

COWICHAN TRIBES FIRST NATION



FINANCIAL ADMINISTRATION LAW

2018

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WHEREAS:

A. Pursuant to section 9 of the *First Nations Fiscal Management Act*, the council of a First Nation may make laws respecting the financial administration of the First Nation;

B. The Council of the Cowichan Tribes considers it to be in the best interests of the First Nation to make a law for such purposes; and

C. Nothing in this Law affects Canada's fiduciary responsibility in respect of moneys held or administered by the Government of Canada for the benefit of Cowichan Tribes;

NOW THEREFORE the Council of the Cowichan Tribes First Nation enacts as follows:

PART I - Citation

Citation

1. This Law may be cited as the *Cowichan Tribes First Nation Financial Administration Law, 2018*.

PART II – Interpretation and Application

Definitions

- 2.(1) Unless the context indicates the contrary, in this Law:

"Act" means the *First Nations Fiscal Management Act*;

"annual financial statements" means the annual financial statements of the First Nation referred to in Division 7 of Part IV;

"appropriation" means an allocation of money under a budget to the purposes for which it may be used;

"auditor" means the auditor of the First Nation appointed under section 78;

"Board" means the First Nations Financial Management Board established under the Act;

"Board standards" means the standards established from time to time by the Board under the Act;

"borrowing member" means a first nation that has been accepted as a borrowing member under section 76 (2) of the Act and has not ceased to be a borrowing member under section 77 of the Act;

"budget" means the annual budget of the First Nation that has been approved by the Council;

"code" means a land code adopted by the First Nation under the *First Nations Land Management Act*;

"Commission" means the First Nations Tax Commission established under the Act;

"Commission standards" means the standards established from time to time by the Commission under the Act;

"Council" means the Council of the First Nation;

"councillor" means a member of the Council of the First Nation;

"dependent" means, in relation to an individual,

- (a) the individual's spouse,
- (b) a person under the age of majority in respect of whom the individual or the individual's spouse is a parent or acting in a parental capacity,
- (c) a person in respect of whom the individual or the individual's spouse is acting as guardian, or
- (d) a person, other than an employee, who is financially dependent upon the individual or the individual's spouse;

"emergency" means an unforeseen situation requiring immediate attention due to an imminent risk to:

- (a) the health or safety of a resident, a First Nation member or First Nation employee, or
- (b) the security or safety of First Nation assets;

"Finance and Audit Committee" means the Finance and Audit Committee established under section 12;

"financial administration" means the management, supervision, control and direction of all matters relating to the financial affairs of the First Nation;

"financial institution" means the First Nations Finance Authority, a bank, credit union or caisse populaire;

"financial competency" means the ability to read and understand financial statements that present accounting issues reasonably expected to be raised by the First Nation's financial statements;

"financial records" means all records respecting the financial administration of the First Nation, including the minutes of meetings of the Council and the Finance and Audit Committee;

"First Nation" means the Cowichan Tribes First Nation, being a band named in the schedule to the Act;

"First Nation's financial assets" means all money and other financial assets of the First Nation;

"First Nation's lands" means all reserves of the First Nation within the meaning of the *Indian Act*;

"First Nation law" means any law, including any by-law or code, of the First Nation made by the Council or the membership of the First Nation;

"First Nation's records" means all records of the First Nation respecting its governance, management, operations and financial administration;

"fiscal year" means the fiscal year of the First Nation set out in section 25;

"GAAP" means generally accepted accounting principles of the Chartered Professional Accountants of Canada, as revised or replaced from time to time;

“local revenue account” means an account with a financial institution into which local revenues are deposited separately from other moneys of the first nation;

“local revenue law” means a local revenue law made by the First Nation under the Act;

“local revenues” means money raised under a local revenue law;

“multi-year financial plan” means the plan referred to in section 26;

“officer” means the senior manager, senior financial officer, tax administrator and any other employee of the First Nation designated by the Council as an officer;

“other revenues” means other revenues as defined in section 3 of the *Financing Secured by Other Revenues Regulations* made under the Act;

“record” means anything on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise;

“related body” means

(a) any agency of the First Nation,

(b) any corporation in which the First Nation has a material interest or that is controlled by the First Nation,

(c) any partnership in which the First Nation or another related body of the First Nation is a partner, or

(d) a trust of the First Nation;

“resident” means an individual whose primary residence is on the First Nation’s lands;

“senior financial officer” means the person appointed senior financial officer under section 19;

“senior manager” means the person appointed senior manager under section 18;

“special purpose report” means a report described in subsection 72(4);

“spouse” means, in relation to an individual, a person to whom the individual is married or with whom the individual has lived as a common law partner for at least one (1) year in a marriage-like relationship;

“standards” means the standards established from time to time under the Act; and

“tax administrator” means the tax administrator appointed under the First Nation’s local revenue laws.

(2) Except as otherwise provided in this Law, words and expressions used in this Law have the same meaning as in the Act.

(3) Unless a word or expression is defined under subsection (1) or (2) or another provision of this Law, the definitions in the *Interpretation Act* apply.

(4) All references to named enactments in this Law are to enactments of the Government of Canada.

Interpretation

3.(1) In this Law, the following rules of interpretation apply:

(a) words in the singular include the plural, and words in the plural include the singular;

(b) words importing female persons include male persons and corporations and words importing male persons include female persons and corporations;

(c) if a word or expression is defined, other parts of speech and grammatical forms of the same word or expressions have corresponding meanings;

(d) the expression “must” is to be construed as imperative, and the expression “may” is to be construed as permissive;

(e) unless the context indicates otherwise, “including” means “including, but not limited to”, and “includes” means “includes, but not limited to”; and

(f) a reference to an enactment includes any amendment or replacement of it and every regulation made under it.

(2) This Law must be considered as always speaking and where a matter or thing is expressed in the present tense, it must be applied to the circumstances as they arise, so that effect may be given to this Law according to its true spirit, intent and meaning.

(3) Words in this Law referring to an officer, by name of office or otherwise, also apply to any person designated by the Council to act in the officer’s place or to any person assigned or delegated to act in the officer’s place under this Law.

Posting of Public Notice

4.(1) If a public notice must be posted under this Law, the public notice is properly posted if a written notice is placed in a conspicuous and accessible place for public viewing in the principal administrative offices of the First Nation.

(2) Unless expressly provided otherwise, if a public notice of a meeting must be posted under this Law the notice must be posted at least fifteen (15) days before the date of the meeting.

Calculation of Time

5. In this Law, time must be calculated in accordance with the following rules:

(a) where the time limited for taking an action ends or falls on a holiday, the action may be taken on the next day that is not a holiday;

(b) where there is a reference to a number of days, not expressed as “clear days”, between two (2) events, in calculating that number of days the day on which the first event happens is excluded and the day on which the second event happens is included;

- (c) where a time is expressed to begin or end at, on or within a specified day, or to continue to or until a specified day, the time includes that day;
- (d) where a time is expressed to begin after or to be from a specified day, the time does not include that day; and
- (e) where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.

Conflict of Laws

- 6.(1) If there is a conflict between this Law and another First Nation law, other than a code or a local revenue law, this Law prevails.
- (2) If there is a conflict between this Law and the Act, the Act prevails.
- (3) If there is a conflict between this Law and a local revenue law, the local revenue law prevails.

Scope and Application

- 7. This Law applies to the financial administration of the First Nation.

PART III – Administration

DIVISION 1 – Council

Responsibilities of Council

- 8.(1) The Council is responsible for all matters relating to the financial administration of the First Nation whether or not they have been assigned or delegated to an officer, employee, committee, contractor or agent by or under this Law.
- (2) Subject to paragraph 5(1)(f) of the Act, this Law and any other applicable First Nation law, the Council may delegate to any of its officers, employees, committees, contractors or agents any of its functions under this Law except the following:
 - (a) the approval of Council policies, procedures or directions;
 - (b) the appointment of members, chairperson and vice-chairperson of the Finance and Audit Committee;
 - (c) the approval of budgets and financial statements of the First Nation;
 - (d) the approval of borrowing of the First Nation.

Council Policies, Procedures and Directions

- 9.(1) Subject to subsection (3), the Council may establish policies and procedures and give directions respecting any matter relating to the financial administration of the First Nation.
- (2) The Council must establish policies or procedures or give directions respecting the acquisition, management and safeguarding of First Nation assets.

(3) The Council must not establish any policies or procedures or give any directions relating to the financial administration of the First Nation that are in conflict with this Law, the Act or GAAP.

(4) The Council must ensure that all human resources policies and procedures are designed and implemented to facilitate effective internal financial administration controls.

(5) The Council must document all its policies, procedures and directions and make them available to any person who is required to act in accordance with them or who may be directly affected by them.

Reporting of Remuneration, Expenses and Contracts

10. (1) In this section:

“entity” means a corporation or a partnership, a joint venture or any other unincorporated association or organization, the financial transactions of which are consolidated in the annual financial statements of the First Nation in accordance with GAAP;

“expenses” includes the costs of transportation, accommodation, meals, hospitality and incidental expenses; and

“remuneration” means any salaries, wages, commissions, bonuses, fees, honoraria and dividends and any other monetary and non-monetary benefits.

(2) Annually the senior financial officer must prepare a report separately listing the remuneration paid and expenses reimbursed by the First Nation, and by any entity, to each councillor whether such amounts are paid to the councillor while acting in that capacity or in any other capacity.

(3) Subsection (2) does not require the reporting of remuneration, expenses or benefits received

(a) in common by all members of the First Nation,

(b) under a program or service universally accessible to all members of the First Nation on published terms and conditions, or

(c) from a trust arrangement according to the terms of the trust.

DIVISION 2 – Finance and Audit Committee

Interpretation

11. (1) In this Division, “Committee” means the Finance and Audit Committee.

(2) For purposes of section 12,

(a) an individual is independent if the individual does not have a direct or indirect financial relationship with the First Nation government that could, in the opinion of Council, reasonably interfere with the exercise of independent judgment as a member of the Finance and Audit Committee, and

(b) an individual does not have a financial relationship with the First Nation government as a result of the individual’s receipt of the following from the First Nation:

- (i) remuneration for acting in his or her capacity as a councillor or as a member of any First Nation committee;
- (ii) fixed retirement compensation;
- (iii) payments or benefits paid in common to all First Nation members;
- (iv) payments or benefits paid under a program or service where such payments are universally accessible to First Nation members on published terms and conditions; or
- (v) payments or benefits paid from a trust arrangement according to the terms of the trust.

Committee Established

12. (1) The Finance and Audit Committee of the First Nation is established to provide Council with advice and recommendations in order to support Council's decision-making process respecting the financial administration of the First Nation.

(2) The Council must appoint not less than three (3) members of the Committee, a majority of whom must have financial competency and all of whom must be independent.

(3) The Council must establish policies or procedures or give directions requiring

- (a) criteria to determine if an individual is eligible to be a member of the Committee and is independent;
- (b) confirmation, before appointment, that each potential member of the Finance and Audit Committee is eligible to be a member and is independent; and
- (c) each member of the Finance and Audit Committee to sign annually a statement confirming that the member is independent.

(4) If the Committee consists of

- (a) three (3) members, at least one (1) of the Committee members must be a councillor; and
- (b) four (4) or more members, at least two (2) of the Committee members must be councilors.

(5) Subject to subsection (7), the Committee members must be appointed to hold office for staggered terms of not less than two (2) complete fiscal years.

(6) A Committee member may be removed from office by the Council if

- (a) the member misses three (3) consecutively scheduled meetings of the Committee; or,
- (b) the chair of the Committee recommends removal.

(7) If a Committee member is removed from office, resigns or dies before the member's term of office expires, the Council must as soon as practicable appoint a new Committee member to hold office for the remainder of the first member's term of office.

Chairperson and Vice-Chairperson

13. (1) The Council must appoint a chairperson and a vice-chairperson of the Committee.
- (2) The chairperson of the Committee must be a councillor.

Committee Procedures

14. (1) The quorum of the Committee is fifty percent (50%) of the total number of Committee members, including at least one (1) councillor.

(2) Unless a Committee member is not permitted to participate in a decision because of a conflict of interest, every Committee member has one (1) vote in all Committee decisions.

(3) In the event of a tie vote in the Committee, the chairperson of the Committee may cast a second tie breaking vote.

(4) Subject to subsection (5), the senior manager and the senior financial officer must be notified of all Committee meetings and, subject to reasonable exceptions, must attend those meetings.

(5) The senior manager or the senior financial officer may be excluded from all or any part of a Committee meeting by a recorded vote if

- (a) the subject matter relates to a confidential personnel or performance issue respecting the senior manager or the senior financial officer, or
- (b) it is a meeting with the auditor.

(6) The Committee must meet

- (a) at least once every three (3) months in each fiscal year as necessary to conduct the business of the Committee, and
- (b) as soon as practical after it receives the audited annual financial statements and report from the auditor.

(7) The Committee must provide minutes of its meetings to the Council and report to the Council on the substance of each Committee meeting as soon as practicable after each meeting.

(8) Subject to this Law and any directions given by the Council, the Committee may make rules for the conduct of its meetings.

Financial Planning Responsibilities

15. (1) The Committee must carry out the following activities in respect of the financial administration of the First Nation:

- (a) review, and recommend to the Council for approval, draft annual budgets and multi-year financial plans for the First Nation;
- (b) on an ongoing basis, monitor the financial performance of the First Nation against the budget and report any significant variances; and

(c) review the quarterly financial statements and recommend them to the Council for approval.

(2) The Committee may make a report or recommendations to the Council on any matter respecting the financial administration of the First Nation that is not otherwise specified to be its responsibility under this Law.

Audit Responsibilities

16. The Committee must carry out the following audit activities in respect of the financial administration of the First Nation:

(a) make recommendations to the Council on the selection, engagement and performance of an auditor;

(b) receive assurances on the independence of a proposed or appointed auditor;

(c) review, and make recommendations to the Council on, the planning, conduct and results of audit activities;

(d) review, and make recommendations to the Council, on the audited annual financial statements, including the audited local revenue account financial statements and any special purpose reports;

(e) periodically review, and make recommendations to the Council, on policies, procedures and directions on reimbursable expenses and perquisites of the councillors, officers and employees of the First Nation;

(f) monitor financial reporting risks and fraud risks and the effectiveness of mitigating controls for those risks taking into consideration the cost of implementing those controls;

(g) conduct a review of this Law under section 108 and, where appropriate, recommend amendments to the Council; and

(h) periodically review, and make recommendations to the Council on, the terms of reference of the Committee.

Council Assigned Responsibilities

17. The Council may, by resolution, assign to the Committee or another committee of the Council other activities in respect of the financial administration of the First Nation.

DIVISION 3 – Officers and Employees

Senior Manager

18. (1) The Council must appoint a person as senior manager of the First Nation and may set the terms and conditions of that appointment.

(2) Reporting to the Council, the senior manager is responsible for leading the planning, organization, implementation and evaluation of the overall management of all the day-to-day operations of the First Nation including the following duties:

- (a) to develop and recommend to the Council for approval, human resources policies and procedures for the hiring, management and dismissal of officers and employees of the First Nation;
- (b) to prepare and recommend to the Council for approval, descriptions of the powers, duties and functions of all employees of the First Nation;
- (c) to hire the employees of the First Nation, as the senior manager considers necessary, and to set the terms and conditions of their employment;
- (d) to oversee, supervise and direct the activities of all officers and employees of the First Nation;
- (e) to oversee and administer the contracts of the First Nation;
- (f) to prepare, recommend to the Council and maintain and revise as necessary the organization chart referred to in section 21;
- (g) to identify, assess, monitor and report on financial reporting risks and fraud risks;
- (h) to monitor and report on the effectiveness of mitigating controls for the risks referred to in paragraph (g) taking into consideration the cost of implementing those controls;
- (i) to perform any other duties of the senior manager under this Law; and
- (j) to carry out any other activities specified by the Council that are not contrary to the Act or inconsistent with the senior manager's duties specified in this Law.

(3) The senior manager may assign the performance of any of the senior manager's duties or functions

- (a) to an officer or employee of the First Nation, and
- (b) with the approval of the Council, to a contractor or agent of the First Nation.

(4) Any assignment of duties or functions under subsection (3) does not relieve the senior manager of the responsibility to ensure that these duties or functions are carried out properly.

Senior Financial Officer

19. (1) The senior manager must appoint a person as senior financial officer of the First Nation and may set the terms and conditions of that appointment.

(2) Reporting to the senior manager, the senior financial officer is responsible for the day-to-day management of the systems of the financial administration of the First Nation including the following duties:

- (a) to ensure the financial administration systems, policies, procedures, directions and internal controls are appropriately designed and operating effectively;
- (b) to administer and maintain all accounts of the First Nation;

- (c) to prepare the draft annual budgets, multi-year financial plans and with advice and input from the tax administrator, to prepare any draft amendments to the component of the annual budget respecting the First Nation's local revenues;
- (d) to prepare the monthly financial information required in section 72, the quarterly financial statements required in section 73 and the draft annual financial statements required in section 74 and section 75;
- (e) to prepare the financial components of reports to the Council and financial information required by the Council;
- (f) to actively monitor compliance with any agreements and funding arrangements entered into by the First Nation;
- (g) to administer and supervise the preparation and maintenance of financial records and the financial administration reporting systems;
- (h) to actively monitor compliance with the Act, this Law, any other applicable First Nation law, applicable standards and any policies, procedures and directions of the Council respecting the financial administration of the First Nation;;
- (i) to prepare or provide any documentation and financial information required by the Council or the Finance and Audit Committee to discharge its responsibilities;
- (j) to evaluate the financial administration systems of the First Nation and recommend improvements;
- (k) to develop and recommend procedures for the safeguarding of assets and to ensure approved procedures are followed;
- (l) to develop and recommend procedures for identifying and mitigating financial reporting and fraud risks and to ensure approved procedures are followed;
- (m) to perform any other duties of the senior financial officer under this Law; and
- (n) to carry out any other activities specified by the senior manager that are not contrary to the Act or inconsistent with the senior financial officer's duties under this Law.

(3) With the approval of the senior manager, the senior financial officer may assign the performance of any of the duties or functions of the senior financial officer to any officer, employee, contractor or agent of the First Nation but this assignment does not relieve the senior financial officer of the responsibility to ensure that these duties or functions are carried out properly.

Tax Administrator

20. (1) If the First Nation is collecting local revenues, the Council must appoint a person as tax administrator of the First Nation and may set the terms and conditions of that appointment.

(2) Reporting to the senior manager, the tax administrator is responsible for performing the tax administrator's duties or functions under the First Nation's local revenue laws, the Act and this Law.

(3) In addition to any duties or functions under the First Nation's local revenue laws and the Act, the tax administrator is responsible for the following:

- (a) to manage local revenues and the local revenue account on a day-to-day basis;
- (b) to recommend to the senior financial officer the draft and amended budgets for the component of the annual budget respecting local revenues;
- (c) to recommend to the senior financial officer the local revenues components of the multi-year financial plan;
- (d) on request, to provide advice to the senior manager, senior financial officer, Finance and Audit committee and the Council respecting local revenues matters;
- (e) to monitor compliance with the Act, the First Nation's local revenue laws and this Law in the administration of local revenues and the local revenue account; and
- (f) to perform any other duties of the tax administrator under this Law.

(4) With the approval of the senior manager, the tax administrator may assign the performance of any of the duties or functions of the tax administrator to any officer, employee, contractor or agent of the First Nation, but this assignment does not relieve the tax administrator of the responsibility to ensure that these duties or functions are carried out properly.

Organizational Structure

21. (1) The Council must establish and maintain a current organization chart for the governance, management and administrative systems of the First Nation.

- (2) The organization chart under subsection (1) must include the following information:
 - (a) all governance, management and administrative systems of the First Nation;
 - (b) the organization of the systems described in paragraph (a) including the linkages between them;
 - (c) the specific roles and responsibilities of each level of the organization of the systems described in paragraph (a); and
 - (d) all governance, management and administrative positions at each level of the organization of the systems described in paragraph (a), including
 - (i) the membership on the Council, Finance and Audit Committee and all other committees of the Council and the First Nation,
 - (ii) the senior manager, the senior financial officer, the tax administrator and other officers and employees of the First Nation, and
 - (iii) the principal lines of authority and the responsibility between the Council, the committees referred to in subparagraph (i) and the officers and employees referred to in subparagraph (ii).

(3) On request, the senior manager must provide a copy of the organization chart under subsection (1) to a councillor, a member of a committee referred to in subparagraph (2)(d)(i), an officer, employee or contractor or agent of the First Nation and a member of the First Nation.

(4) In the course of discharging his or her responsibilities under this Law, the senior manager must recommend to the Council for approval and implementation human resource policies and procedures that facilitate effective internal financial administration controls.

(5) The Council must take all reasonable steps to ensure that the First Nation hires or retains qualified and competent personnel to carry out the financial administration activities of the First Nation.

DIVISION 4 – Conduct Expectations

Conflict of Interest Provisions

22. (1) The Council must establish and maintain policies and procedures respecting the avoidance and mitigation of conflicts of interest including the following:

- (a) defining the private interests of councillors, officers, employees, committee members, contractors and agents that could result in a conflict of interest;
- (b) requiring the disclosure of actual or potential conflicts of interest as they arise and keeping of records of such disclosures;
- (c) specifying restrictions on the acceptance of gifts and benefits by any person referred to in paragraph (a) that might reasonably be seen to have been offered in order to influence the making of a decision by that person;
- (d) prohibiting any person referred to in paragraph (a) who has a conflict of interest from attempting to influence a decision or from participating in the making of a decision respecting the matter in which the person has a conflict of interest; and
- (e) specifying how any undisclosed or any alleged but not admitted conflicts of interest of councillors are to be addressed.

Conduct of Councillors

23. (1) When exercising a power, duty or responsibility relating to the financial administration of the First Nation, a councillor must

- (a) comply with this Law, the Act, any other applicable First Nation law and any applicable standards,
- (b) act honestly, in good faith and in the best interests of the First Nation,
- (c) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances,
- (d) avoid conflicts of interest and comply with provisions in this Law for, or policies and procedures established by the council for, the avoidance and mitigation of those conflicts, and

(e) disclose as soon as practicable any circumstances which could result in a conflict of interest, and sign a declaration annually, in a form established by Council from time to time, disclosing relevant information respecting their private interests which could result in a conflict of interest.

(2) If a court of competent jurisdiction or the First Nation has determined, after a thorough and diligent investigation, that a councillor has contravened this Law, then

- (a) the councillor must be removed from the Finance and Audit Committee, if applicable;
- (b) the First Nation may use any legal means available to it to remedy the situation; and
- (c) the Council must communicate the determination to the membership as soon as practicable after the contravention was determined.

Conduct of Officers, Employees, Committee Members, Contractors and Agents

24. (1) This section applies to

- (a) an officer, employee, contractor and agent of the First Nation,
- (b) a person acting under the delegated authority of the Council or the First Nation, or
- (c) a member of a committee of the Council or the First Nation who is not a councillor.

(2) When a person is exercising a power, duty or responsibility relating to the financial administration of the First Nation, that person must

- (a) comply with this Law, the Act, any other applicable First Nation law and any applicable standards,
- (b) comply with all policies, procedures and directions of the Council, including policies and procedures established under section 22,
- (c) avoid conflicts of interest, and
- (d) disclose as soon as practicable any circumstances that could result in a conflict of interest.

(3) The Council must incorporate the relevant provision of this section 24 into

- (a) the terms of employment or appointment of every officer or employee of the First Nation,
- (b) the terms of every contract of a contractor of the First Nation,
- (c) the terms of appointment of every member of a committee who is not a councillor, and
- (d) the terms of appointment of every agent of the First Nation.

(4) If a person contravenes subsection (2), the following actions may be taken:

- (a) an officer or employee may be disciplined including dismissal;
- (b) a contractor's contract may be terminated;

- (c) the appointment of a member of a committee may be revoked; or
- (d) the appointment of an agent may be revoked.

PART IV – Financial Management

DIVISION 1 – Financial Plans and Annual Budgets

Fiscal Year

- 25.** The fiscal year of the First Nation is April 1 to March 31 of the following year.

Multi-year Financial Plan

- 26.** No later than March 31 of each year, the Council must approve a multi-year financial plan that
- (a) has a planning period of five (5) years comprised of the current fiscal year and the four (4) succeeding fiscal years,
 - (b) is based on the projections of revenues, expenditures and transfers between accounts,
 - (c) sets out projected revenues, segregated by significant category,
 - (d) sets out projected expenditures, segregated by significant category,
 - (e) in respect of transfers between accounts, sets out the amounts from any reserve accounts, and
 - (f) indicates whether in any of the five (5) years of the plan a deficit or surplus is expected from the projection of revenues and expenditures for that year.

Content of Annual Budget

- 27. (1)** An annual budget must be prepared that encompasses all the operations for which the First Nation is responsible and must identify

- (a) anticipated revenues, segregated by significant category, with estimates of the amount of revenue from each category,
- (b) anticipated expenditures, segregated by significant category, with estimates of the amount of expenditure for each category, and
- (c) any anticipated annual and accumulated surplus or annual and accumulated deficit and the application of year end surplus.

(2) The revenue category of moneys derived from the First Nation's lands must be shown separately in the annual budget from other revenues and must include a sub-category for revenues from natural resources obtained from the First Nation's lands.

(3) In subsection (2), "natural resources" means any material on or under the First Nation's lands in their natural state which when extracted has economic value.

Budget and Planning Process Schedule

28. (1) On or before March 25 of each year, the senior financial officer must prepare and submit to the Finance and Audit Committee for review a draft annual budget and a draft multi-year financial plan for the next fiscal year.

(2) On or before March 25 of each year, the Finance and Audit Committee must review

(a) the draft annual budget and recommend an annual budget to the Council for approval, and

(b) the draft multi-year financial plan and recommend a multi-year financial plan to the Council.

(3) On or before March 31 of each year, the Council must review and approve the annual budget for the First Nation for the next fiscal year.

(4) On or before June 15 of each year, the senior financial officer must prepare and submit to the Finance and Audit Committee for review a draft amendment of the component of the annual budget respecting the First Nation's local revenues.

(5) On or before June 30 of each year, the Finance and Audit Committee must review the draft amendment of the component of the annual budget respecting the First Nation's local revenues and recommend an amendment to the annual budget to the Council for approval.

(6) No later than July 15 of each year, the Council must approve the amendment of the component of the annual budget respecting the First Nation's local revenues.

Additional Requirements for Budget Deficits

29. If a draft annual budget contains a proposed deficit, the Council must ensure that

(a) the multi-year financial plan of the First Nation demonstrates how and when this deficit will be addressed and how it will be serviced, and

(b) the deficit does not have a negative impact on the credit worthiness of the First Nation.

Amendments to Annual Budgets

30. The annual budget of the First Nation must not be changed without the approval of the Council.

Local Revenues Budget Requirements

31. Despite any other provisions of this Law, any part of a budget relating to the local revenues must be prepared, approved and amended in accordance with applicable provisions of the Act and of the Commission standards.

Policy for First Nation Member Information or Involvement

32. The Council must establish policies or procedures or give directions respecting the means by which members of the First Nation must be informed about or involved in consideration of

(a) the annual budget, including any component of the annual budget respecting the First Nation's local revenues,

- (b) the multi-year financial plan, and
- (c) budget deficits or extraordinary expenditures.

DIVISION 2 - Financial Institution Accounts

Financial Institution Accounts

33. (1) No account may be opened for the receipt and deposit of money of the First Nation unless the account is

- (a) in the name of the First Nation,
- (b) opened in a financial institution; and
- (c) authorized by the senior manager or the senior financial officer.

(2) The First Nation must establish the following accounts in a financial institution:

- (a) a general account for money from any sources other than those described in paragraphs (b) and (c); and
- (b) a local revenue account for money from local revenues; and
- (c) a trust account if the First Nation has money held in trust.

(3) The First Nation may establish any other accounts not referred to in subsection (2) as may be necessary and appropriate to manage the First Nation's financial assets.

Accounts Management

34. (1) The senior financial officer must ensure the safekeeping of all money received by the First Nation.

(2) The senior financial officer

- (a) must deposit all money received by the First Nation as soon as practicable into the appropriate accounts described in section 33, and
- (b) must not authorize payment of money from an account described in section 33 unless the payment relates to the subject matter for which the account was established and is otherwise authorized or permitted under this Law.

DIVISION 3 – Expenditures

Prohibited Expenditures

35. (1) Money or financial assets in a trust account must not be used for a purpose other than that permitted under the terms of the trust.

(2) Money in a local revenue account must not be used for any purpose other than that permitted under a local revenue law.

Prohibited Agreements

36. The First Nation must not enter into an agreement or undertaking that requires the First Nation to expend money that is not authorized by or that contravenes this Law, a local revenue law or the Act.

No Expenditure without Appropriation

37. (1) Subject to subsection 38(1), money must not be paid out of any account unless the expenditure is authorized under an appropriation.

(2) Subsection (1) does not apply to expenditures from a trust account where the expenditure is authorized under the terms of the trust.

Emergency Expenditures

38. (1) The senior manager may approve an expenditure for an emergency purpose that was not anticipated in the budget if the expenditure is not expressly prohibited by or under this Law or another First Nation law.

(2) The Council must establish policies and procedures to authorize expenditures under subsection (1).

(3) The expenditure under subsection (1) must be reported to the Council as soon as practicable and the Council must amend the budget to include the expenditure.

(4) Subsection (1) does not give the senior manager the authority to borrow for the purpose of making an expenditure for an emergency purpose.

Appropriations

39. (1) An amount that is appropriated in a budget must not be expended for any purpose other than that described in the appropriation.

(2) The total amount expended by the First Nation in relation to an appropriation must not exceed the amount specified in the budget for the First Nation for that appropriation.

(3) Every person who is responsible for managing an appropriation must establish and maintain a current record of commitments chargeable to that appropriation.

Payments after Fiscal Year End

40. (1) Money appropriated in a budget for a fiscal year must not be expended after the end of the fiscal year except to discharge a liability incurred in that fiscal year.

(2) If the liabilities for an appropriation under subsection (1) exceed the unexpended balance of the appropriation at the end of the fiscal year, the excess must be

(a) charged against a suitable appropriation for the following fiscal year, and

(b) reported in the financial statements for the fiscal year in which the liability was incurred.

Requisitions for Payment

41. (1) No money may be paid out of any account without a requisition for payment as required under this section.

(2) No requisition may be made or given for a payment of money unless it is an approved charge against an appropriation or an authorized use of money in a trust.

(3) No requisition may be made or given for payment of money that results in expenditures from a trust account in excess of the unexpended balance of the trust account.

(4) No requisition may be made or given for payment of money that reduces the balance available in an appropriation or trust account so that it is not sufficient to meet the commitments chargeable against it.

(5) A requisition may apply to one (1) or more expenditures chargeable against one (1) or more appropriations.

(6) If a requisition is for the payment of performance of work or services or the supply of goods, the requisition must include a statement certifying that

(a) the work or services have been performed or the goods supplied, any conditions in an agreement respecting the work, services or goods have been met and the price charged or amount to be paid is in accordance with an agreement or, if not specified by agreement, is reasonable, or

(b) if payment is to be made before completion of the work or services, delivery of the goods or satisfaction of any conditions in an agreement, the payment is in accordance with the agreement.

(7) The authorized officer for the trust must authorize payment out of, or sign a requisition for payment from, a trust account.

(8) The tax administrator must authorize payment out of a local revenue account.

(9) Subject to subsection (8), the senior manager or senior financial officer may authorize a payment out of, or sign a requisition for, payment from any appropriation.

(10) Subject to subsection (8), a person who is responsible for managing an appropriation may authorize payment out of, or sign a requisition for, payment from the appropriation.

Form of Payment

42. Payments by the First Nation may be made by cheque, draft, electronic transfer or other similar instrument signed by authorized signing officers.

DIVISION 4 – General Matters

Advances

43. (1) The senior manager or the senior financial officer may approve an advance to prepay expenses that are chargeable against an appropriation in the current fiscal year or an appropriation in the next fiscal year.

(2) The tax administrator may approve an advance to prepay expenses that are chargeable against an appropriation from the local revenue account in the current fiscal year or an appropriation from that account in the next fiscal year.

Holdbacks

44. If the First Nation withholds an amount payable under an agreement, the payment of the amount withheld must be charged to the appropriation from which the agreement must be paid even if the fiscal year for which it was appropriated has ended.

Deposit Money

45. (1) Money received by the First Nation as a deposit to ensure the doing of any act or thing must be held and disposed of in accordance with

- (a) the agreement under which the deposit has been paid, and
- (b) in the absence of any provisions respecting that matter, any policy or directions of the Council.

(2) The Council must make policies or procedures or give directions in respect of the disposition of deposit money referred to in subsection (1).

Interest

46. (1) All interest earned on the accounts described in subsections 33(2) and 33(3), other than a trust account or local revenue account, may be deposited in the general account unless the program or resolution under which the account was established requires interest to be retained in that account.

- (2) All interest earned on
 - (a) a trust account must be retained in that account; and
 - (b) the local revenue account must be retained in that account.

(3) Subject to the *Interest Act*, the First Nation may charge interest at a rate set from time to time by the Council on any debts or payments owed to the First Nation that are overdue.

Refunds

47. Money received by the First Nation that is paid or collected in error or for a purpose that is not fulfilled may be refunded in full or in part as circumstances require.

Write Off of Debts

- 48.** All or part of a debt or obligation owed to the First Nation may be written off
- (a) if approved by the Council; or
 - (b) if done under the authority of a policy or direction of the Council.

Extinguishment of Debts

- 49.** All or part of a debt or obligation owed to the First Nation may be forgiven only
- (a) if approved by the Council; or
 - (b) if done under the authority of a policy or direction of the Council.

Year End Surplus

50. (1) Subject to subsection (2), an operating surplus at the end of the fiscal year may be paid into the general account described in section 33, or may be retained in another account described in subsection 33(3) if required by the program or resolution under which the account was established.

(2) An operating surplus in the local revenue account at the end of the fiscal year must be retained in that account.

DIVISION 5 – Borrowing

Limitations on Borrowing

51. (1) Except as specifically authorized in this Law or in a local revenue law, the First Nation must not borrow money or grant security.

(2) Subject to this Law, if the First Nation is authorized in this Law to borrow money or grant security, the Council may authorize the senior financial officer to borrow money or grant security in the name of the First Nation

- (a) as specifically approved by the Council, or
- (b) in accordance with the policies, procedures or directions made by the Council.

Borrowing for Ordinary Operations

52. (1) The First Nation may incur trade accounts or other current liabilities payable within normal terms of trade for expenditures provided for in the budget for the fiscal year if the debt will be repaid from money appropriated under an appropriation for the fiscal year or is in respect of an expenditure that may be made without the authority of an appropriation under this Law.

(2) The First Nation may enter into agreements with financial institutions for overdrafts or lines of credit and, for the purpose of securing any overdrafts or lines of credit, may grant security to the financial institution in a form, amount and on terms and conditions that the Council approves.

(3) The First Nation may enter into a general security agreement or a lease for the use or acquisition of lands, buildings, materials or equipment required for the operation, management or administration of the First Nation.

Financial Agreements

53. (1) The First Nation may enter into agreements with financial institutions and related services agreements in the name of the First Nation for the purpose of efficient management of the First Nation's financial assets.

(2) Unless otherwise specified by the Council, the senior financial officer may enter into any agreements referred to in subsection (1) on behalf of the First Nation.

Borrowing for Authorized Expenditures

54. (1) If the general account described in section 33 is not sufficient to meet the expenditures authorized to be made from it and the senior financial officer recommends that money be borrowed to ensure that the general account is sufficient for these purposes, the First Nation may borrow an amount not exceeding a maximum amount specified by the Council and to be repaid within a specified period of time.

(2) Despite the repayment terms specified in subsection (1), if the money borrowed under subsection (1) is no longer required for the purpose for which it was borrowed, the money must be repaid as soon as possible.

Borrowing Member Requirements

55. (1) This section applies if the First Nation is a borrowing member.

(2) The First Nation may only secure long-term financing secured by property tax revenues from the First Nations Finance Authority as permitted under its local revenue law and the Act.

(3) Money borrowed under subsection (2) may only be used for the purposes permitted under the Act.

(4) Money borrowed by the First Nation from the First Nations Finance Authority that is secured by other revenues may only be used for the purposes set out in section 4 of the *Financing Secured by Other Revenues Regulations* made under the Act.

Borrowing for Capital Projects

56. (1) Subject to this Law, the First Nation may enter into financing agreements for Council-approved capital projects in an amount not exceeding a maximum amount specified by the Council.

(2) The Council must establish policies or procedures or give directions respecting the means by which members of the First Nation must be informed about or involved in consideration of borrowing for new capital projects described in subsection 94(2).

Borrowing for Repayment of Debts

57. Subject to this Law and a local revenue law, the First Nation may borrow money that is required for the repayment or refinancing of any debt of the First Nation, other than a debt in relation to money borrowed under subsection 54(1).

Use of Borrowed Money

58. (1) Subject to this section and any local revenue law, money borrowed by the First Nation for a specific purpose must not be used for any other purpose.

(2) All or some of the money borrowed for a specific purpose by the First Nation and not required to be used immediately for that purpose may be temporarily invested under subsection 64(1) until required for that purpose.

(3) If some of the money borrowed for a specific purpose is no longer required for that purpose, that money must be applied to repay the debt from the borrowing.

Execution of Security Documents

59. (1) Subject to subsection (2), a security granted by the First Nation must be signed by a councillor designated by the Council and by the senior manager or the senior financial officer.

(2) A security granted by the First Nation in respect of local revenues must be signed by a councillor designated by the Council and by the tax administrator.

DIVISION 6 - Risk Management

Operational Controls

60. The Council must establish policies or procedures or give directions respecting the establishment and implementation of an effective system of internal controls that ensures the orderly and efficient conduct of the First Nation's operations.

Limitation on Business Activity

61. (1) Subject to subsections (2) and (3), the First Nation must not

- (a) carry on business as a proprietor,
- (b) acquire an interest in a partnership as a general partner, or
- (c) act as a trustee respecting property used for, or held in the course of, carrying on a business.

(2) The First Nation may carry on a business that

- (a) is ancillary or incidental to the provision of programs or services or other functions of First Nation governance, or
- (b) derives income from the granting of a lease or license of or is in respect of
 - (i) an interest in, or natural resources on or under, the First Nation's lands or lands owned in fee simple by or in trust for the First Nation, or
 - (ii) any other property of the First Nation.

(3) The First Nation may carry on business activities for the primary purpose of profit if the Council determines that the business activities

- (a) do not result in a material liability for the First Nation, or
- (b) do not otherwise expose the First Nation's financial assets, property or resources to significant risk.

(4) The Council may impose terms and conditions on the conduct of any business activity permitted under this section in order to manage any risks associated with that activity.

Guarantees and Indemnities

62. (1) The First Nation must not give a guarantee unless the Council has considered the risks associated with giving the guarantee and has assessed the ability of the First Nation to honour the guarantee should it be required to do so.

(2) The First Nation must not give an indemnity unless it is

(a) authorized under section 107,

(b) necessary and incidental to and included in another agreement to which the First Nation is a party, or

(c) in relation to a security granted by the First Nation that is authorized under this Law or another First Nation law.

(3) Subject to a resolution described in section 107, the Council must make policies and directions respecting guarantees and indemnities as follows:

(a) specifying circumstances under which an indemnity may be given without Council approval;

(b) designating the persons who may give an indemnity on behalf of the First Nation and specifying the maximum amount of any indemnity which may be given by them;

(c) specifying any terms or conditions under which a guarantee or indemnity may be given; and

(d) specifying the records to be maintained of all guarantees and indemnities given by the First Nation.

Authority to Invest

63. (1) Except as specifically authorized in this Law or another First Nation law, the First Nation must not invest the First Nation's financial assets.

(2) If the First Nation is authorized in this Law to invest the First Nation's financial assets, the Council may authorize the senior financial officer to invest the First Nation's financial assets

(a) as specifically approved by the Council, or

(b) in accordance with the policies, procedures or directions made by the Council.

Approved Investments

64. (1) Money in an account described in section 33 that is not immediately required for expenditures may be invested by the First Nation in one (1) or more of the following:

(a) securities issued or guaranteed by Canada, a province or the United States of America;

(b) fixed deposits, notes, certificates and other short term paper of, or guaranteed by a financial institution;

- (c) securities issued by the First Nations Finance Authority or by a local, municipal or regional government in Canada;
- (d) commercial paper issued by a Canadian company that is rated in the highest category by at least two (2) recognized security-rating institutions;
- (e) any class of investments permitted under an Act of a province relating to trustees;
- (f) any other investments or class of investments prescribed by a regulation under the Act.

(2) Subject to the terms of the trust, money held in trust that is not immediately required for expenditures may be invested by the First Nation as permitted under the terms of the trust or under the laws of the jurisdiction in which the majority of the First Nation's lands are located.

(3) If the First Nation has established an investment account under section 33, the First Nation may invest money in that account in

- (a) a company that is incorporated under the laws of Canada or of a province or territory and in which the First Nation is a shareholder,
- (b) a trust in which the First Nation is a beneficiary, or
- (c) a limited partnership or joint venture in which the First Nation is a partner.

(4) Despite any other provision in this section, the First Nation may only invest the following in investments specified in subsection 82(3)(a), (b), (c) or (d) of the Act and in investments in securities issued by the First Nations Finance Authority:

- (a) government transfer funds;
- (b) local revenues; and
- (c) other revenues, if the First Nation has a loan from the First Nations Finance Authority secured by other revenues.

Permitted Investments in Entities in which the First Nation has an Interest

65. (1) The First Nation may make a loan to an entity in which the First Nation has an interest only if the loan is approved by the Council and meets the requirements of this section.

(2) Before the Council approves a loan under this section, the senior financial officer must prepare a report for Council identifying any risks associated with the loan and the costs of administering the loan.

(3) Any loan made to an entity in which the First Nation has an interest must be set out in an annual report prepared pursuant to section 82 which must include details about the amount loaned, the purpose of the loan, the name of the entity receiving the loan and repayment of principal and interest on the loan.

(4) Any loan made pursuant to this section must be recorded in a written agreement that provides for proper security for repayment and sets out the terms for repayment of principal and interest.

(5) The Council must make policies or procedures or give directions for the operation of the program referred to in this section.

Administration of Investments and Loans

66. (1) If the First Nation is authorized to make an investment or loan under this Law, the senior financial officer may do all things necessary or advisable for the purpose of making, continuing, exchanging or disposing of the investment or loan.

(2) If the First Nation is authorized to make a loan under this Law, the Council must establish policies or procedures or give directions respecting the terms and conditions under which loans may be made including a requirement that all loans be recorded in a written agreement that provides for proper security for repayment and sets out the terms for repayment of principal and interest.

Risk Assessment and Management

67. (1) Annually, and more often if necessary, the senior manager must identify and assess any significant risks to the First Nation's financial assets, the First Nation's tangible capital assets as defined in Part V and the operations of the First Nation.

(2) Annually, and more often if necessary, the senior manager must report to the Finance and Audit Committee on proposed plans to mitigate the risks identified in subsection (1) or, where appropriate, to manage or transfer those risks by agreement with others or by purchasing insurance.

Insurance

68. (1) The Council must ensure that insurance coverage that is appropriate and commensurate with the risks identified in section 67 and any other risks associated with any assets, property or resources under the care or control of the First Nation is procured and maintained in force.

(2) The Council must purchase and maintain insurance for the benefit of a councillor or an officer or their personal representatives against any liability arising from that person being or having been a councillor or an officer.

Fraud Risks

69. In this section:

“fraudulent financial reporting” means an intentional act in financial reporting that is designed to deceive users of financial reports and that may result in a material omission from or misstatement of financial reports;

“fraudulent non-financial reporting” means an intentional act in non-financial reporting that is designed to deceive users of non-financial reports; and

“misappropriation of assets” means the theft of First Nation assets in circumstances where the theft may result in a material omission or misstatement in financial reports.

70. The Council must establish procedures for the identification and assessment of the following types of potential fraud in the First Nation:

(1) fraudulent financial reporting;

- (2) fraudulent non-financial reporting;
- (3) misappropriation of assets; and
- (4) corruption and illegal acts.

DIVISION 7 – Financial Reporting

Separate Accounting

71. (1) The senior financial officer must account for local revenues of the First Nation separately from other moneys of the First Nation.

(2) If the First Nation has a loan from the First Nations Finance Authority that is secured by other revenues, the senior financial officer must

- (a) account for all other revenues of the First Nation separately from other moneys of the First Nation; and
- (b) provide the First Nations Finance Authority or the Board, on its request, with accounting information respecting the other revenues.

Monthly Financial Information

72. (1) At the end of each month the senior financial officer must prepare financial information respecting the financial affairs of the First Nation in the form and with the content approved by the Council on the recommendation of the Finance and Audit Committee.

(2) The senior financial officer must provide the financial information in subsection (1) to the Council and the Finance and Audit Committee within a reasonable period of time following the end of the month for which the information was prepared.

Quarterly Financial Statements

73. (1) At the end of each quarter of the fiscal year the senior financial officer must prepare financial statements for the First Nation for that quarter in the form and with the content approved by the Council on the recommendation of the Finance and Audit Committee.

(2) The senior financial officer must provide the quarterly financial statements in subsection (1) to the Council and the Finance and Audit Committee not more than forty-five (45) days after the end of the quarter of the fiscal year for which they were prepared.

(3) The quarterly financial statements in subsection (1) must be

- (a) reviewed by the Finance and Audit Committee, and
- (b) reviewed and approved by the Council.

(4) If the First Nation has a loan from the First Nations Finance Authority that is secured by other revenues, the senior financial officer must

- (a) account for and report on all other revenues of the First Nation separately from other money of the First Nation; and
- (b) provide the First Nations Finance Authority or the Board, on its request, with information respecting the other revenues account.

Annual Financial Statements

74. (1) This section does not apply to the annual financial statements respecting local revenues referred to in subsection 75(1).

(2) At the end of each fiscal year the senior financial officer must prepare the annual financial statements of the First Nation for that fiscal year in accordance with GAAP and to a standard that is at least comparable to that generally accepted for governments in Canada.

(3) The annual financial statements must be prepared in a form approved by the Council on the recommendation of the Finance and Audit Committee.

(4) The annual financial statements must include the following information:

- (a) the financial information of the First Nation and its related bodies for the fiscal year; and
- (b) the revenue categories for the First Nation's lands referred to in subsection 27(2).

(6) The senior financial officer must provide draft annual financial statements to the Finance and Audit Committee for review within a reasonable period of time following the end of the fiscal year for which they were prepared.

(7) The Finance and Audit Committee must present draft annual financial statements to the Council for review within a reasonable period of time following the end of the fiscal year for which they were prepared.

Local Revenues Annual Financial Statements

75. (1) The senior financial officer must prepare separate annual financial statements respecting the First Nation's local revenues in accordance with Board standards respecting financial reporting of local revenues.

(2) The council must establish policies and procedures respecting the annual preparation, review, audit and approval of the annual financial statements referred to in subsection (1) including any required deadlines for completing these activities.

(3) The policies and procedures referred to in subsection (2) must be consistent with any requirements of the Board standards respecting financial reporting of local revenues.

(4) The provisions of this Law, including this section, respecting separate annual financial statements for local revenues do not apply if Board standards respecting financial reporting of local revenues permit the First Nation to report on its local revenues in its audited annual financial statements as a distinct segment of the activities that appear in those statements and the First Nation chooses to report on its local revenues in that manner.

Special Purpose Reports

76. The annual financial statements must include the following special purpose reports:

- (a) a report setting out all payments made to honour guarantees and indemnities for that fiscal year;
- (b) a report setting out the information required in section 10;
- (c) a report setting out all debts or obligations forgiven by the First Nation;
- (d) if the First Nation has a land code in force, a report setting out moneys of the First Nation derived from First Nation lands, categorized and shown separately from other revenues and that includes a sub-category respecting revenues from natural resources obtained from First Nation lands; and
- (e) any other report required under the Act or an agreement.

Audit Requirements

77. (1) The annual financial statements of the First Nation must be audited by the auditor not more than one hundred and twenty (120) days after the fiscal year end.

(2) The auditor must conduct the audit of the annual financial statements in accordance with generally accepted auditing standards established by the Chartered Professional Accountants of Canada.

(3) The auditor must conduct that part of the annual financial statements respecting the local revenue account in accordance with Board standards for the audit of local revenue accounts and must report on that account separately from other accounts.

(4) When conducting the audit, the auditor must provide

- (a) an audit opinion of the annual financial statements, and
- (b) an audit opinion or review comments on the special purpose reports referred to in subsection 76.

Appointment of Auditor

78. (1) The First Nation must appoint an auditor for each fiscal year to hold office until the later of

- (a) the end of the Council meeting when the audited annual financial statements for that fiscal year are being considered, or
- (b) the date the auditor's successor is appointed.

(2) The terms and conditions of the appointment of the auditor must be set out in an engagement letter approved by the Finance and Audit Committee and must include the auditor's obligation:

- (a) to confirm in writing that the annual financial statements and the audit of them comply with this Law, the Act, and Board standards, or

- (b) to the extent they are not in compliance, to identify in writing consequential non-compliance matters
- (3) To be eligible for appointment as the auditor of the First Nation, an auditor must
 - (a) be independent of the First Nation, its related bodies, councillors and officers and members, and
 - (b) be a public accounting firm or public accountant
 - (i) in good standing with the Chartered Professional Accountants of Canada or its respective counterpart in the province or territory in which the public accounting firm or public accountant is practicing, and
 - (ii) licensed or otherwise authorized to practice public accounting in the province or territory in which the majority of the reserve lands of the First Nation are located.
- (4) If the auditor ceases to be independent, the auditor must as soon as practicable after becoming aware of the circumstances
 - (a) advise the First Nation in writing of the circumstances, and
 - (b) eliminate the circumstances that resulted in loss of independence or resign as the auditor.

Auditor's Authority

- 79.** (1) To conduct an audit of the annual financial statements of the First Nation, the auditor must be given access to
- (a) all records of the First Nation for examination or inspection and given copies of these records on request, and
 - (b) any councillor, officer, employee, contractor or agent of the First Nation to ask any questions or request any information.
- (2) On request of the auditor, every person referred to in paragraph (1)(b) must
- (a) make available all records referred to in paragraph (1)(a) that are in that person's care or control, and
 - (b) provide the auditor with full information and explanation about the affairs of the First Nation as necessary for the performance of the auditor's duties.
- (3) The auditor must be given notice of
- (a) every meeting of the Finance and Audit Committee,
 - (b) every Council meeting where matters relating to the annual audit, including the approval of the annual financial statements, will be considered, and
 - (c) every meeting of the members of the First Nation where the financial administration of the First Nation will be considered.

(4) Subject to subsection (6), the auditor may attend any meeting for which he or she must be given notice under this section and must be given the opportunity to be heard at those meetings on any subject that concerns the auditor as auditor of the First Nation.

(5) The auditor may call a meeting of the Finance and Audit Committee to discuss any subject that concerns the auditor of the First Nation.

(6) The auditor may be excluded from all or any part of a meeting of the Finance and Audit Committee or the Council by a recorded vote if the subject matter relates to the retaining or dismissal of the auditor.

Review of Audited Annual Financial Statements

80. (1) The audited annual financial statements must be provided to the Finance and Audit Committee for its review and consideration within a reasonable period of time after the fiscal year end for which the statements were prepared.

(2) The Council must review and approve the audited annual financial statements not more than one hundred and twenty (120) days after the fiscal year end for which the statements were prepared.

Access to Annual Financial Statements

81. (1) Before the annual financial statements referred to in both subsections 74(1) and 75(1) may be published or distributed, they must

(a) be approved by the Council,

(b) be signed by

(i) the Chief of the First Nation,

(ii) the chairperson of the Finance and Audit Committee, and

(iii) the senior financial officer, and

(c) include the auditor's audit report of the annual financial statements and the auditor's audit opinion or review comments of the special purpose reports referred to in section 76.

(2) The audited annual financial statements referred to in subsections 74(1) and 75(1) and special purpose reports must be available for inspection by members of the First Nation at the principal administrative offices of the First Nation during normal business hours.

(3) Council must provide members and any person referred to in subsection 14(2) of the Act with access to all audited annual financial statements, including financial statements respecting local revenues, and special purpose reports.

Annual Report

82. (1) Not later than one hundred and eighty (180) days after the end of each fiscal year, the Council must prepare an annual report on the operations and financial performance of the First Nation for the previous fiscal year.

(2) The annual report referred to in subsection (1) must include the following:

(a) a description of the services and operations of the First Nation;

(b) a progress report on any established financial objectives and performance measures of the First Nation;

(c) the audited annual financial statements of the First Nation for the previous fiscal year including special purpose reports.

(3) The senior manager must provide the annual report referred to in subsection (1)

(a) to a member of the First Nation as soon as practicable after a request is made by the member;

(b) to the Board as soon as practicable after the report's publication, if the First Nation has a certificate issued by the Board under subsection 50(3) of the Act; and

(c) to the First Nations Finance Authority as soon as practicable after the report's publication, if the First Nation is a borrowing member.

(4) The Council must establish policies or procedures respecting, or give directions respecting, an accessible process and remedy available to First Nation members who have requested but have not been provided with the annual report.

DIVISION 8 – Information and Information Technology

Ownership of Records

83. (1) All records that are produced by or on behalf of the First Nation or kept, used or received by any person on behalf of the First Nation are the property of the First Nation.

(2) The Council must establish policies or procedures or give directions to ensure that the records referred to in subsection (1) remain the property of the First Nation.

Operations Manual

84. (1) The senior manager must prepare and maintain a current operations manual respecting every element of the First Nation's administrative systems, including any financial administration systems referred to in this Law.

(2) The operations manual under subsection (1) must be made available to councillors, members of the Finance and Audit Committee and all other Council committees and officers and employees of the First Nation.

(3) If any part of the operations manual under subsection (1) is relevant to the services being provided by a contractor or agent of the First Nation, that part of the operations manual must be made available to the contractor or agent.

Record Keeping and Maintenance

85. (1) The senior manager must ensure that the First Nation prepares, maintains, stores and keeps secure all the First Nation's records that are required under this Law or any other applicable law.

(2) No First Nation's record may be destroyed or disposed of except as permitted and in accordance with the policies, procedures or directions of the Council.

(3) All financial records of the First Nation must be stored for at least seven (7) years after they were created.

(4) The Council must establish policies and procedures or give directions respecting access of any persons to First Nation's records.

Local Revenue Account Records

86. (1) The tax administrator must prepare, maintain, store and keep secure a complete set of all records respecting the local revenue system of the First Nation, including all records referred to in section 5 of the *Local Revenue Management Implementation Regulations*.

(2) The senior financial officer must prepare, maintain, store and keep secure a complete set of all records respecting other revenues of the First Nation, including all records referred to in section 5 of the *Local Revenue Management Implementation Regulations* as amended by the *Financing Secured by Other Revenues Regulations*.

Confidentiality of Information

87. (1) No person may be given access to First Nation's records containing confidential information except as permitted in and in accordance with the policies, procedures and directions of the Council.

(2) All persons who have access to First Nation's records must comply with all policies, procedures or directions of the Council respecting the confidentiality, control, use, copying or release of that record or information contained in those records.

Information Technology

88. The Council must establish policies or procedures or give directions respecting information technology used by the First Nation in its operations to ensure the integrity of the First Nation's financial administration system and its data base.

PART V – Capital Projects

Definitions

89. In this Part:

“capital project” means the construction, rehabilitation or replacement of the First Nation's tangible capital assets and any other major capital projects in which the First Nation or its related bodies are investors;

“First Nation's tangible capital assets” means all non-financial assets of the First Nation having physical substance that

(a) are held for use in the production or supply of goods and services, for rental to others, for administrative purposes or for the development, construction, maintenance or repair of other tangible capital assets,

- (b) have useful economic lives extending beyond an accounting period,
- (c) are to be used on a continuing basis,
- (d) are not for sale in the ordinary course of operations; and
- (e) have a replacement value of ten thousand dollars (\$10,000) or more.

“life-cycle management program” means the program of inspection, review and planning for management of the First Nation’s tangible capital assets as described in section 93;

“rehabilitation” includes alteration, extension and renovation but does not include routine maintenance;

“replacement” includes substitution, in whole or in part, with another of the First Nation’s tangible capital assets.

Council General Duties

90. The Council must take reasonable steps to ensure that

- (a) the First Nation’s tangible capital assets are maintained in a good and safe condition and to the same standard as a prudent owner of those assets,
- (b) the rehabilitation or replacement of the First Nation’s tangible capital assets is in accordance with a life-cycle management program described in this Part, and
- (c) capital projects for the construction of buildings or other improvements are financed, planned and constructed in accordance with procedures and to standards, that generally apply to the financing, planning and construction of public buildings and other improvements of organized communities in the region in which the majority of the First Nation’s lands are located.

Tangible Capital Assets Reserve Fund

91. The Council must establish a tangible capital asset reserve fund for the purpose of funding expenditures for capital projects carried out under this Part.

Reports on Capital Projects

92. At least quarterly at a Finance and Audit Committee meeting, the senior manager must report on the following subjects:

- (a) year to date borrowings, loans and payments in respect of each capital project;
- (b) the status of a capital project including
 - (i) a comparison of expenditures to date with the project budget,
 - (ii) a detailed description of any identified legal, financial, technical, scheduling or other problems, and
 - (iii) the manner in which a problem identified in subparagraph (ii) has been or will be addressed; and

- (c) steps taken to ensure compliance with section 95 for every project referred to in that section.

Life-Cycle Management Program

93. (1) The senior manager must establish and keep current a register of all the First Nation's tangible capital assets that identifies each of these assets and includes the following information:

- (a) location and purpose of the asset;
- (b) ownership and restrictions over ownership of the asset;
- (c) year of acquisition;
- (d) last inspection date of the asset;
- (e) expected life of the asset at the time of acquisition;
- (f) assessment of condition of the asset and its remaining useful life;
- (g) estimated residual value of the asset;
- (h) insurance coverage for the asset; and
- (i) any other information required by the Council.

(2) On or before November 30 of each year, the senior manager must arrange for the inspection and review of the state of each of the First Nation's tangible capital assets to establish or update information respecting the following matters:

- (a) its present use;
- (b) its condition and state of repair;
- (c) its suitability for its present use;
- (d) its estimated remaining life;
- (e) its estimated replacement cost;
- (f) estimated dates and costs of its required future rehabilitation;
- (g) a comparison of annual operating and maintenance costs, other than rehabilitation costs, for the last five (5) fiscal years;
- (h) maintenance records for all periods up to the date of inspection; and
- (i) property and liability insurance covering the capital asset and its use or operation.

(3) On or before December 31 of each year, the senior financial officer must prepare the following:

- (a) a schedule of annual routine maintenance, other than rehabilitation, for each of the First Nation's tangible capital assets for the next fiscal year;

- (b) five (5), ten (10) and thirty (30) year forecasts of the estimated cost for rehabilitation or replacement of the First Nation's tangible capital assets;
- (c) the proposed budget for rehabilitation of the First Nation's tangible capital assets for the next fiscal year, setting out
 - (i) each proposed rehabilitation project and its schedule,
 - (ii) the estimated cost, including contingencies of each proposed rehabilitation project, and
 - (iii) the estimated amounts and timing of money that is required to carry out each proposed rehabilitation project; and
- (d) the proposed budget for replacement of the First Nation's tangible capital assets for the next fiscal year setting out
 - (i) each proposed replacement project and its schedule,
 - (ii) the description of each asset to be replaced,
 - (iii) the estimated cost, including contingencies, of each proposed replacement project, and
 - (iv) the reasons why each proposed acquisition should be regarded as a replacement for the capital asset to be replaced.

Review by Finance and Audit Committee

94. (1) On or before January 15 of each year, the Finance and Audit Committee must review the information, schedules and budget prepared under section 93 for the following purposes:

- (a) to identify any means to reduce the costs of each rehabilitation or replacement project included in the proposed budgets;
- (b) to know the effect that each rehabilitation or replacement project included in the proposed budgets will have on the annual operating costs and routine maintenance costs in future years, and
- (c) to determine whether any significant savings might be effected by coordinating the scheduling of projects, deferring any projects or carrying out rehabilitation projects rather than replacement projects.

(2) On or before January 15 of each year, the Finance and Audit Committee must review any plans for new construction of the First Nation's tangible capital assets including the proposed schedule, budget and impact on annual operating costs and routine maintenance costs in future years.

Capital Projects – Contracts and Tenders

95. (1) The Council must establish policies or procedures or give directions respecting the management of capital projects, the construction and rehabilitation of buildings and other improvements to land, including capital infrastructure:

- (a) project planning, design, engineering, safety and environmental requirements;

- (b) project costing, budgeting, financing and approval;
- (c) project and contractor bidding requirements;
- (d) tender, contract form and contract acceptance;
- (e) course of construction insurance;
- (f) project performance guarantees and bonding;
- (g) project control, including contract management; and
- (h) holdbacks, work approvals, payment and audit procedures.

(2) The construction or rehabilitation of any buildings, improvements, or any other capital projects, infrastructure by, or under the direction of, the First Nation must be carried out in accordance with the policies, procedures or directions referred to in subsection (1) unless the funding agency has a specific process or specific requirements that must be followed, in which case the funding agency's process or requirements shall prevail as approved by Council.

Capital Project Consultants

96. The senior manager may retain the services of a professional engineer or other consultant to assist the senior manager, Finance and Audit Committee and Council to carry out their obligations under this Part.

Policy for Information or Involvement of Members

- 97.** The Council must establish policies or procedures or give directions for
- (a) the provision of information to members of the First Nation respecting capital projects, or
 - (b) the involvement of members of the First Nation in consideration of capital projects.

PART VI – Board Standards and Powers

Application

98. This Part applies to the First Nation if it is a borrowing member as defined in the Act, or has a certificate issued by the Board under subsection 50(3) of the Act.

Compliance With Standards

99. (1) The First Nation must comply with all applicable Board standards.

(2) If the Council becomes aware that the First Nation is not complying with a Board standard referred to in subsection (1), the Council must as soon as practicable take the any required actions to bring the First Nation into compliance with the Board standard.

100. (1) Without limiting section 53 of the Act, if

- (a) the First Nation is

- (i) making local revenue laws under subsection 5(1) of the Act, or
 - (ii) using its local revenues to secure a loan from the First Nations Finance Authority, and
- (b) the Board gives notice to the First Nation under section 53 of the Act that third-party management of the First Nation's local revenues is required, the Council of the First Nation delegates to the Board
 - (i) the powers and authorities described in subsection 53(2) of the Act, and
 - (ii) any other of the Council's powers required to give effect to third-party management of the First Nation's local revenues and local revenue account under the Act.
- (2) Without limiting section 53 of the Act as adapted by the Financing Secured by Other Revenues Regulations, if
 - (a) the First Nation is using its other revenues to secure a loan from the First Nations Finance Authority, and
 - (b) the Board gives notice to the First Nation under section 53 of the Act that third-party management of the First Nation's other revenues is required, the Council of the First Nation delegates to the Board
 - (i) the powers and authorities described in subsection 53(2) of the Act as adapted by the Financing Secured by Other Revenues Regulations, and
 - (ii) any other of the Council's powers required to give effect to third-party management of the First Nation's other revenues under the Act.

PART VII – Land Management

Application

101. This Part applies to the First Nation if it has a land code under the *First Nations Land Management Act*.

Obligations

102. (1) The First Nation must comply with the *First Nations Land Management Act* and any land code made by the First Nation as required or permitted under that Act.

(1) The Council must establish and implement a policy that provides a method consistent with the requirements of the First Nation's land code for being accountable to members of the First Nation for the management of the First Nation's lands and for moneys earned from those lands to satisfy paragraph 6(1)(e) of the *First Nations Land Management Act*.

PART VIII - Miscellaneous

Reports of Breaches and Financial Irregularities, Etc.

103. (1) Subject to subsections (2) and (3), if any person has reason to believe that

(a) an expenditure, liability or other transaction of the First Nation is not authorized by or under this Law or another First Nation law,

(b) there has been a theft, misappropriation or other misuse or irregularity in the funds, accounts, assets, liabilities and financial obligations of the First Nation,

(c) a provision of this Law has been contravened, or

(d) a person has failed to comply with the conflict of interest requirements of this Law or of any policy or procedure established pursuant to section 22,

the person may disclose the circumstances to the chairperson of the Finance and Audit Committee.

(2) If a councillor becomes aware of any circumstances described under subsection (1), the councillor must report them to the chairperson of the Finance and Audit Committee.

(3) If an officer, employee, contractor or agent of the First Nation becomes aware of any circumstances described under subsection (1), the officer, employee, contractor or agent, as the case may be, must report them to the senior manager or the chairperson of the Finance and Audit Committee.

Inquiry into Report

104. (1) If a report is made to the senior manager under subsection 103(3), the senior manager must inquire into the circumstances reported and report the findings to the Finance and Audit Committee as soon as practicable.

(2) If a report is made to the chairperson of the Finance and Audit Committee under section 103, the chairperson must inquire into the circumstances reported and report the findings to the Finance and Audit Committee as soon as practicable.

(3) The Finance and Audit Committee may make a further inquiry into any findings reported to it under this section but, in any event, must make a report to the Council respecting any circumstances reported to the Finance and Audit Committee under this section including the Committee's recommendations, if any.

Protection of Parties

105. (1) All reasonable steps must be taken by the senior manager, the members of the Finance and Audit Committee and the councillors to ensure that the identity of the person who makes a report under section 103 is kept confidential to the extent practicable in all the circumstances.

(2) A person who makes a report in good faith under section 103 must not be subjected to any form of reprisal by the First Nation or by a councillor, officer, employee, contractor or agent of the First Nation as a result of making that report.

(3) The senior manager and the chairperson of the Finance and Audit Committee must take all necessary steps to ensure that subsection (2) is not contravened and must report any contravention or suspected contravention to the Council.

(4) The Council must establish policies or procedures or give directions

(a) for the recording and safeguarding of reports made under section 103 and any records prepared during the inquiry or investigation into those reports,

(b) for the inquiry or investigation into reports made under section 103, and

(c) concerning the fair treatment of a person against whom a report has been made under section 103.

Liability for Improper Use of Money

106. (1) If the Council passes a resolution authorizing an amount to be expended, invested or used contrary to this Law or the First Nation's local revenue law, the councillors who are present at the meeting at which the resolution is made are personally jointly and severally liable to the First Nation for that amount.

(2) Subsection (1) does not apply to a councillor who:

(a) votes against the resolution; and

(b) provides a written notice of dissent to the resolution to the senior manager and the secretary to the Council within three days of the resolution having been made.

(3) A councillor who was not present at a meeting at which a resolution authorizing an amount to be expended, invested or used contrary to this Law or the First Nation's local revenue law is passed is personally liable to the First Nation as if the councillor was present at the meeting unless, within seven (7) days after becoming aware of the resolution, the councillor provides a written notice of dissent to the resolution to the senior manager and the secretary to the Council.

(4) Subsections (1) and (3) do not apply if the Council relied on information provided by an officer or employee of the First Nation and the officer or employee was guilty of dishonesty, gross negligence or malicious or willful misconduct when providing the information.

(5) An amount owed to the First Nation under subsection (1) or (3) may be recovered for the First Nation by the First Nation, a member of the First Nation or a person who holds a security under a borrowing made by the First Nation.

(6) It is a good defence to any action brought against an officer or employee of the First Nation for unauthorized expenditure, investment or use of First Nation financial assets if it is proved that the officer or employee gave a written and signed warning to the Council that in his or her opinion, the expenditure, investment or use would be unlawful.

Indemnification Against Proceedings

107. (1) In this section:

“indemnify” means to pay amounts required or incurred

- (a) to defend an action or prosecution brought against a person in connection with the exercise or intended exercise of the person’s powers or the performance or intended performance of the person’s duties or functions, or
- (b) to satisfy a judgment, award or penalty imposed in an action or prosecution referred to in paragraph (a);

“First Nation official” means a current or former councillor, officer or employee of the First Nation.

(2) Subject to subsection (3), the Council may by resolution indemnify or provide for the indemnification of a named First Nation official, a category of First Nation official or all First Nation officials in accordance with the terms specified in the resolution.

(3) The Council may not pay a fine that is imposed as a result of a First Nation official’s conviction for an offence unless the offence is a strict or absolute liability offence.

Periodic Review of Law

108. (1) On a regular, periodic basis established by a policy of the Council, the Finance and Audit Committee must conduct a review of this Law

- (a) to determine if it facilitates effective and sound financial administration of the First Nation, and
 - (b) to identify any amendments to this Law that may better serve this objective.
- (2) The Council must establish policies or procedures or give directions for
- (a) the provision of information to members of the First Nation respecting any proposed amendment of this Law, or
 - (b) the involvement of members of the First Nation in consideration of an amendment to this Law.
- (3) If the First Nation is a borrowing member, it may only repeal this Law if it replaces it at the same time with another financial administration law which has been reviewed by the Board and issued a compliance approval under section 9 of the Act.
- (4) Any amendment of this Law must be reviewed by the Board and issued a compliance approval under section 9 of the Act.

Provision of Law to First Nations Finance Authority

109. If the First Nation intends to apply to become a borrowing member, the Council must provide a copy of this Law to the First Nations Finance Authority as soon as practicable after the Board approves the Law.

Coming Into Force

110. This Law comes into force on the day after it is approved by the First Nations Financial Management Board under Section 9 of the Act.

THIS LAW IS HEREBY DULY ENACTED by Council on the 22 day of May, 2018, at **Duncan in the Province of British Columbia at a duly called and conducted Council meeting at which the required quorum of five (5) members of Council was present throughout.**

Original signed by William Seymour
Chief William Seymour

Original signed by Christopher Alphonse
Councillor Christopher Alphonse

Original signed by Francine Alphonse
Councillor Francine Alphonse

Original signed by Andrew Canute
Councillor Andrew Canute

Original signed by Albie Charlie
Councillor Albie Joe Charlie

Original signed by Stephanie Charlie
Councillor Stephanie Charlie

Original signed by Craig George
Councillor Craig George

Original signed by Darin George
Councillor Darin George

Original signed by Howard George
Councillor Howard George

Original signed by Stuart Pagaduan
Councillor Stuart Pagaduan

Original signed by Calvin Swustus Sr.
Councillor Calvin Swustus Sr.

Original signed by Debra Toporowski
Councillor Debra Toporowski

Original signed by Dora Wilson
Councillor Dora Wilson