

DuaneMorris

## **MYANMAR**

# *Legal and Tax Structure of Major Construction Projects*

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# A few basics

## ➤ Freehold

- Freehold is also known as “ancestor” land
- Myanmar citizens and companies wholly owned by Myanmar citizens can sell, mortgage, lease to other citizens

## ➤ Grant Land

- Freehold is also known as “ancestor” land
- Myanmar citizens and companies wholly owned by Myanmar citizens can sell, mortgage, lease to other citizens
- A land fee is due on grant land

## ➤ Government Leases and licenses

- State owned land administered by municipal or Government authority
- Already leased or new leases
- Often in combination with a BOT
- Upfront payment called “premium”
- Annual land use fee
- Subleases or transfers with permission
- MIC permission is required

# Income Tax Rate Primer

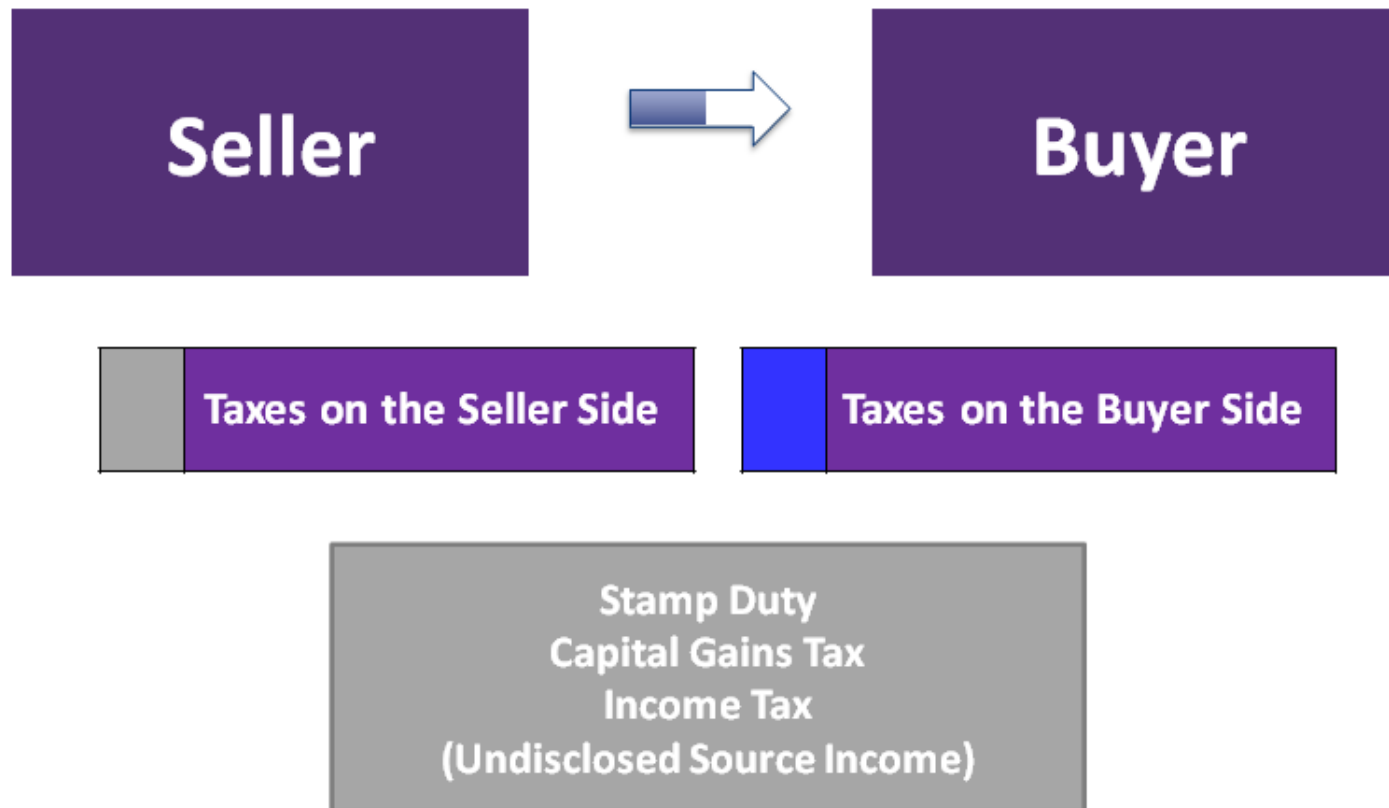
Payment type	Residents	Non-Residents
Net profit	25%	35%
Dividends	0%	0%
Interest	0%	15%
Royalties	15%	20%
Capital Gains (exceptions apply)	10%	40%
Procurement of goods (exceptions apply)	2%	3.5%
Services (performed in Myanmar or abroad)	2%	3,5%

- \* WHT Rates amended effective 26 August 2011 (Notification 167/2011)
- \* Deemed profit ratios may apply to non-residents
- \* WHT on payments to residents is not a final tax, but tax on payments to non-residents is a final tax.

## Tax Structure of Land Transfer Deals

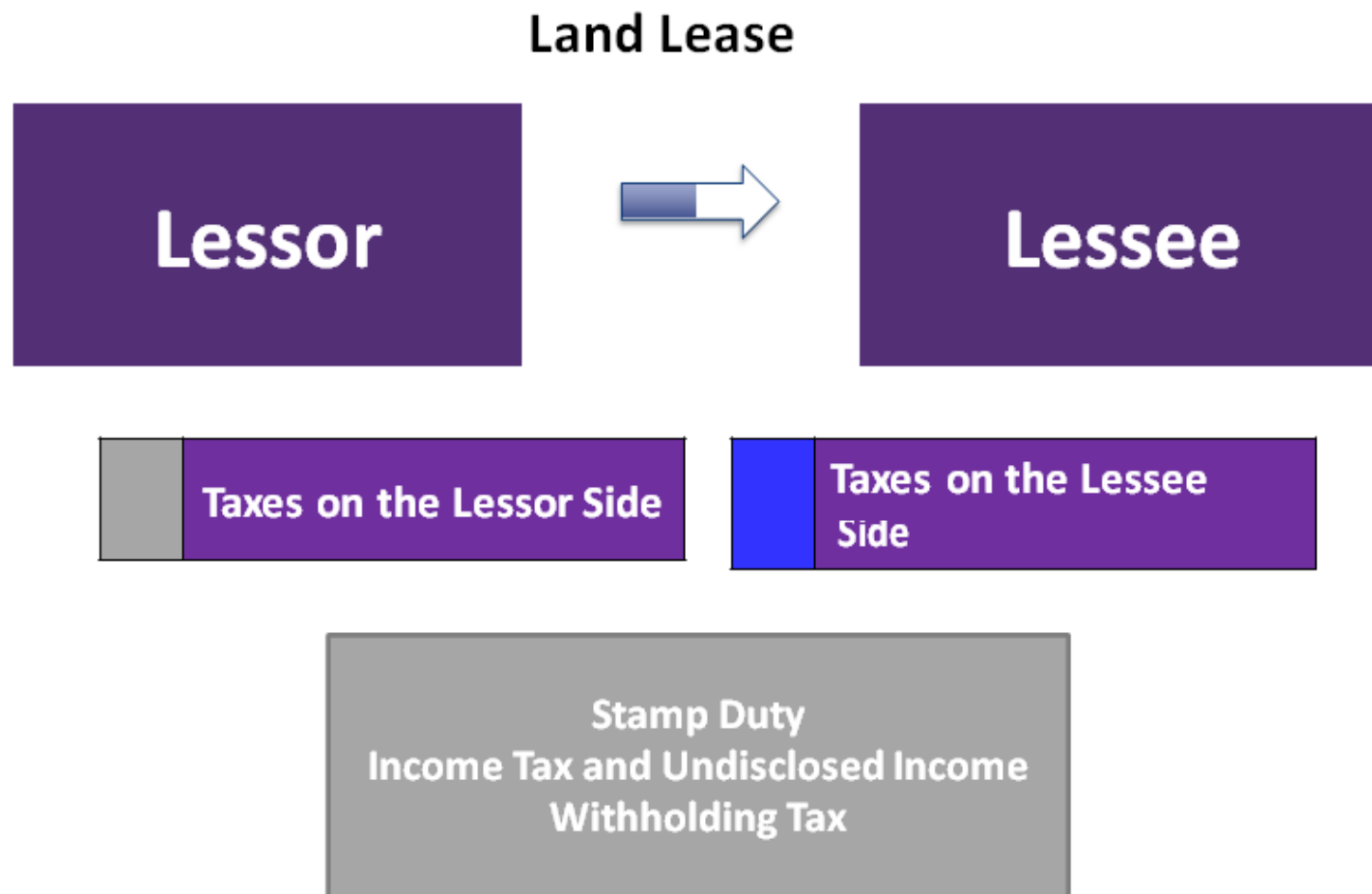
Stamp Duty, Income Tax, Capital Gains

### Transfer of Land Right



## Tax Structure of Land Leases

Stamp Duty, Income Tax, WHT



# Licensing issues

## **Joint Venture required for:**

- Production of goods, beverages
- Plastics, rubber, ceramics, paper, leather production
- Certain chemical industries
- Certain mining activity
- Most real estate development, except hotels and BOT projects
- Air and sea transport
- Certain medical services
- Fishing, small scale livestock, certain wood-based industries
- Certain media activity

# Licensing issues (con't)

## **Licensing issues for construction related activity:**

- Joint venture for construction service activities in general?
- Construction consultation service or contractor?
- Contractor permit from the Ministry of Construction
- National Building Code
- Mutual Recognition Agreements
- Role of local architects in relation to projects
- Initial Environmental Examination
- Environmental Impact Assessment



# IEE OR EIA?

- Initial Environmental Examination (IEE) Projects in which the requirement for an EIA needs to be ascertained, should be subjected to an Initial Environmental Examination (IEE).
- IEE also requires expert advice and technical input from environmental specialists so that potential environmental problems can be clearly defined.
- When an IEE is able to provide a definite solution to environmental problems, an EIA is not necessary.
- Typical activities such as
  - siting of the project
  - resource demand
  - waste production and regulation
  - policies and guidelines

# Key terms of Government leases

## Lease terms

### Government leased land

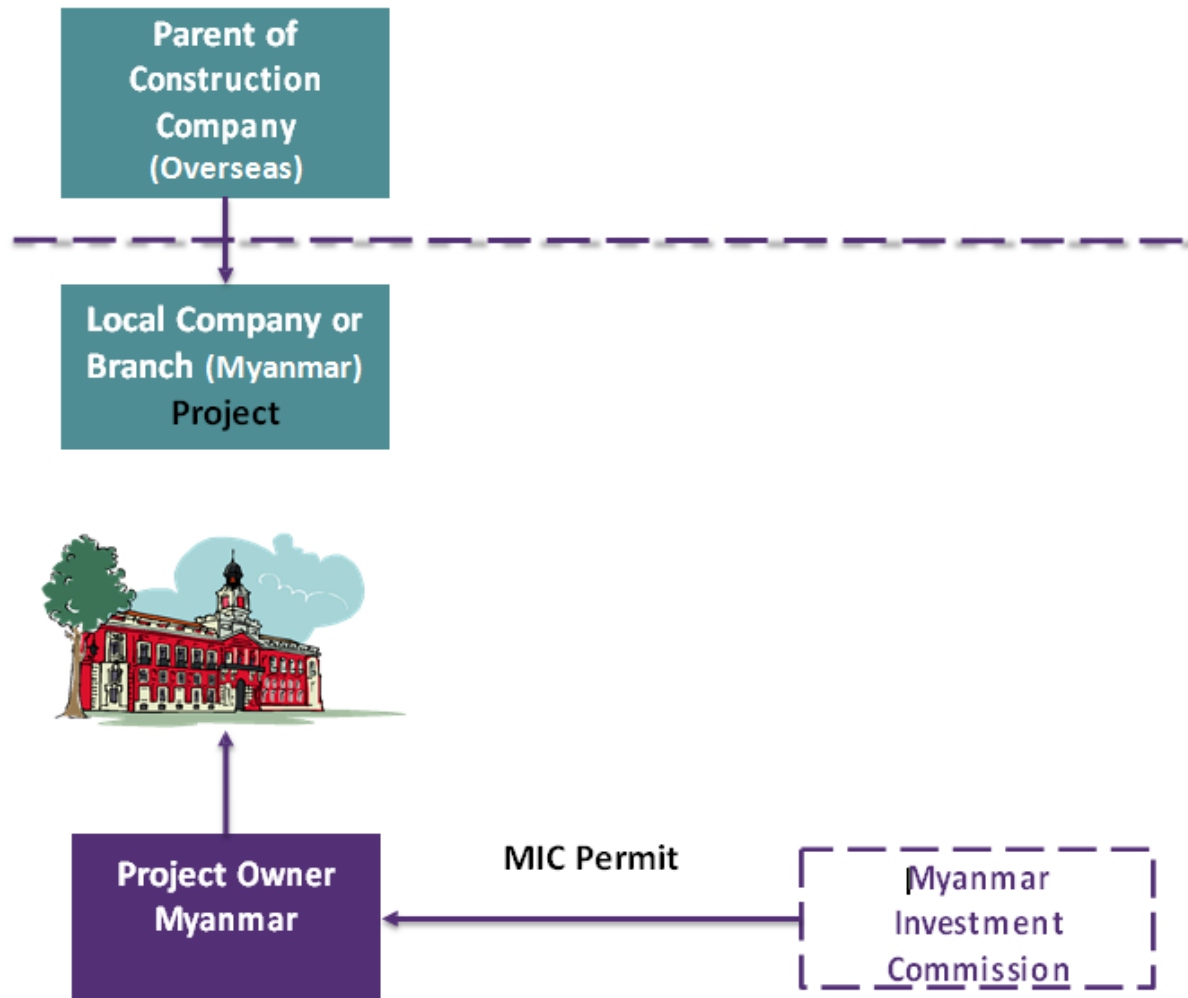
#### Key Terms of the Government Lease:

- Purpose of the lease
- Upfront payment “Premium” (payment terms)
- Annual land use fee (% of income of fixed fee)
- No sublease allowed
- Pay taxes, fees Construct only with approval
- Who owns the additional construction?
- Environmental
- Extensions of initial lease period
- Stamp Duty
- Deed Registration Office
- Special provisions:
  - Sale of units
  - Mortgage
  - Mortgage in secondary market

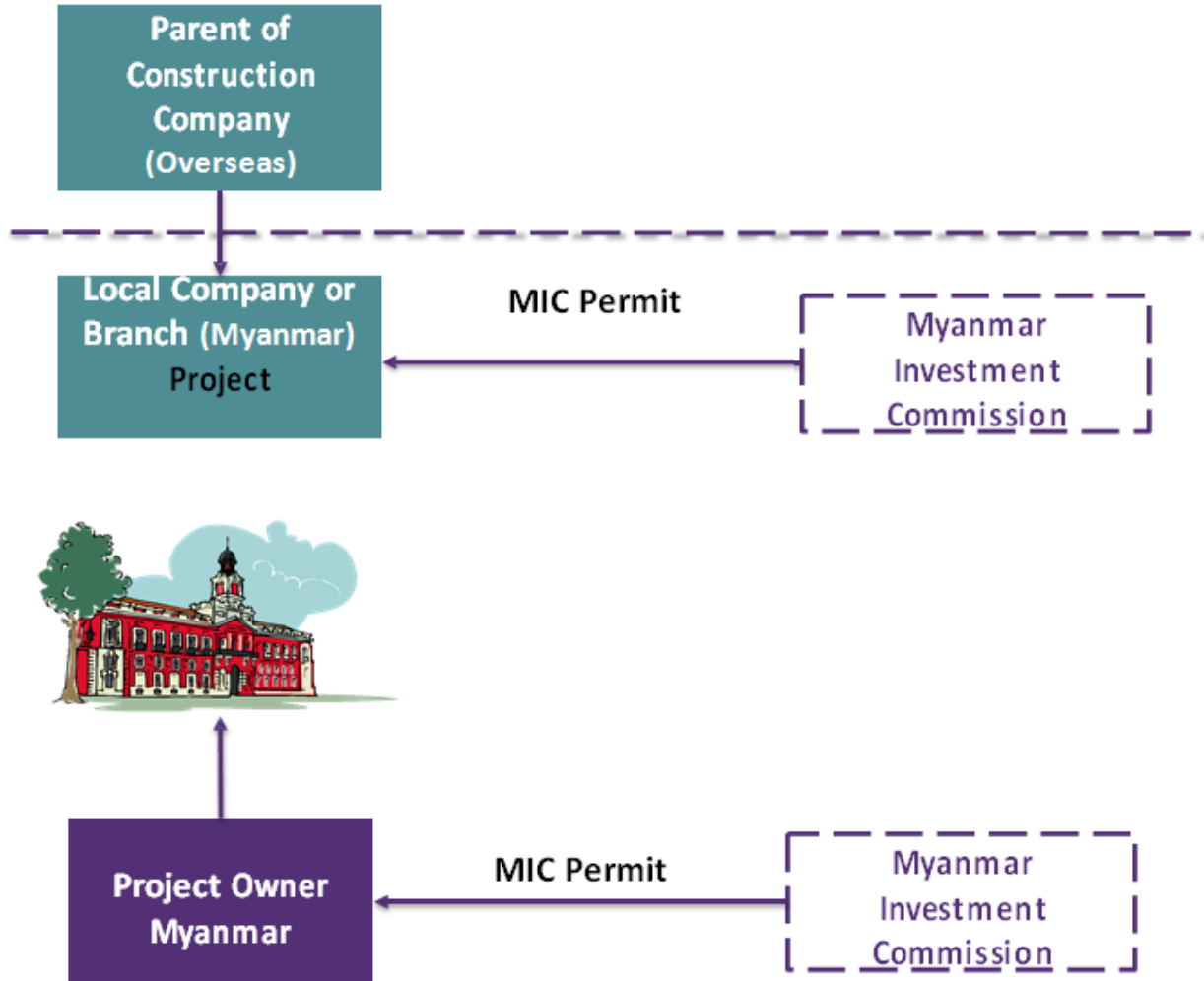
# Construction company case study



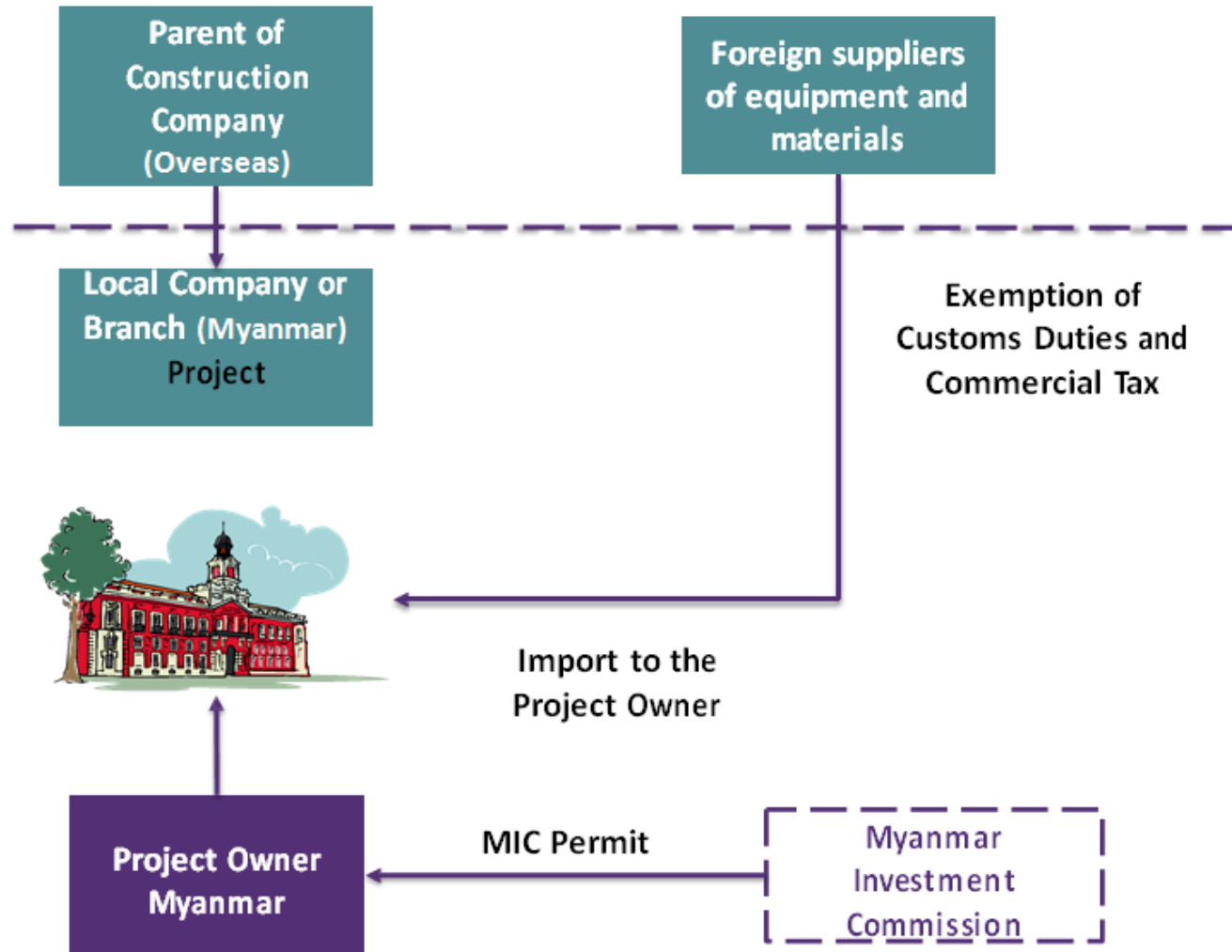
# Investment licensing



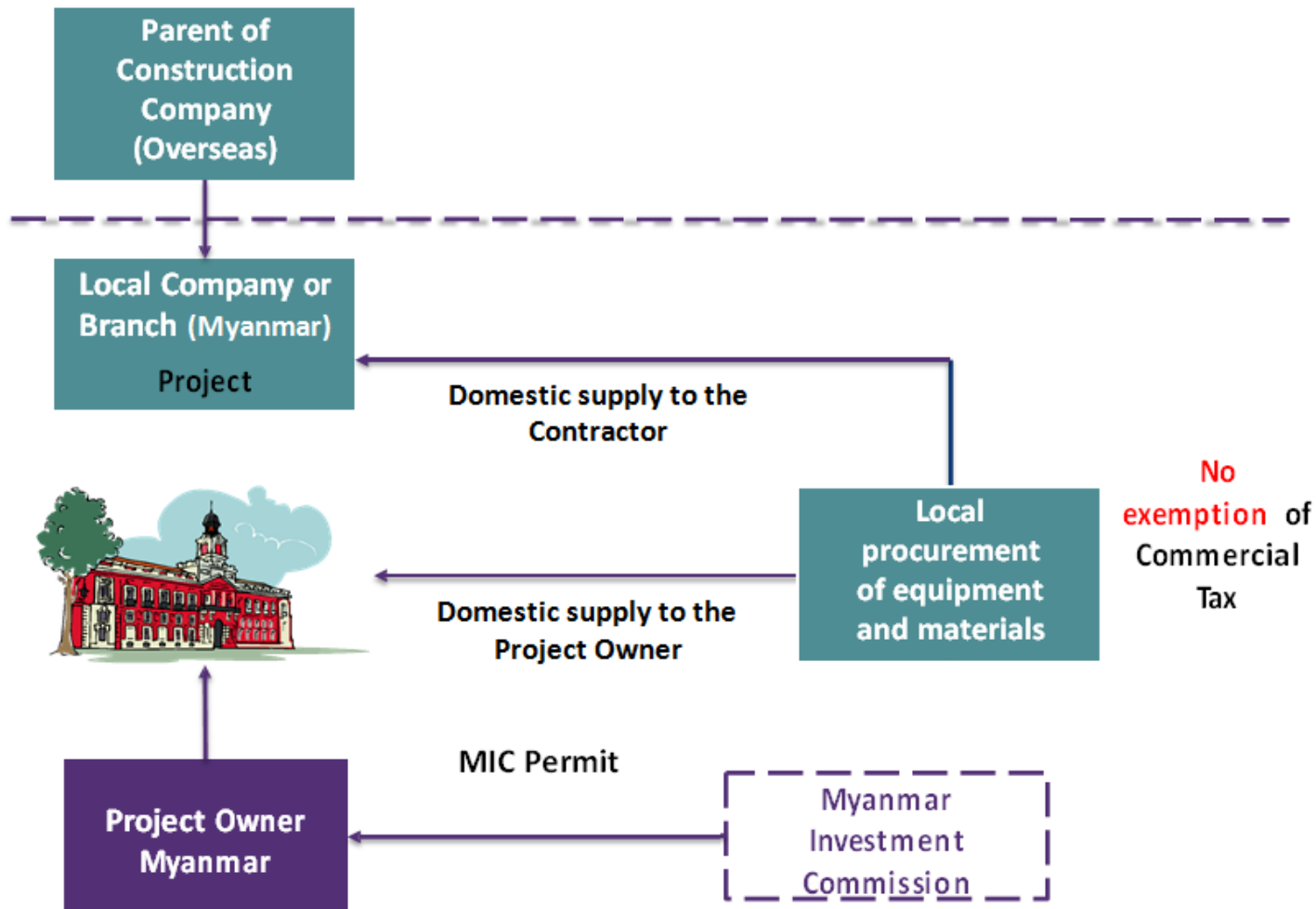
# Investment licensing



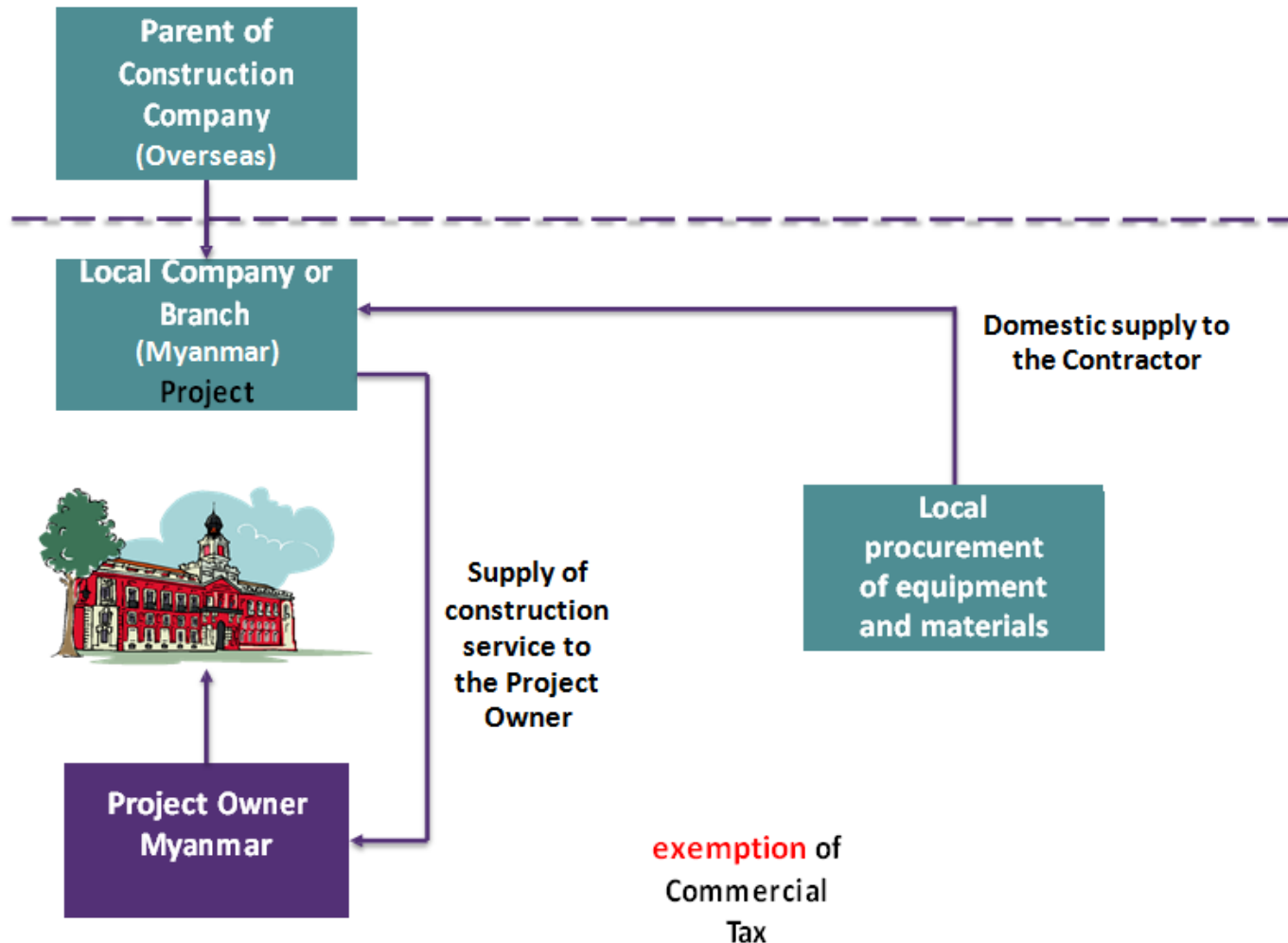
# Offshore procurement



# Local procurement

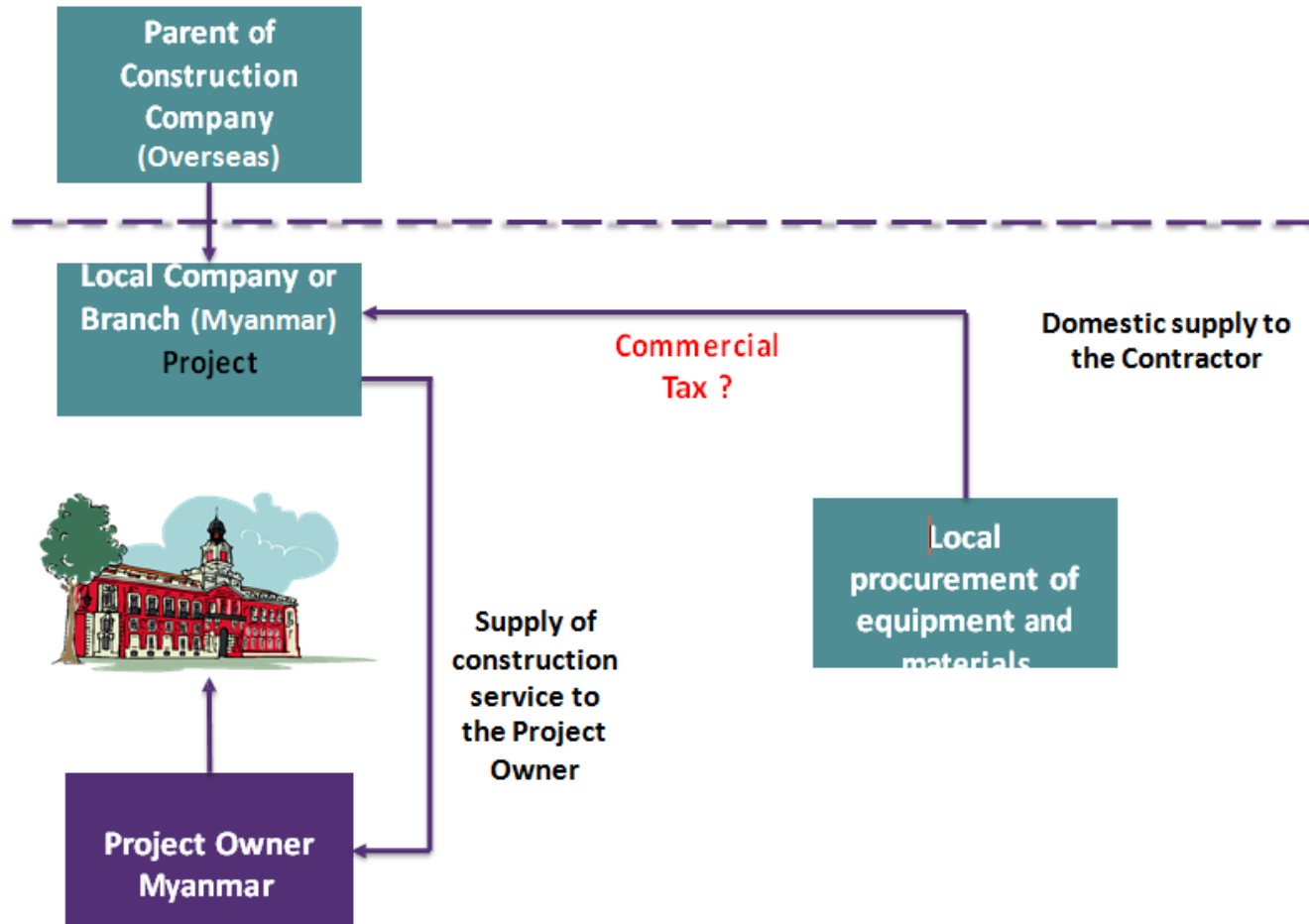


# Procurement through local contractor

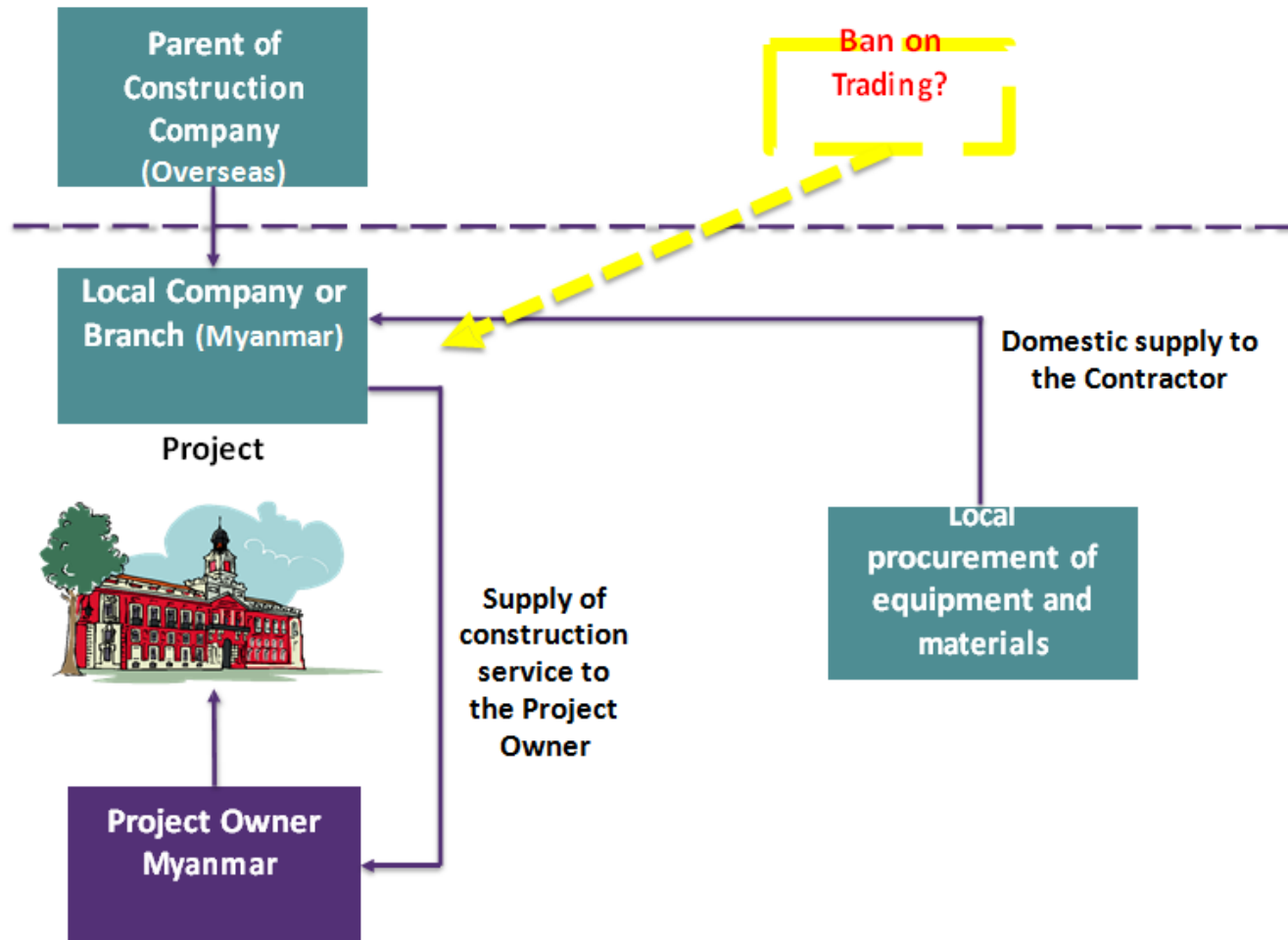




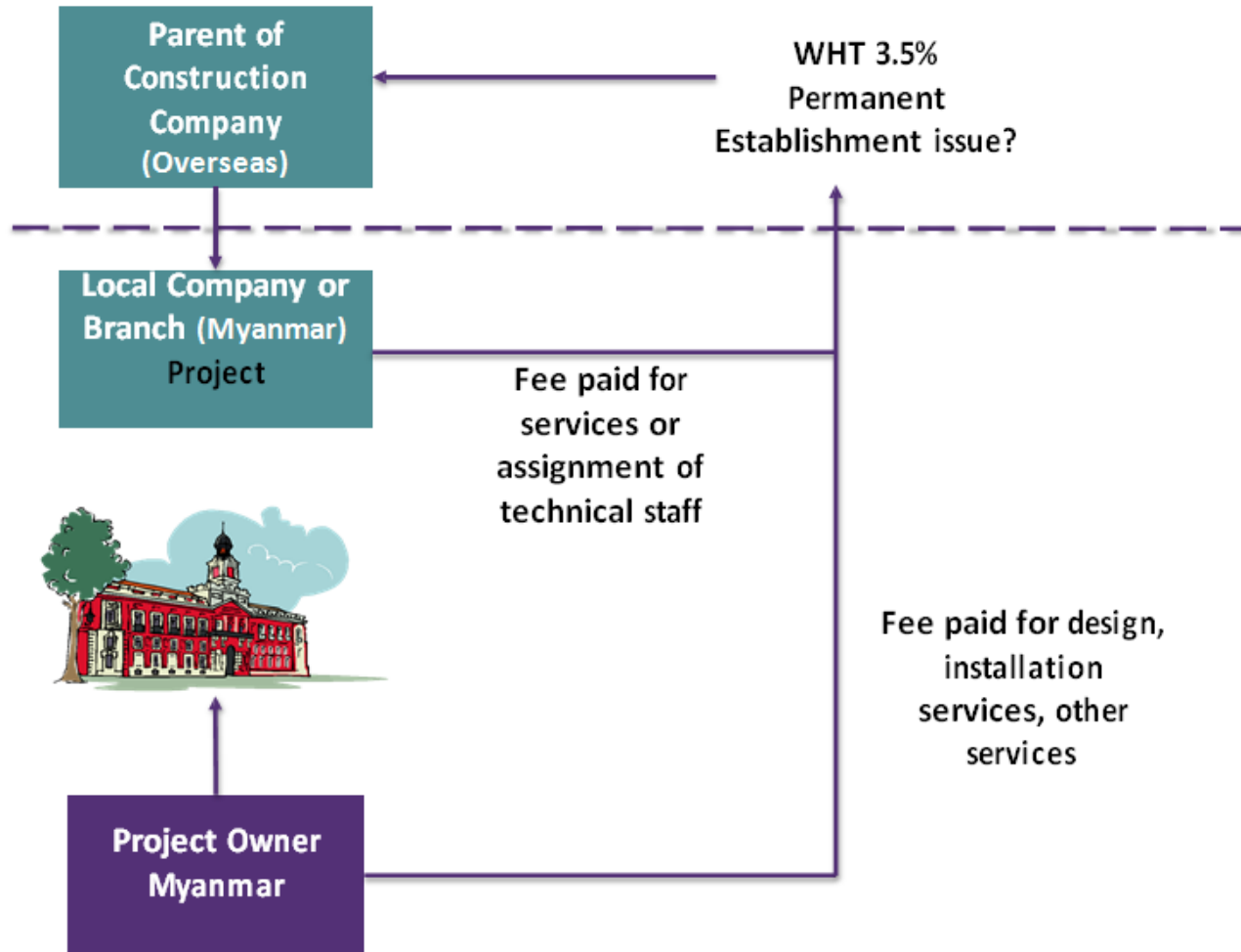
# Procurement through local contractor



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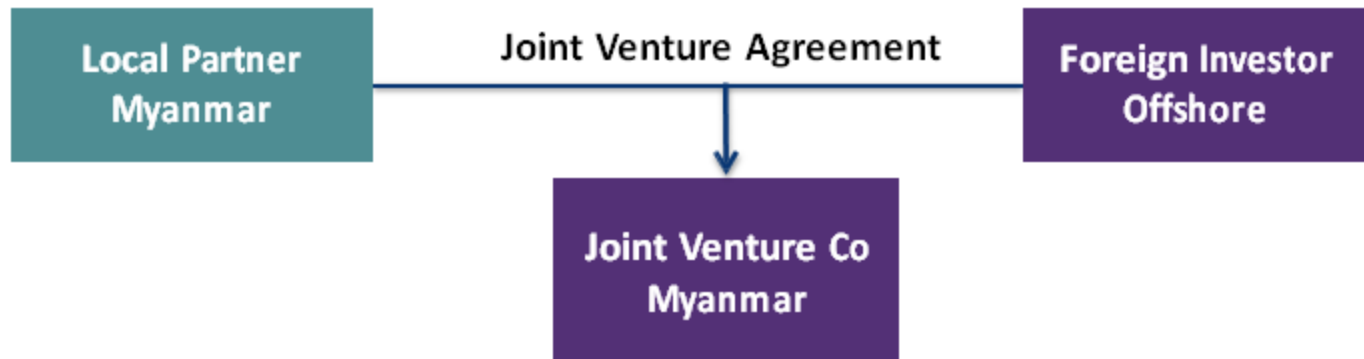
# Service fee



## How to structure the equity funding of the joint venture?

### Equity Structuring

Options, Warrants, Convertible Loans

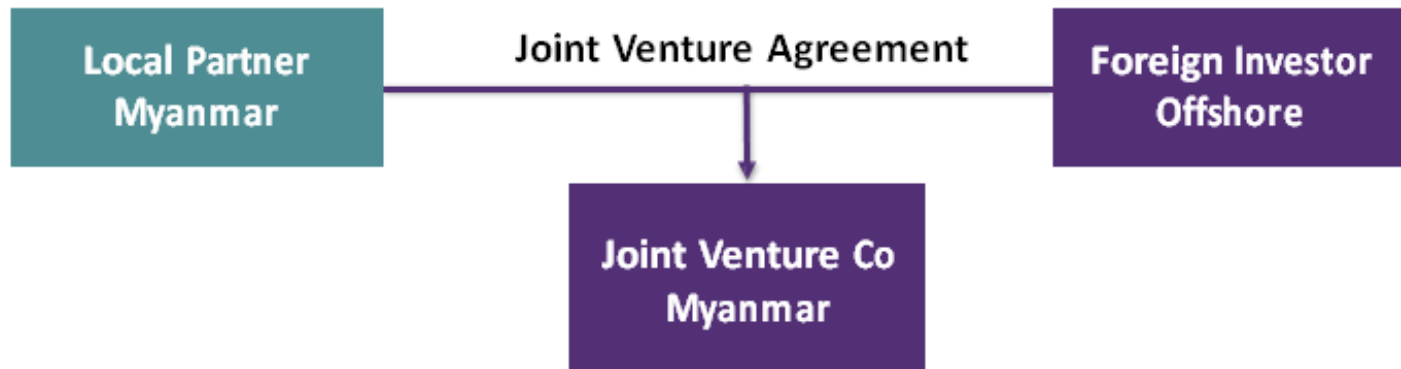


### What works in practice?

- Call options and put options - warrants?
- Different classes of shares?
- Convertible shareholder loan?

## Equity Structuring

### Options, Warrants, Convertible Loans



#### Equity Funding

Capital: 10M\$

Loans: 20M\$

Total: 30M\$

#### Debt Funding

Capital: 1M\$

Loans: 29M\$

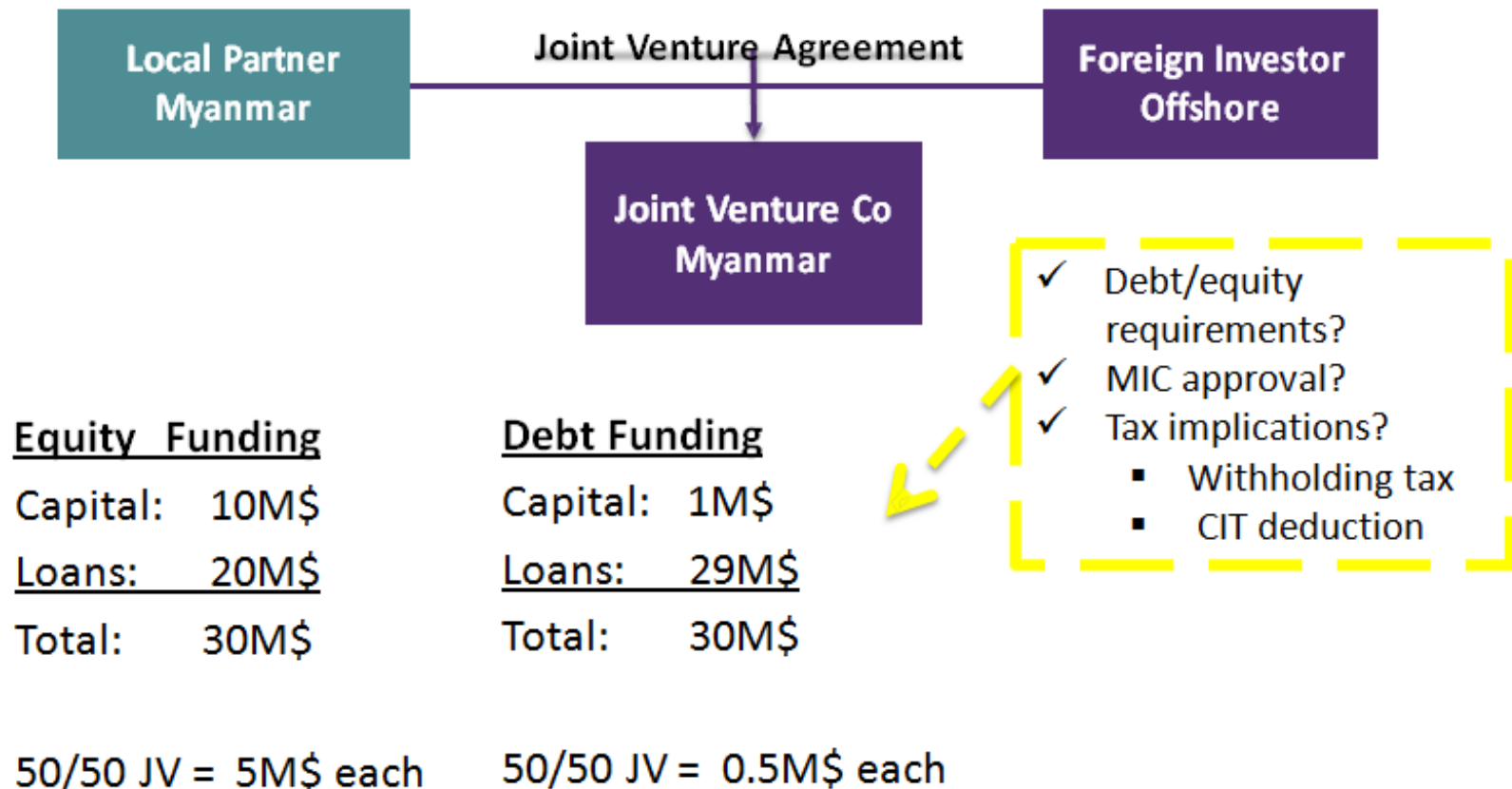
Total: 30M\$

50/50 JV = 5M\$ each

50/50 JV = 0.5M\$ each

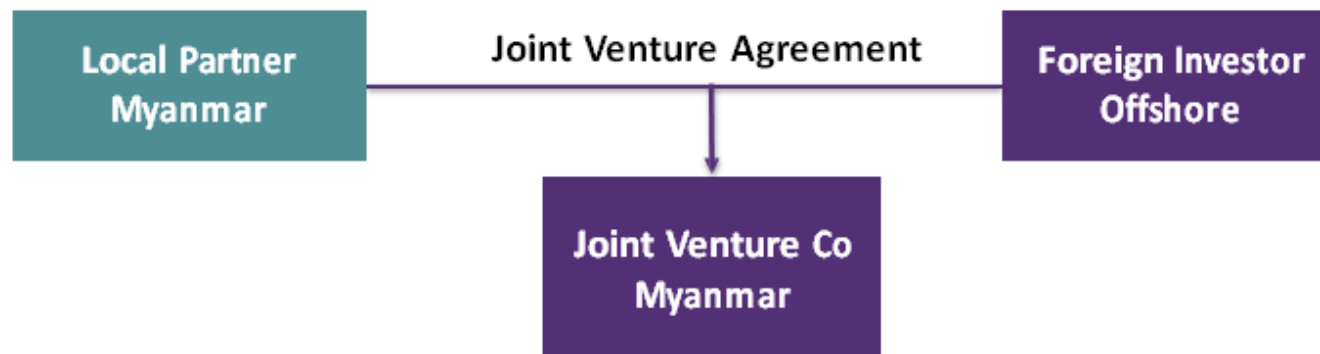
# Equity Structuring

## Options, Warrants, Convertible Loans



## Equity Structuring

### Options, Warrants, Convertible Loans



#### Automatic drag along in the Myanmar Companies Act

- There is an offer to acquire shares of the company (the transferor company);
- This offer has been accepted by 75% of the shareholders by value;
- This acceptance took place within 4 months of the initial offer;
- Notice within 2 months
- The terms and conditions for the acquisition of the shares from the dissenting shareholders are the ones provided in the offer.

## Which articles of a construction contract may cause problems under Myanmar law?

### Typical Myanmar construction contract law

#### Points of attention

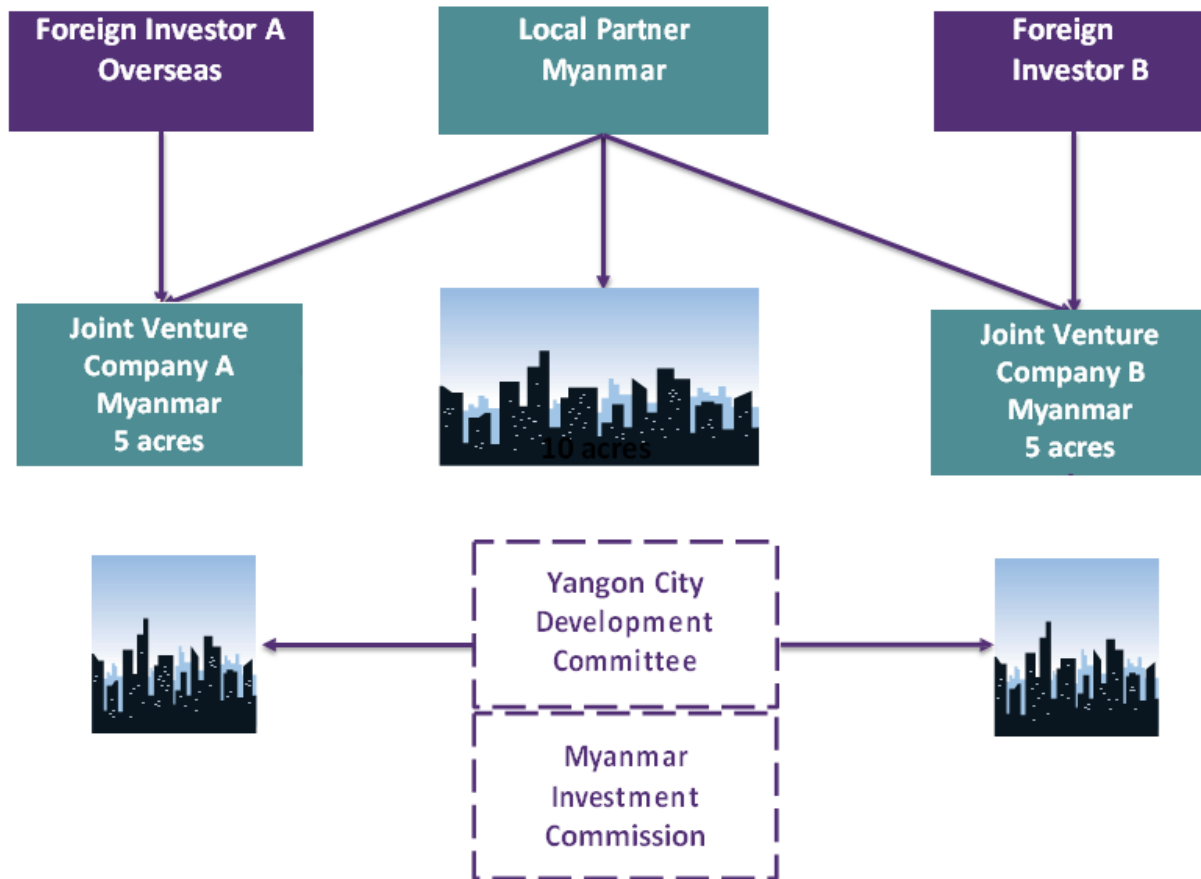
- Indemnity and termination payment
- Tax related clauses
  - Commercial Tax
  - Withholding Tax
- Arbitration, settlement of disputes
- Unlawful objects in a contract
- Payment and guarantees



# How to separate land into different plots for a real estate development project?

## Equity structures

Multiple joint ventures, division of plots



**Thank you very much!**

# Questions

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