



Effective Date: June 12, 2018

GUARANTEES AND INDEMNITIES

Definitions

- The following definitions apply to this Policy:
 - Guarantee** - a legal agreement where Cowichan Tribes agrees to be held liable for the debt or obligation of another person, who is primarily responsible for the debt or obligation, and agrees to make the necessary payments if the person primarily responsible for the debt cannot make the payments;
 - Indemnify** - to pay amounts required or incurred 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
 - Satisfy a judgment, award or penalty imposed in an action or prosecution referred to in paragraph (i) above;
 - Indemnity** - a contractual agreement between two (2) parties where one party agrees to compensate the other party for any damages or losses they may, or have, incurred. The indemnity agreement provides for protection, by compensation, from liabilities or penalties incurred by one's actions;
 - Official** - a current or former councillor, officer or employee of Cowichan Tribes;
 - Strict (or Absolute) Liability Offence** - a situation where there was no genuine intent to break the law by the those alleged to have committed the offence;
- Please refer to Cowichan Tribes' "Definitions Guide for Policies and Procedures" for the definitions of other terms used in this Policy and the associated procedures.

Policy Directive:

Cowichan Tribes shall only grant guarantees and indemnities in specific and limited cases, and manage them in a prudent and effective manner.

Related Cowichan Teaching

"Help one another and work together for the good of all"

Applicable Legislation and Standards

- Cowichan Tribes' practices respecting the granting of guarantees and indemnities must comply with applicable legislation, standards, and Cowichan Tribes' laws, policies and procedures, including:
 - The *First Nations Fiscal Management Act*;
 - First Nations Financial Management Board (FNFMB) Standards;



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- iii) Cowichan Tribes First Nation Financial Administration Law (the FAL); and
- iv) Public Sector Accounting Standards of the Public Sector Accounting Board.

Reason for Policy

- 4. The objectives of this Policy include:
 - i) Providing guidelines and a framework for the establishment of an effective, fair, transparent and accountable process for the approval, management, collection, recording and reporting of guarantees and indemnities by Cowichan Tribes as authorized under the FAL, including clarifying the related roles and responsibilities;
 - ii) Ensuring Cowichan Tribes only grants guarantees and indemnities in limited and specified cases where the associated level and duration of risks are fully understood and minimized to the extent possible;
 - iii) Maintaining accurate and complete records of approved guarantees, indemnities, and related payments for the purposes of effective management, accountability, reporting and audit; and
 - iv) Ensuring that Cowichan Tribes' practices respecting the granting of guarantees and indemnities comply with all applicable requirements.

Consequences of Non-Compliance with Policy

- 5. Potential consequences of non-compliance with this Policy include:
 - i) Lack of clarity and directions respecting the approval and management of guarantees and indemnities by Cowichan Tribes;
 - ii) Guarantees and indemnities being granted without the proper authorization or due diligence (i.e., the associated risks are too high, or are inadequately managed);
 - iii) Lack of review and monitoring of active guarantees and indemnities for compliance with related agreements, and other applicable requirements;
 - iv) Inappropriate records and documentation of guarantees and indemnities; and
 - v) Breach of legislation, standards, or Cowichan Tribes' laws, policies and procedures.

Policy Application

- 6. This Policy applies to or affects:
 - i) Cowichan Tribes':
 - a) Chief and Council,
 - b) Finance and Audit Committee,
 - c) General Manager,
 - d) Comptroller and the Finance Department, and
 - e) All other employees and persons involved in the granting, administration and management of guarantees and indemnities on behalf of Cowichan Tribes; and
 - ii) All guarantees and indemnities granted by Cowichan Tribes.



Policy Requirements

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7. Cowichan Tribes shall only grant guarantees and indemnities in accordance with the FAL and all applicable Cowichan Tribes' policies and procedures.
8. Council's prior written approval is required for the granting of a guarantee or indemnity.
9. Guarantees shall only be granted if the risk of non-payment or non-fulfillment of an obligation is reasonable and at an acceptable level for Cowichan Tribes.
10. Subject to the section below, Council may by resolution indemnify or provide for the indemnification of a named Cowichan Tribes' official, a category of officials or all Cowichan Tribes' officials in accordance with the terms specified in the resolution.
11. Council may not pay a fine that is imposed as a result of a Cowichan Tribes' official's conviction for an offence unless the offence is a strict or absolute liability offence.
12. Cowichan Tribes shall ensure that any guarantees and indemnities given are made in accordance with written legal agreements which include standard clauses, are properly approved, and regularly reported to the Finance and Audit Committee.
13. The maximum amount of any guarantee or indemnity that may be granted shall be limited as per Cowichan Tribes' Expenditure Management Policy and Procedures, and the Authorization and Delegation Table.
14. The requirements for obtaining a guarantee or indemnity, and the standard terms and conditions of the related agreements shall be accessible by all Cowichan Tribes' members who request this information from Cowichan Tribes' Administration Office.
15. Payment requests for a guarantee or indemnity must be reviewed and, if appropriate, approved by the Finance and Audit Committee and signed off by the Comptroller.
16. Cowichan Tribes must ensure that the annual budget includes provisions for the potential costs of approved guarantees and indemnities, including payments.
17. All active guarantees and indemnities shall be regularly monitored for compliance with the terms of the related agreements, this Policy and the associated procedures.

Leases

18. Cowichan Tribes may only enter into a lease agreement if the:
 - i) The agreements are made in accordance with the land code or applicable land management laws and policies; and
 - ii) The related amounts payable are provided for within the related program or department budget.



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19. Cowichan Tribes must comply with the terms and conditions of each lease agreement it enters into.

Reporting and Records Management

20. Cowichan Tribes shall on a regular yearly basis prepare a report of all active guarantees and indemnities granted by Cowichan Tribes, and a report of all payments made to honour guarantees and indemnities.
21. Proper records must be kept and retained regarding the granting and management of guarantees and indemnities, and all lease agreements entered into, by Cowichan Tribes in accordance with applicable records management requirements.



Procedures: Guarantees and Indemnities

Roles and Responsibilities

22. The responsibilities of Council include reviewing requests for and, if appropriate, approving guarantees and indemnities as per Cowichan Tribes' laws and policies.
23. The responsibilities of the Finance and Audit Committee include:
 - i) Providing guidance on the provision and management of guarantees and indemnities;
 - ii) Reviewing proposals for guarantees and indemnities and making recommendations to Council; and
 - iii) Monitoring the status of active guarantees and indemnities, taking any necessary action to ensure effective controls are in place, and reporting to Council.
24. The responsibilities of the General Manager include ensuring Cowichan Tribes' guarantee and indemnity process is transparent by providing all Cowichan Tribes' members with access to pertinent information such as the requirements for a guarantee or indemnity, and the related procedures, terms and conditions.
25. The responsibilities of the Comptroller include:
 - i) Reviewing requests, and conducting a risk assessment, for the granting of a guarantee or indemnity by Cowichan Tribes;
 - ii) Preparing guarantee and indemnity agreements;
 - iii) Ensuring adequate records are made and maintained for guarantees and indemnities;
 - iv) Reporting on guarantees and indemnities; and
 - v) Reviewing active guarantees and indemnities granted by Cowichan Tribes for compliance, reporting any issues to the Finance and Audit Committee, and taking any necessary corrective action, as required.

Guarantees

26. Before Council authorizes a guarantee, the Comptroller must prepare a report for Council identifying any risks associated with giving the guarantee and assessing the ability of Cowichan Tribes to honour the guarantee should it be required to do so.
27. Cowichan Tribes must not give a guarantee unless Council has:
 - i) Considered the report of the Comptroller discussed in the above section and any other known risks associated with giving the guarantee;
 - ii) Assessed, and confirmed, Cowichan Tribes' ability to honour the guarantee;
 - iii) Approved the guarantee by resolution at a duly convened Council meeting; and
 - iv) A valid and signed standard legal agreement with person(s) requesting the guarantee.
28. Cowichan Tribes shall obtain a copy of the legal agreement regarding the asset or investment, for example, for which Cowichan Tribes issued a guarantee, and retain it on file with the guarantee agreement.

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Indemnities

29. Cowichan Tribes shall establish processes for the review and approval of indemnities, including the review and approval of indemnity clauses in contracts.
30. Cowichan Tribes must not give an indemnity unless it is:
 - i) Approved and authorized by Council through a resolution;
 - ii) Necessary and incidental to and included in another agreement to which Cowichan Tribes is a party; or
 - iii) In relation to a security granted by Cowichan Tribes that is authorized under the FAL or another Cowichan Tribes' law.
31. Prior to approving an indemnity, Council shall ensure that:
 - i) The associated risk has been assessed and is at an acceptable level; and
 - ii) There is a valid and signed standard legal agreement between Cowichan Tribes and the individual(s) requesting the indemnity arrangement, as applicable.

Agreements

32. A legal agreement shall be made between Cowichan Tribes and the individual requesting the guarantee or indemnity.
33. Cowichan Tribes shall only sign guarantee and indemnity agreements that:
 - i) Are prepared or reviewed by Cowichan Tribes' legal counsel and approved by Council;
 - ii) Require a periodic review of the necessity for continuing a guarantee or indemnity agreement, and a review of the related dollar value; and
 - iii) Clarify when a guarantee or indemnity payment becomes necessary.
34. The following items, at a minimum, shall be included in guarantee and indemnity agreements, as applicable:
 - i) Name of the individual(s) granted the guarantee or indemnity;
 - ii) Amount of the guarantee or limits of indemnification;
 - iii) Purpose of the guarantee or indemnity, and duration of the related agreement;
 - iv) Amount, maturity and repayment terms of the underlying loan or obligation; and
 - v) Purpose and use of the underlying loan or obligation.

Monitoring

35. The Finance Department shall review and monitor all active guarantee and indemnity agreements to ensure they:
 - i) Have all the necessary approvals;
 - ii) Are carried out in accordance with the respective agreement terms; and
 - iii) Comply with Cowichan Tribes' laws, policies and procedures.



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36. The Finance and Audit Committee must, at least annually, review active guarantees and indemnities, and the related primary debts or obligations, and risk assessments, to ensure compliance with Cowichan Tribes' laws and policies.

Reporting

37. On an annual basis, the Finance Department shall prepare a report listing all active guarantees and indemnities granted by Cowichan Tribes. This report shall, as a minimum, include the following information for each guarantee and indemnity:
- i) Name of the individual(s) or entity(ies) granted the guarantee or indemnity;
 - ii) Purpose of the guarantee or indemnity;
 - iii) Amount of and time period covered by the original guarantee or indemnity;
 - iv) Actual payments, if any, made against guarantees or indemnities; and
 - v) Any expected payments required as a result of Cowichan Tribes having to fulfill or honour a guarantee or indemnity agreement.
38. At the end of each fiscal year, the Comptroller shall prepare a special purpose report that sets out all payments made by Cowichan Tribes to honour guarantees and indemnities for that fiscal year, as per Cowichan Tribes' Financial Reporting Policy and Procedures.

Records Management

39. Cowichan Tribes shall ensure that appropriate records and documents are made respecting all guarantees and indemnities requested from and granted by Cowichan Tribes, and that these records and documentation are maintained in a safe and confidential manner, as per the Financial Records Management Policy and Procedures, including records regarding:
- i) Supporting documentation for all guarantees, indemnities and indemnifications given by Cowichan Tribes, including all related approvals;
 - ii) Risk assessments and legal agreements respecting guarantees and indemnities;
 - iii) Guarantees and securities given for capital projects on Cowichan Tribes' lands;
 - iv) Reporting of guarantees and indemnities; and
 - v) Lease agreements entered into by Cowichan Tribes and the related obligations.

Related Cowichan Tribes' Policies

- Expenditure Management Policy and Procedures;
- Financial Records Management Policy and Procedures;
- Financial Reporting Policy and Procedures;