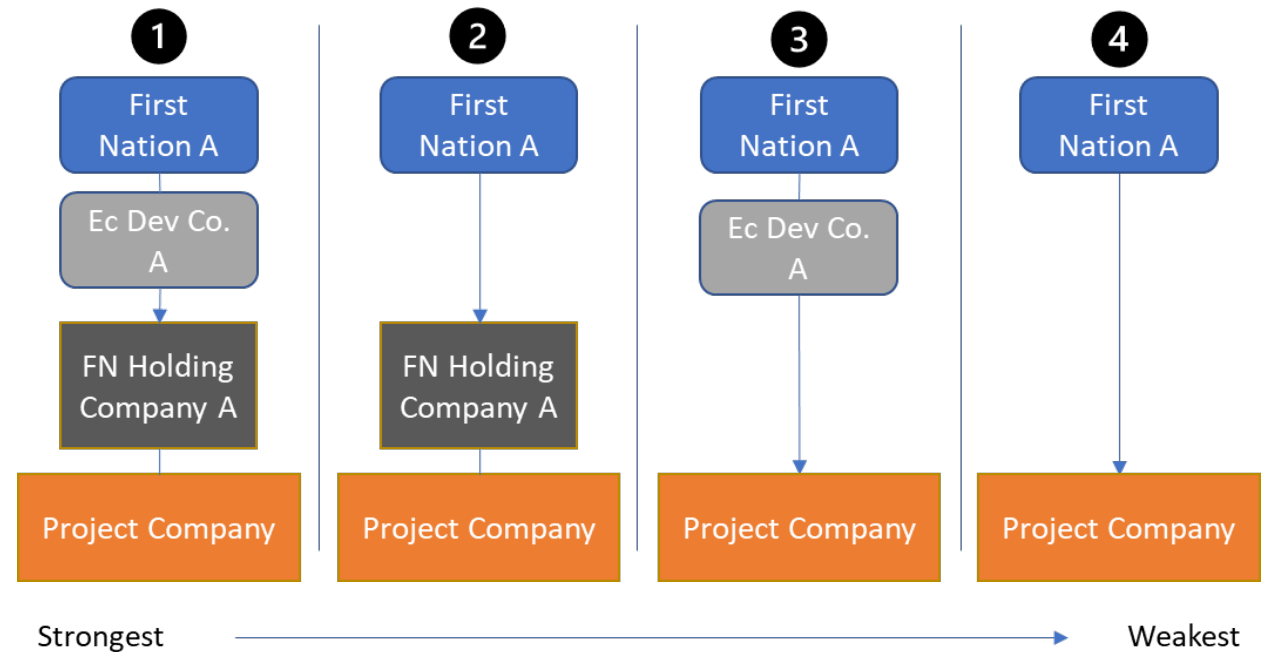
SECTION 5

Establishing the Commercial Vehicle

Commercial Considerations

Commercial Structuring Models

- In order to participate in the equity purchase, the FNMPC assists First Nation A and the nine other participating First Nations to establish a legal entity through which to participate
- The FNMPC helps educate the group on commercial structuring models and the varying levels of risk, governance implications, creditworthiness considerations and strength of their transaction structure



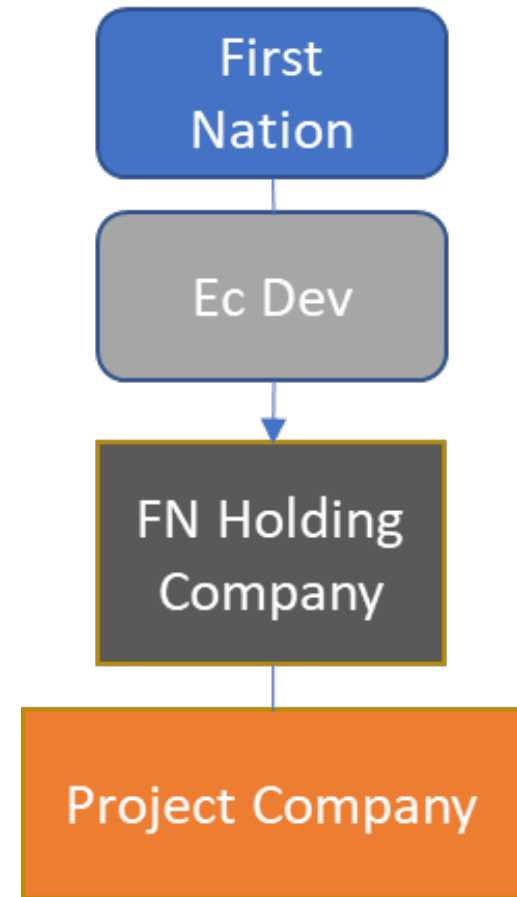
Commercial Considerations

Strongest Model

Scenario: FNMPC and advisors recommend that the First Nations structure their participation in the project through a non-recourse, limited liability transaction structure.

Suggested model:

- Each FN would delegate decision-making authority for the project and the investment to a wholly-owned, non-political Economic Development Corporation (Ec Dev)
- The partnership would then establish a special purpose vehicle (FN Holding Company) to invest in the project

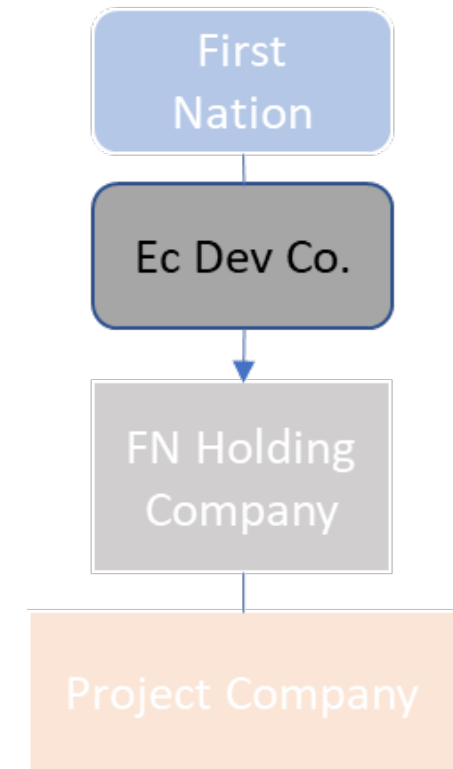


Commercial Considerations

Why an Economic Development Entity?

- Structuring participation through a business-oriented entity, such as a First Nation owned Ec Dev Co, ensures continuity of leadership in the project over the long term
- Without an Ec Dev Co, decision-making may fall to the Council and Chief. Each time there is a new election, the membership on project governance committees' changes; project support and strategic ties can be lost.
- Lenders will assess the likelihood of this risk when assessing the creditworthiness of the investment, which may increase financing costs

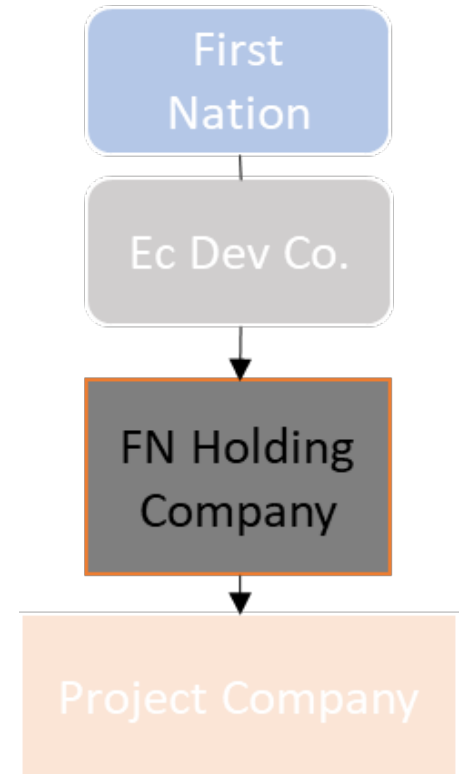
Action: Each of the 10 First Nations passes band resolutions delegating their decision-making for the project to their wholly owned Economic Development Corporation



Commercial Considerations

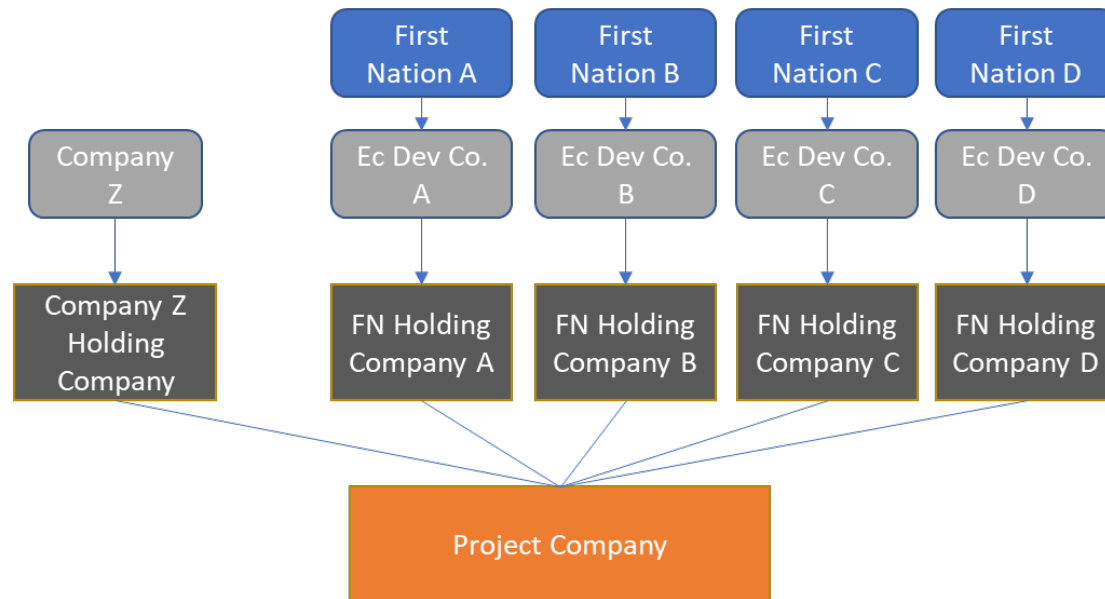
Why set up a Holding Company?

- The Holding Company is a separate legal entity whose sole purpose is to invest in the project
- Investing through a holding company limits the liability to project risks; should the project fail, the assets owned by the First Nation and the Ec Dev Co are protected
- Allows for the capacity to develop a project outside of a FN's balance sheet, improving its financial capabilities
- Holding Companies can be established independently for each FN, or with others



Commercial Considerations

Organizing independently

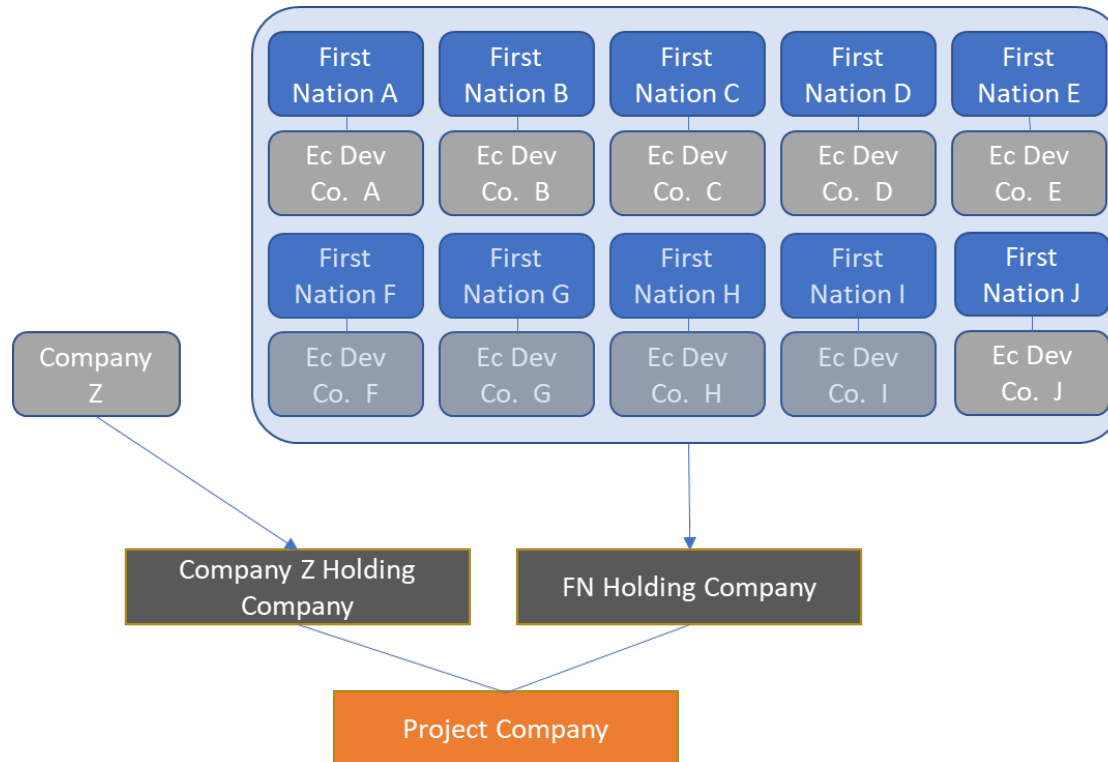


If each FN organizes independently to participate in the project

- There is duplication of effort as each FN has established its own Holding Company
- Each FN must attain its own financing package in order to purchase their equity stake. Financing may be provided by different institutions, creating timing challenges for exercising the equity option
- Lenders will require separate security packages from each FN
- Fractured representation of FNs in the Project Company

Commercial Considerations

Organizing together

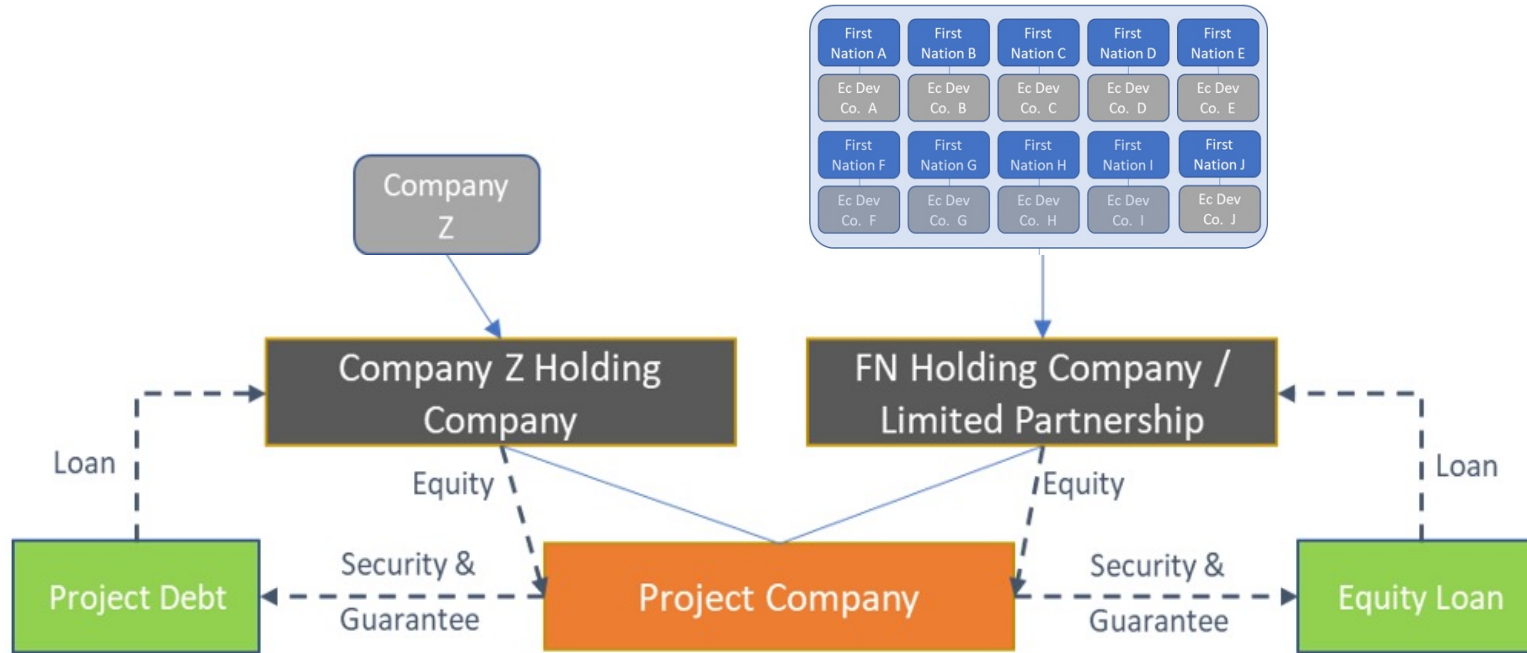


If the FNs organize to participate in the project together

- The FNs are a single legal entity and participate through a limited partnership model
- Reduced transaction costs (advisor fees) from establishing a single holding company
- Unified voice representing First Nations in the Project will be seen as favourable by Lenders
- Reduced effort for Lenders who can provide a single financing package for the equity purchase. This creates leverage that can be used to secure more favourable terms for the loan

Commercial Considerations

Financial Implications



- Since all ten FNs are unified in seeking their financing package together, the size of the debt package, and the strong commercial structure will attract better options than a fragmented approach
- The single equity loan is a simple transaction, and lenders have flexibility in their proposed approach
- By participating in the project together and establishing a joint Holding Company, the group creates a commercial structure that allows for **efficiencies** that can **increase the attractiveness** of the project among Lenders

Commercial Considerations

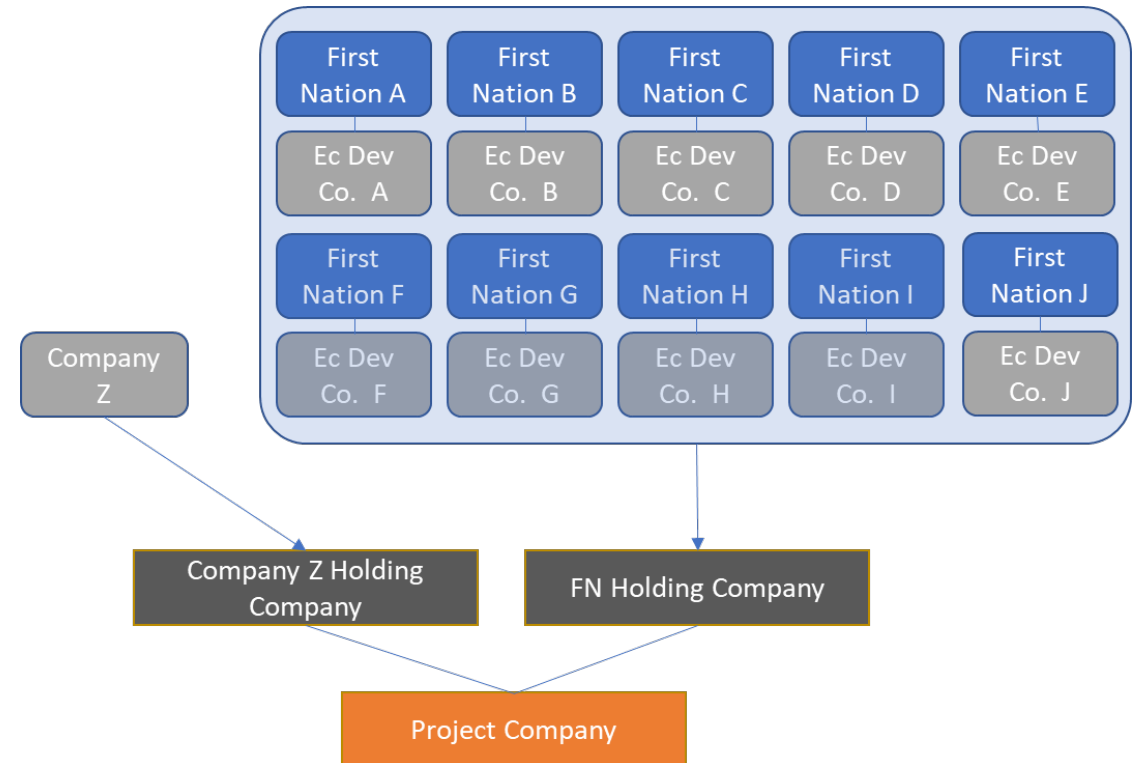
Financial Implications

- A strong commercial structure improves a project's creditworthiness among lenders
 - Well-defined governance framework and a **clear decision-making framework** contributes to improved management of risk
 - FNs acting as one through a limited partnership **brings a single voice to the table**, meaning negotiations are one-for-all, and there's no gaming between parties
 - Using dedicated holding companies for each FN provides a **sustainable business model** for the operational term of the project
 - A single representative ensures **alignment of owner's interests**

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Conclusion

- The 10 FNs establish a joint Holding Company to participate in the project as a limited liability partnership
- The result is that the FNs have been set up for success through the establishment of a strong commercial structure
- Owing to the establishment of this commercial structure, the partnership of FNs can access a single lending package for the equity purchase and benefit from reduced financing costs
- The likelihood of success is materially improved for all FNs through FNMPC's advice and leadership

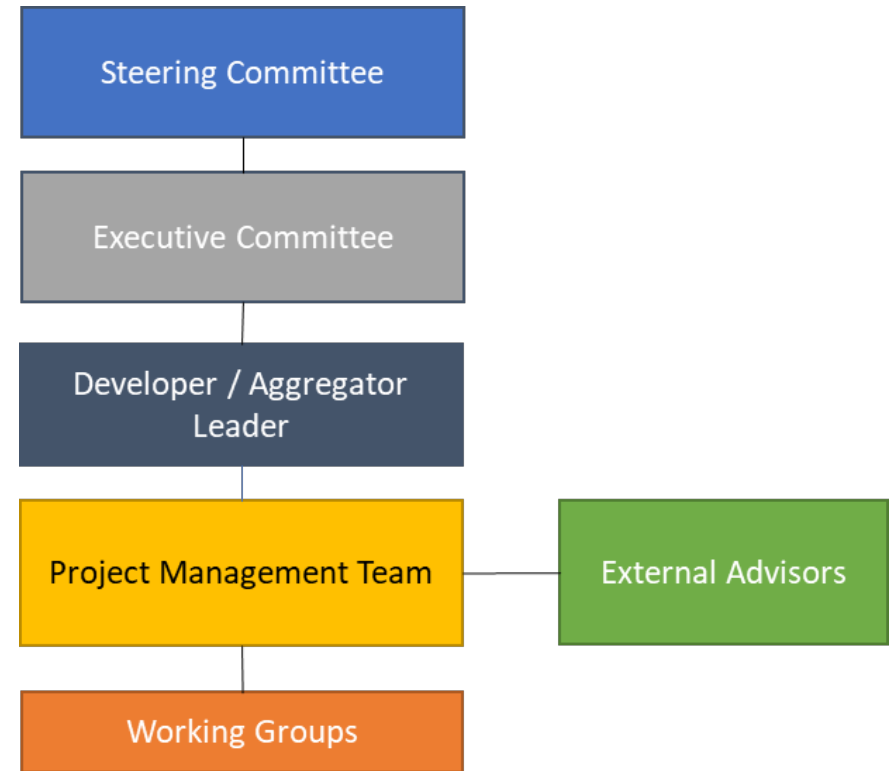


APPENDIX

Project Governance

What is Project Governance?

- Project governance is the formal management framework to make decisions about the project
- Ensures a clear chain of command, timely decision-making, and effective coordination amongst owners and their project delivery partners
- The internal governance framework for major projects often has multiple levels
- Each impacted FN should establish a form of governance structure that works best for them and satisfies basic commercial principles



Establishing a Project Governance Structure

Committee Membership

FN participation in the Project governance structure will occur at two levels:

- The Steering Committee provides authorization for execution of the project and oversees and provides direction regarding all matters associated with the project. This group reports into the impacted communities' Leaders.
- The Executive Committee are the overarching group that sanction the project and approves the Project Charter. They are responsible for monitoring the status of the Project and providing direction to the Project Team, who will manage the day-to-day execution of the project.

Steering Committee

- Impacted Community Leaders
- Economic Development Leaders

Executive Committee

- Aggregator Leader
- Delegated Ec Dev Leaders



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