



Aboriginal – Resource Industry Joint Ventures

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Items covered in this Presentation

- ⇒ Community based businesses
- ⇒ Typical business structures
- ⇒ Finding a business partner
- ⇒ Attracting investment
- ⇒ Financing First Nation businesses
- ⇒ Managing risk
- ⇒ The Impact of the Duty to Consult and Accommodate

First Nation's Business

⇒ What is a community based business?

- It is a community-based corporation
- Usually a resource development partnership
- It provides a product or service to a major developer
- The rights to the resource are usually with the developer, the First Nation or both.

First Nation's Business

- The resource is located on traditional land
- The community based corporation is a share capital corporation majority owned by the First Nation(s)
- Or the First Nation is a limited partner in a Limited Partnership business structure

Typical Business Structures

- ⇒ Limited Partnerships
- ⇒ Partnerships
- ⇒ For Profit Corporations
- ⇒ Non-Profit Corporations

Limited Partnership

- ⇒ General partner with limited partners
- ⇒ General partner takes on most of the liability and charges administration fee
- ⇒ Limited partners have limited liability and are not involved in management
- ⇒ Subject to certain situations, profits allocated to Bands are tax exempt

Partnership

- ➔ The partners may take an active role in the management of the company
- ➔ Some partnerships may have a managing party with limited responsibilities
- ➔ The partners share the liability
- ➔ The partnership runs like any other corporation except it is not incorporated

For Profit Corporation

- ⇒ Incorporated either provincially or federally and has shareholders
- ⇒ Liability is limited to the corporation
- ⇒ The corporation pays corporate tax, it does not matter if the shareholders are First Nations or status Indians
- ⇒ If the corporation is at least 90% owned by the First Nation the profits are exempted from tax subject to certain conditions

Non Profit Corporation

- ⇒ Is incorporated but no share holders
- ⇒ Surpluses are retained to support corporation's objectives
- ⇒ Better access to government support programs and social capital investors
- ⇒ The boards are usually large and all directors play an active role in management

Creating a Business Climate

- ⇒ Develop plans and policies that attract investors and companies (e.g. business strategic plan, protocols related to consultations, land use plans etc.)
- ⇒ Make public statements that encourages investment in the First Nations traditional territory.

Creating The Investment Climate

- ➔ Set aside investment funds if the First Nation is able to do so.
- ➔ If necessary put a plan in place to improve the band's financial position.
- ➔ Know your borrowing capacity.
- ➔ Use the competition by requesting Expressions of Interest (EOI) for partnerships.

Request For Expression of Interest

- ⇒ Issue Request For Expression of Interest (EOI) to 3 or 5 prescreened selected companies.
- ⇒ Provide as much detail as possible in the EOI
- ⇒ Select your partner and negotiate the JV agreement
- ⇒ Jointly prepare your business plan or revise your existing plan to include the JV

Using The Competition

- ⇒ Select the company that demands the least amount of cash for your equity
- ⇒ Your prescreening should ensure the company has a good track record and has a good reputation in the industry
- ⇒ Using the competition will cause companies to create innovative financial solutions

Strategies To Manage Risk

⇒ If you are a First Nation:

- Research potential partners using annual reports, management circulars and web sites
- Has the company had previous or existing partnerships with Aboriginal groups?
- Request the above information in the EOI
- Put the same questions to private companies

Strategies To Manage Risk

- ⇒ How large is the company?
- ⇒ Will the JV be impacted by environmental or political issues? For example, moratoriums, land claims or differences between governments

Strategies To Manage Risk

⇒ Typical questions from non-aboriginal companies

- Is the community politically stable?
- For how long has the leadership been elected?
- What are their policies in dealing with industry?
- Are the financial statements in good shape? Do they have money to invest?
- What is their borrowing capacity?

Managing Risk Continues.....

- Do they have a transparent administration?
- How do they communicate with their people?
- Do they have local champions to drive the JV?
- Do they have linkages to training facilities?
- How big is the labour force and what are the skills?
- Do they have a history of working with the private sector?
- Do they have an economic development strategy?

Debt Financing

- ⇒ Bridge loan,
- ⇒ line of credit,
- ⇒ term loans
- ⇒ Vendor take back financing. (e.g. hospitality industry)

Raising Debt and Equity Financing

- ⇒ Acquire equity through future earnings
- ⇒ Pool your equity with other First Nations
- ⇒ Leverage debt financing against purchase contract
- ⇒ Borrowing for your equity (e.g. subordinated debt)
- ⇒ Use funds from IBA to reinvest in project
- ⇒ Convert success fees into equity

Non Bank Financing

- ⇒ Issue an Offering Memorandum to sell equity or units.
- ⇒ Select an investment banker/ advisor that knows the financial markets.

Investors

- ⇒ Subject to size of the investment, the investors can be pension funds, insurance funds, asset backed lenders, corporate strategic investors or angels
- ⇒ Investors can be First Nations within Canada or Tribes in the US.
- ⇒ Difficult to raise capital under \$1 million

Investors

- ⇒ Typical sources for financing under \$1 million are Aboriginal Financial Institutions (AFI), government programs, some First Nations or community based corporations, friends and relatives
- ⇒ It is easier to source, structure and arrange transactions between \$1 mil and \$10 million.

Approaching Funding Sources

- ⇒ It is recommended to use an investment banker/ advisor to raise the financing you need.
- ⇒ Develop a professional Information or Investment memorandum that anticipates key questions from the investor/lender
- ⇒ Know your financial sources and their criteria

Approaching Funding Sources

- ⇒ Ask existing customers for a letter of reference and tell them they maybe contacted by an investor/lender
- ⇒ Partner with a credible business that knows the industry if your company lacks the technical and/or human resource capacity
- ⇒ Your partner maybe a funding source

Approaching Funding Sources

- ⇒ Be clear on how you intend to achieve your financial projections.
- ⇒ What is the security?
- ⇒ Who is going to manage the partnership and execute the business plan?
- ⇒ What is the training strategy?
- ⇒ Is there a purchase or contract agreement that has been pre-negotiated and signed?

Perception of Venture Capitalist

- ⇒ Preference to companies closer to home
- ⇒ Historically the preference has been for technology, bioscience or IT proposals. (High growth companies)
- ⇒ Aboriginal enterprises are not on the radar screen at all
- ⇒ Greater effort is required to bridge the gap



Perception Of Financiers

- ⇒ Aboriginal JV's are viewed no differently and are analyzed the same as any other JV proposal.
- ⇒ The difference includes a Band Council Resolution to provide an enforceable general security.
- ⇒ There is usually an expectation of government involvement in the transaction.

Government Financing

⇒ Sources of funding for aboriginal/non-aboriginal joint ventures are:

Developmental Funding:

- Aboriginal Business Canada
- INAC
- FedNor

Common Government Criteria

- ⇒ Eligible applicants are usually community-based corporations
- ⇒ Some equity is required by the applicant
- ⇒ The funds are restricted to fixed assets, consulting professional services and other non-operating expenses
- ⇒ The submissions are usually under \$1 million

How can FN's use P3 Financings

- ⇒ Many public governments use Public, Private, Partnership (P3) financings for public projects.
- ⇒ The model is normally used in the form of Design, Build, Finance, Operate (DBFO)
- ⇒ Private finance should be used only where there is a net benefit to the First Nation and/or the general public.
- ⇒ The First Nations rents or leases its public services.

P3 Financing

- ⇒ If leased, the ownership is transferred back to the First Nation after a period of time
- ⇒ The question is “Can the First Nation manage the risks associated with a particular Public Service at a lower cost than can the private sector”
- ⇒ Its an allocation of risk and reward between the private and public sectors

P3 Financing

- ➔ The need for a Independent Matawa Public Services comparator
- ➔ Successful PPP's comes from the transfer of individual risks from the public government to the private sector partners where the private sector is best able to manage and mitigate the risk

Developing Your Business Plan

- ⇒ Financial projections extremely important and how you intend to achieve your projections
- ⇒ What is the security?
- ⇒ Who is going to manage the JV and execute the business plan?
- ⇒ What is the training strategy?

Lessons Learned

- ➔ Lack of taking the time to fully understand what is being signed
- ➔ The need for independent advice at all stages
- ➔ The First Nations must have the financial resources to engage professional advice
- ➔ Community consultations are a prerequisite to successful agreements

Lessons Learned

- ⇒ Discussing potential problems before they become problems
- ⇒ The Crown not acting on its duty to consult First Nations on the potential infringement of aboriginal or treaty rights
- ⇒ The call for revenue sharing is not being addressed by the Crown

Lessons Learned

- ➔ As interaction increases between industry and aboriginal communities on resource development more innovative solutions for financing will occur
- ➔ First Nations need to ask themselves if they are getting the return on the money that is being spent on training

Why is the Duty to Consult and Accommodate necessary?

- ⇒ It is the law. It is current jurisprudence.
- ⇒ It usually begins when a company is on First Nation traditional territory and consultations with the community is required.

The Duty to Consult

- ⇒ The proposed activity is presented to the First Nation or Aboriginal community.
- ⇒ The community engagement starts with the company introducing itself to the Chief and Council or their designates.
- ⇒ Formal presentations to the Council or the community will follow (e.g. public meetings, radio, cable TV or newsletter)

What are other companies doing to accommodate?

- ⇒ Ongoing consultation and communicating progress on activities
- ⇒ Entering into agreements on business and employment opportunities
- ⇒ Developing maps to identify sacred, cultural and environmental sensitive sites
- ⇒ Depending on the scale of the activity, some companies are entering into participation and/or compensation agreements

Practical approaches for accommodation

- ⇒ Collaborate on training that increases the skill levels in the community to fill employment opportunities connected to the project
- ⇒ If available, purchase supplies and services locally.
- ⇒ Encourage and support joint ventures on larger business opportunities offered by the company

How is compensation or reconciliation involved?

- ⇒ Depending on the size of the operation, participation agreements appear to be the preferred route which are usually connected to business and employment opportunities
- ⇒ In some cases, both participation and compensation agreements are sought
- ⇒ Some compensation agreements deal with historic loss and future impacts - most deal with future impacts

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- ⇒ There is a growing trend to move away from the term “compensation” in favor of calling it something else like the socio-economic and cultural fund for example
- ⇒ In determining what the fund amount should be the trend is to move away from conducting extensive impact studies and move toward linking payments to operational milestones as progress is made
- ⇒ While some companies are prepared to consider transfer payments to the First Nation in the initial years of operations they insist on the government becoming involved in releasing them of their responsibilities

What is a reasonable accommodation?

- ⇒ If no equity is provided by the aboriginal party the compensation can range from 5% to 15% of the cost of the project in the development stage
- ⇒ The compensation varies depending on the cost and size of the activity or project
- ⇒ Compensation usually does not include benefits to the community such as business and employment opportunities
- ⇒ In terms of operational companies, the compensation can vary depending on the resource sector and the amount of annual income.

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- ⇒ Payments can be connected to a defined cash flow, stumpage fees and/or the price of commodity and payments are usually specific to the project or activity on the traditional land in question
- ⇒ The parties enter into business and employment agreements to offer business and employment opportunities to local people and businesses
- ⇒ If local skilled individuals and/or qualified businesses are not available more focus is placed on training and encouraging joint ventures
- ⇒ In the preconstruction or preoperational stage some aboriginal communities may forgo the compensation in exchange for equity in the project

What is the government's role and the industry's role?

- ⇒ Governments are generally looked upon as funders in supporting aboriginal participation in the negotiations of agreements
- ⇒ Depending on the size of the project governments may provide equity or loans to the aboriginal party through their various programs
- ⇒ Some aboriginal parties feel the governments should take a more active role in facilitating consultation between industry and the aboriginal side while others feel governments may be more of an impediment
- ⇒ Some parties feel governments should be active in funding traditional land use mapping so everyone knows the boundaries

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- ⇒ The industry's role is to work with the affected aboriginal or First Nation community; to develop win-win solutions before carrying on their business activities
- ⇒ Industry's role is to ensure the local public is informed on their the proposed activity
- ⇒ In some instances, industry has supported Aboriginal negotiation costs while the aboriginal party applied for government funding

What is the capacity of the communities to respond to accommodation

- ⇒ At the outset the community usually lacks technical and legal advice and financial support to negotiate and conclude agreements
- ⇒ Very often the aboriginal community requires training and partners to build companies, including financing all of which is necessary to implement business and employment agreements
- ⇒ What communities do offer is: knowledge of the land, a young labor force and the ability to provide certainty to development

Conclusion

- ⇒ Accommodating each other as industry and Aboriginal communities and First Nations is the new normal way of doing business
- ⇒ The relationships that will become the most profitable will be the ones that really take the time to understand each other and to maintain a relationship based on trust, honesty and openness



Thank you for listening

Any questions? Or comments?

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