

Financial Administration Law Standards



First Nations Financial Management Board

Prepared to accompany

Draft of Law Sample One

2009, January 22

A.2

FIRST NATIONS FINANCIAL MANAGEMENT BOARD

FINANCIAL ADMINISTRATION LAW STANDARDS

Background Context

The *First Nations Fiscal and Statistical Management Act (FSMA)* establishes several first nation institutions – the First Nations Tax Commission (FNTC), the First Nations Financial Management Board (FMB) and the First Nations Finance Authority (FNFA) - with mandates designed to permit first nations access to financial markets on a similar basis as municipalities and local governments in Canada.

Working in a collaborative framework these three institutions facilitate the voluntary development of first nation capacity to access these markets – by assisting them to use their available tax bases to secure funding; by assisting them to implement a sound financial administration system in which investment bankers would have confidence; by negotiating on their collective behalf the borrowing of funds from these financial markets.

In order for a first nation to access these markets through this legislative program, the first nation must become a “borrowing member” of the First Nations Finance Authority. Before a first nation is eligible to be considered for membership in the FNFA, the FMB must issue a certificate to the first nation indicating that it meets the standards set by the FMB under the *FSMA*. For these purposes the FMB Board of Directors has issued *Financial Administration Law Standards (Law Standards)* and *Financial Administration System Standards (System Standards)*.

The FMB Board of Directors has also issued the *Law Approval and System Certification Procedures (Procedures)* to guide first nations who are applying for a certificate from the FMB to become eligible for membership in the FNFA. At the beginning of these *Procedures* is a flowchart that also explains the steps to be taken in this process towards certification.

On application of a first nation, the FMB will issue a certificate to that first nation to be eligible to become a “borrowing member” when the following occurs:

- first, the first nation must submit to the FMB a financial administration law that the FMB Board of Directors determines meets the requirements of the *Law Standards* and that is approved by the FMB Board of Directors; and
- second, the first nation must demonstrate by way of an operational review conducted by a FMB reviewer and considered by the FMB Board of Directors that the first nation’s financial administration system is in material compliance with the *System Standards*.

To assist first nations the FMB has prepared and made available to first nations a Sample Financial Administration Law (Sample Law) which meets the requirements of the *Law Standards* and which reflects sound financial administration practices of local, provincial and federal government in Canada.

All of the FMB documents referred to are available from the FMB.

The *Law Standards* contained in this document are intended to support adoption of “sound practices” respecting first nation financial administration systems. They were prepared after review of the following laws, standards and agreements:

- existing first nation financial administration laws publicly available to the FMB – including laws available from first nation web sites or provided to the FMB, laws published in the *First Nations Gazette* and sample laws (and related materials) of the Aboriginal Financial Officers Association of Canada and of the First Nations Indian Taxation Advisory Board (now the FNTC)
- treaty provisions relating to financial administration
- financial administration requirements for local governments in Canada
- financial administration laws of Canada and of several provincial governments
- *First Nations Fiscal and Statistical Management Act*, regulations (under development) to the Act and FNTC sample local revenue laws and standards (under development)
- section 83 of the *Indian Act* and first nation assessment, taxation, rates, budget and other laws made under the Act
- the elements of the *First Nations Land Management Act* and of the *First Nations Oil and Gas and Moneys Management Act* relevant to financial administration
- sample agreements between Canada and first nations and between provinces and first nations respecting programs and services funding
- COSO (Committee of Sponsoring Organizations of the Treadway Commission) framework for internal control
- PSAB (Public Sector Accounting Board) Common Government Reporting Model including Statement of Principles and research study - the Assessment of Tangible Capital Assets and Guide to Accounting for and Reporting Tangible Capital Assets
- CICA (Canadian Institute of Chartered Accountants) Study: Financial Reporting by First Nations.

On the basis of a comparative analysis of the above, the *Law Standards*, the Sample Law and the *System Standards* were developed. These documents were refined (and will continue to be refined as necessary) through an ongoing process of FMB internal review and revision that has involved members of the former First Nations Financial Management Board Advisory Panel (which directed *FSMA* legislative development), the FMB Board of Directors and FMB technical advisors, including lawyers and accountants experienced in first nation advisory services. Advice on financial market expectations applicable to local government bond financings has also been obtained.

FMB has carried out case studies of the potential requirements of the standards and procedures with several representative first nations, to test document and system content and application. The FNTC and FNFA have reviewed and provided comment on the FMB standards, procedures and sample laws to ensure they do not conflict with FNTC and FNFA authorities applicable to scheduled first nations including FNFA borrowing members.

In addition to the materials reviewed in the development of the financial administration law standards and sample law, the following standards and materials were reviewed:

- Various ISO (International Organization for Standardization) Standards, including ISO 9001 (Fundamentals for Quality Management Systems) and ISO 17021 (Guidelines for Certification Bodies)
- IWA4 (ISO International Workshop Agreement #4) – Guidelines for the Application of ISO 9001:2000 “Quality Management Systems for Local Governments”
- ISO/IEC (International Electrotechnical Commission) Directives, Part 2 – Rules for the Structure and Drafting of International Standards
- CICA (Canadian Institute of Chartered Accountants) Handbook and Study Group documents
- additional Public Sector Accounting Board materials
- Excerpts from TSX (Toronto Stock Exchange) materials

FIRST NATIONS FINANCIAL MANAGEMENT BOARD
FINANCIAL ADMINISTRATION LAW STANDARDS

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FIRST NATIONS FINANCIAL MANAGEMENT BOARD

FINANCIAL ADMINISTRATION LAW

STANDARDS

INTRODUCTION

1.0 PURPOSE

1.1 Purpose of Standards – The purpose of these standards is to identify elements of a financial administration law that would support sound financial administration practices for a first nation government in Canada.

2.0 REVIEW PROCEDURES

2.1 Application of Procedures - The *Law Approval and System Certification Procedures* apply to these *Financial Administration Law Standards*.

3.0 INTERPRETATION OF STANDARDS

3.1 Definitions - Unless the context indicates otherwise, in these standards:

“**Act**” means the *First Nations Fiscal and Statistical Management Act*;

“**auditor**” means the auditor for the first nation appointed by the council;

“**Board**” means the First Nations Financial Management Board;

“**Board standards**” mean the standards made 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;

“**code**” means a code adopted by the first nation under the *First Nations Oil and Gas and Moneys Management Act* or a land code adopted by the first nation under the *First Nations Land Management Act*;

“**council**” means the council of the first nation;

“**councillor**” means a member of the council of the first nation;

“**FAL**” means a financial administration law of the first nation;

“**financial administration**” includes financial management, financial performance and accountability;

“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;

“first nation lands” mean all reserves of the first nation within the meaning of the Indian Act;

“first nation law” means any law, including any bylaw or code, of the first nation made by the council or the membership of the first nation;

“first nation’s tangible capital assets” mean 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, and
- d. are not for sale in the ordinary course of operations;

“fiscal year” means the period beginning on April 1st of one year and ending on March 31st in the next year;

“generally accepted accounting principles” means generally accepted accounting principles of the Canadian Institute of Chartered Accountants, as amended or replaced from time to time;

“including” means ‘including, but not limited to’;

“land code” means a land code adopted by the first nation under the *First Nations Land Management Act*;

“local revenue account” means the local revenue account referred to in section 13 of the Act;

“local revenue law” means a local revenue law made by the first nation under section 5(1) of the Act;

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

“property tax law” means a law made under section 5(1)(a) of the Act;

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

“**senior financial officer**” means the senior financial manager or administrator responsible for the day-to-day management or administration of the first nation’s financial administration system;

“**senior manager**” means the senior manager or administrator responsible for the day-to-day management or administration of the first nation’s administrative system;

“**tax administrator**” means the tax administrator appointed under the first nation’s local revenue laws.

3.2 Application of Act definitions - Unless the context indicates otherwise, the words and expressions used in these standards and not otherwise defined have the same meanings as in the Act.

3.3 Rules of interpretation - In these standards, the following rules of interpretation apply:

- a. words in the singular include the plural, and words in the plural include the singular;
- b. if a word or expression is defined, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- c. a reference to a law, including a financial administration law, means the law as amended or replaced from time to time;
- d. a reference to a standard means the standard as amended or replaced from time to time;
- e. headings, subheadings and notes are inserted for convenience of reference only, do not form part of these standards and in no way define, limit, alter or enlarge the scope or meaning of any provision of these standards.

3.4 Mandatory provisions – These standards include mandatory requirements – requirements that a first nation’s financial administration law must satisfy. The verb “**must**” is used in mandatory provisions.

3.5 Permitted provisions – These standards include optional provisions – provisions that a first nation’s financial administration law may, but is not required to, include. The verb “**may**” is used in optional provisions. These optional provisions are recommended as good practice but not required in these *Financial Administration Law Standards*.

3.6 Editorial cross references – To assist readers to work with these *Financial Administration Law Standards* and the *Financial Administration Law Sample One*, cross references to applicable provisions in *Law Sample One* have been noted at the end of provisions in these *Standards*.

4.0 SOUND FINANCIAL ADMINISTRATION PRACTICES

4.1 Sound practices required – If a provision in these *Standards* is mandatory, the standard must be met so as to enable the first nation to carry out its financial administration in a manner that substantially accords with sound financial administration practices of governments in Canada.

4.2 Applicable considerations – When determining how a mandatory provision is to be met in its financial administration law, the first nation may take into consideration the unique characteristics of the first nation.

4.3 Minimal required content – These *Standards* do not address all the subjects that a first nation may wish to include in its financial administration law – only those subjects which the first nation must include in its financial administration law in order to receive the approval of the law by the First Nations Financial Management Board.

4.4 Permitted variations of content - The Sample Laws made available by the Board include subject matter that these *Standards* require to be included in a financial administration law but these *Standards* are often written in a manner that permits the first nation to address the required subject matter in different ways – permitted variations that may not be obvious from a reading of the Sample Laws.

PART ONE – INTERPRETATION AND APPLICATION

5.0 COMPREHENSION AND INTERPRETATION

5.1 Mandatory provisions - A *FAL* must include any necessary provisions to provide greater certainty in the meaning of the law including the interpretation of its provisions. [*E1(1)-(4), 2(1)-(3), 3(1), (2), 4*]

5.2 Permitted definitions - A *FAL* may include

- a. a provision that defines words and phrases used in the law, and
- b. a provision that, by reference, incorporates definitions used in the Act or other federal legislation. [*E1(1)-(4)*]

5.3 Mandatory definitions – A *FAL* must include definitions if they are necessary to satisfy standard 5.1. [*E1(1)-(4)*]

5.4 Mandatory clarity - A *FAL* must be written in a clear and unambiguous manner so that readers will understand what the law requires to be done or what actions the law permits to be

taken. For example, a *FAL* should clearly specify in each instance, as appropriate, - **who** must do **what**, within **what time** period, in **what location** and in **what manner**.

5.5 Mandatory internal logic - The subject matter of a *FAL* must be organized logically.

5.6 Mandatory consistency - The provisions of a *FAL* must be consistent with each other.

6.0 CONFLICT BETWEEN LAWS

6.1 Between *FAL* and Act - A *FAL* must provide that, in the event of a conflict between the *FAL* and the Act or any regulations made under the Act, the Act or the regulations prevail to the extent of the conflict. [£5(2)]

6.2 Between *FAL* and other first nation law - A *FAL* must provide that, in the event of a conflict between the *FAL* and any other first nation law, other than a code or a local revenue law, the *FAL* prevails to the extent of the conflict. [£5(1)]

6.3 Between *FAL* and local revenue law - A *FAL* must provide that, in the event of a conflict between the *FAL* and a local revenue law, the local revenue law prevails to the extent of the conflict. [£5(3)]

7.0 APPLICATION

7.1 Mandatory application - A *FAL* must apply to the financial administration – including the receipt, control and expenditure – of all money and financial assets belonging to, or under the care or control of, the first nation. [£6]

PART TWO – ADMINISTRATION

8.0 FIRST NATION COUNCIL

8.1 Mandated responsibility - A *FAL* must make the council responsible for the financial administration of the first nation whether or not any part of that function is assigned or delegated to an officer, employee, committee, contractor or agent under the law. [£7(1)]

8.2 Delegation - A *FAL* may permit the council to delegate to an officer, employee, committee, contractor or agent any function of the council respecting the financial administration of the first nation except

- a. the approval of policies or procedures or the giving of directions respecting any financial administration matter which under the *FAL* are the responsibility of the council,
- b. the approval of budgets and first nation borrowing,
- c. the approval of financial statements of the first nation, and

- d. the appointment of members and chairperson of the finance and audit committee. [£7(2)]

8.3 Policies, procedures and directions

8.3.1 Mandatory authority to make - A *FAL* must allow the council to establish policies and procedures and to give directions, not inconsistent with the *FAL* and generally accepted accounting principles, respecting the financial administration of the first nation. [£8(1), (3)]

8.3.2 Mandatory policies, etc. - A *FAL* must require the council to establish appropriate policies or procedures or to give directions respecting the acquisition, management and safeguarding of first nation assets. [£8(2)]

8.3.3 Mandatory documentation - A *FAL* must require the council to document all its policies, procedures and directions respecting financial administration. [£8(5)]

8.3.4 Mandatory provision of policies, etc. - A *FAL* must require the council to make available all its policies, procedures and directions to all affected persons. [£8(5)]

9.0 REPORTING OF COMPENSATION, BENEFITS AND CONTRACTS

9.1 Defined terms - For the purposes of standard 9.0,

- a. a “member of the family” of a councillor or a senior manager is
 - i. his or her spouse or common-law partner,
 - ii. his or her dependent children, and
 - iii. the dependent children of his or her spouse or common-law partner, and
- b. a “dependent child” is a child
 - i. who has not reached the age of 18 years, or
 - ii. who has reached the age of 18 years but who is primarily dependent for financial support on the councillor or senior manager or on his or her spouse or common law partner, as applicable. [£1(1)]

9.2 Mandatory annual report - A *FAL* must require an annual report to be prepared listing for each councillor, each member of the councillor’s family, each senior manager and each member of the senior manager’s family the following:

- a. the remuneration, expenses and benefits he or she received from the first nation;

- b. any contract he or she had with the first nation for supply of goods or services.

[£9(1)]

9.3 Permitted exclusion - A *FAL* may exclude from the reporting requirement in standard 9.2 the remuneration, expenses or benefits received

- a. in common by all first nation members,
- b. under a program or service universally accessible to first nation members on published terms and conditions, or
- c. from a trust arrangement according to the terms of the trust. [£9(2)]

10.0 FINANCE AND AUDIT COMMITTEE

10.1 Constitution

10.1.1 Mandatory establishment – A *FAL* must provide for the establishment, makeup and other characteristics of a finance and audit committee - which may be named as appropriate to reflect the committee’s functions. [£11(1)]

10.1.2 Mandatory reporting – A *FAL* must require the finance and audit committee to report to the council. [£13(7)]

10.1.3 Mandatory membership - A *FAL* must require at least 25% of the members of the finance and audit committee to be councillors. [£11(3)]

10.1.4 Mandatory competency – A *FAL* must require the finance and audit committee to have a majority of members who have financial competency. [£11(2)]

10.1.5 Mandatory number – A *FAL* must require the finance and audit committee to have not less than three members.

10.2 Terms of office

10.2.1 Mandatory terms - A *FAL* must require the finance and audit committee members to be appointed for terms that

- a. are of a sufficient period of time to permit the members to develop a critical understanding of the financial administration system of the first nation, and
- b. are staggered to ensure the continuing effectiveness of the committee and to provide for succession planning. [£11(4)]

10.2.2 Mandatory removal events - A *FAL* must provide for the events or circumstances when a finance and audit committee member may be removed from office. [£11(5)]

10.3 Committee officers

10.3.1 Mandatory chairperson - A *FAL* must require the council to appoint a councillor as the chairperson of the finance and audit committee. [£12(1)]

10.3.2 Permitted vice chairperson - A *FAL* may permit the finance and audit committee to appoint one of its members, who is a councillor, as vice-chairperson of the committee. [£12(2)]

10.4 Committee procedures

10.4.1 Mandatory quorum - A *FAL* must require the quorum of the finance and audit committee to be at least 50% of the total number of committee members including at least one councillor. [£13(1)]

10.4.2 Mandatory one vote - A *FAL* must allow each member of the finance and audit committee to have one vote on any question before the committee, subject to any recusals of a committee member resulting from the member's conflict of interest. [£13(2)]

10.4.3 Mandatory tie vote provision – A *FAL* must specify the results of a tie vote or how the tie vote can be managed. [£13(3)]

10.4.4 Mandatory senior officer attendance - A *FAL* must require the senior manager and the senior financial officer to attend all finance and audit committee meetings, subject to reasonable exceptions. [£13(4), (5)]

10.4.5 Mandatory meetings - A *FAL* must establish a minimum number of meetings of the finance and audit committee for each fiscal year, including requiring the committee to meet

- a. at least once every three months, and
- b. as soon as reasonably possible after receipt of the audited annual financial statements and report from the auditor. [£13(6)]

10.4.6 Mandatory minutes and report - A *FAL* must require the finance and audit committee

- a. to provide minutes of each committee meeting, and
- b. to report to council on the substance of the meeting within a reasonable time after the meeting. [£13(7)]

10.4.7 Permitted rules - A *FAL* may permit the finance and audit committee to make rules, not inconsistent with the *FAL* or any directions given by council, which the committee considers necessary for the conduct of its meetings. [£13(8)]

10.5 Committee Functions

10.5.1 Mandatory financial functions - A *FAL* must assign responsibility for the following matters to the finance and audit committee:

- a. to prepare or review, and recommend to the council for approval, draft annual budgets and multi-year financial plans for the first nation;
- b. to monitor the financial performance of the first nation against the budget and report significant variances to the council;
- c. to review the first nation's quarterly financial statements before their recommendation to the council for its approval.

[£14(1), 26(2) and(2), 69(3)]

10.5.2 Mandatory audit functions - A *FAL* must assign responsibility for the following matters to the finance and audit committee:

- a. to make recommendations to the council respecting the selection, engagement and performance of the auditor;
- b. to receive assurances on the independence of an auditor;
- c. to make recommendations to the council respecting the planning, conduct and results of audit activities;
- d. to review and make recommendations to the council respecting the first nation's audited annual financial statements and any special purpose reports, including the audited annual local revenue account financial statement;
- e. to make recommendations to council respecting policies, procedures or directions on reimbursable expenses and perquisites of councillors and employees;
- f. to 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. to review the *FAL* and recommend draft amendments to the council;
- h. to review and make recommendations to the council on the terms of reference of the committee. *[£15, 65(2)]*

10.5.3 Permitted functions - A *FAL* may assign responsibility to the finance and audit committee for any other matter respecting the financial administration of the first

nation that council considers would benefit from finance and audit committee involvement. [£16]

10.5.4 Mandatory discretion - A *FAL* must permit the finance and audit committee to make a report or recommendations to the council on any financial administration matter that is not otherwise specified to be its responsibility under the *FAL*. [£14(2)]

11.0 FIRST NATIONS OFFICERS AND EMPLOYEES

11.1 Senior Manager

11.1.1 Mandatory appointment – A *FAL* or another first nation law or resolution must provide for the appointment and set out the principal powers, duties and functions of the senior manager who must be given responsibility for leading the day-to-day management or administration of the first nation. [£17(1), (2)]

11.1.2 Mandatory reporting relationship – A *FAL* or another first nation law or resolution must require the senior manager to report directly to the council. [£17(2)]

11.1.3 Permitted positions - For purposes of standard 11.1, the responsibilities of the senior manager may be performed by more than one person so long as each person reports directly to council.

11.1.4 Mandatory functions - A *FAL* or another first nation law or resolution must require the senior manager

- a. to oversee, supervise and direct the activities of all officers and employees of the first nation,
- b. to oversee and administer the contracts of the first nation,
- c. to identify, assess, monitor and report on financial reporting risks and fraud risks, and
- d. to monitor and report on the effectiveness of mitigating controls for the risks referred to in paragraph c. taking into consideration the cost of implementing those controls;. [£17(2), 65(1)and (2)]

11.1.5 Permitted functions - A *FAL* or another first nation law or resolution may permit the council to require the senior manager to carry out other activities if they are not contrary to the Act or inconsistent with the senior manager’s duties set out in the *FAL*. [£17(2)]

11.1.6 Permitted assignment – A *FAL* may permit the senior manager to require an officer, employee, contractor or agent of the first nation to perform any of the senior manager’s duties or functions respecting financial administration of the first nation but

this assignment of duties or functions must not relieve the senior manager of the responsibility to ensure that these duties or functions are carried out properly. [£17(3) and (4)]

11.2 Senior Financial Officer

11.2.1 Mandatory appointment - A *FAL* must provide for the appointment and set out the principal powers, duties and functions of the senior financial officer who must be responsible for the day-to-day management or administration of the first nation's financial administration system. [£18(1), (2)]

11.2.2 Mandatory reporting relationship – A *FAL* must require the senior financial officer to report directly to the senior manager or to the council. [£18(2)]

11.2.3 Mandatory functions - A *FAL* must require the senior financial officer to carry out the following functions:

- a. to ensure the financial accounting systems, policies, procedures, directions and internal controls are appropriately designed and operating effectively;
- b. to administer and maintain the accounts of the first nation including the local revenue account;
- c. to prepare the budgets and any multi-year financial plans of the first nation;
- d. to prepare the financial statements of the first nation;
- e. to prepare the financial components of reports to the council and financial information required by the council or the finance and audit committee;
- 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 legal obligations of the first nation and any policies, procedures and directions of the council respecting the financial administration of the first nation, other than those matters that are the responsibility of the tax administrator under the *FAL*, another first nation law or the Act;
- i. to evaluate the financial administration systems of the first nation and recommend improvements;
- j. to develop and recommend procedures for the safeguarding of assets and ensure approved procedures are followed;

- k. to develop and recommend procedures for identifying and mitigating financial reporting risks and fraud risks and to ensure approved procedures are followed.

[£18(1), 26(1), 26(4)]

11.2.4 Permitted functions - A *FAL* may permit the senior manager to require the senior financial officer to carry out other activities if they are not contrary to the Act or inconsistent with the senior financial officer's duties set out in the *FAL*. *[£18(2)]*

11.2.5 Permitted assignment - A *FAL* may permit the senior financial officer to require an officer, employee, contractor or agent of the first nation to perform any of the senior financial officer's duties or functions but this assignment of duties or functions must not relieve the senior financial officer of the responsibility to ensure that these duties or functions are carried out properly. *[£18(3)]*

11.3 Tax Administrator

11.3.1 Permitted additional functions - A *FAL* may set out any duties and functions of the tax administrator that are in addition to those set out in the first nation's local revenue laws and the regulations made under the Act. *[£19(1)]*

11.3.2 Permitted assignment - A *FAL* may permit the tax administrator to require an officer, employee, contractor or agent of the first nation to perform any of the tax administrator's additional duties or functions set out in the *FAL* but this assignment of duties or functions must not relieve the tax administrator of the responsibility to ensure that these duties or functions are carried out properly. *[£19(2)]*

11.4 Employees

11.4.1 Approved functions - A *FAL* must require the principal powers, duties and functions of all other employees of the first nation, including those who report directly or indirectly to the tax administrator, to be set out in writing and approved by the council of the first nation or the senior manager. *[£20(2)]*

11.4.2 Mandatory organization chart - A *FAL* must require the preparation and maintenance of a current organization chart. *[£20(1), (2)]*

11.4.3 Mandatory access - A *FAL* must require access to the organization chart to be provided to all persons affected by it including councillors, committee members, officers, employees, contractors and agents of the first nation and first nation members. *[£20(3)]*

11.4.4 Mandatory HR policies/practices - A *FAL* must require that the first nation's human resource policies and practices be designed and implemented to facilitate effective internal financial administration controls. *[£8(4), 20(4)]*

11.4.5 Mandatory competence – A *FAL* must require the first nation to hire or retain qualified and competent personnel to carry out the financial administration activities of the first nation. [£20(5)]

12.0 CONDUCT

12.1 Council mandates - A *FAL* must require a councillor, when exercising a power, duty or responsibility relating to the financial administration of the first nation,

- a. to act honestly, in good faith and in the best interests of the first nation,
- b. to exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances,
- c. to act in accordance with the *FAL*, any other applicable first nation law, the Act, its regulations and any applicable standards made under the Act, and
- d. to avoid conflicts of interests and to comply with provisions in the *FAL* for, or policies and procedures established by the council for, the avoidance and mitigation of those conflicts. [£21(1)]

12.2 Employees, etc. mandates - A *FAL* must require the officers, employees, committee members, contractors and agents, when exercising a power, duty or responsibility relating to the financial administration of the first nation,

- a. to act in accordance with the *FAL*, the Act, its regulations, any other applicable first nation law and any applicable standards made under the Act,
- b. to comply with all policies, procedures and directions of the council, and
- c. to avoid conflicts of interests and comply with provisions in the *FAL* for, or policies and procedures established by the council for, the avoidance and mitigation of those conflicts. [£22(2)]

12.3 Mandatory inclusions - A *FAL* must require that the obligations respecting conduct required under standard 12.2 be included in the terms of any applicable employment contracts, appointments to the finance and audit committee, contracts for service and appointment of agents. [£22(3)]

12.4 Mandatory enforcement - A *FAL* must state the actions that may be taken if a councillor, officer, employee, committee member, contractor or agent fails to comply with the conduct obligations set out in the *FAL* and with any requirements of the first nation respecting the avoidance and mitigation of conflicts of interests. [£21(2), 22(4)]

12.5 Mandatory disclosures - A *FAL* must require

- a. councillors to annually disclose relevant information respecting their private interests which could result in a conflict of interest, and
- b. officers, employees, committee members, contractors and agents to disclose as soon as practicable any circumstances which could result in a conflict of interest. [£21(1)(d), 22(2)(c)]

12.6 Mandatory conflict of interest provisions – A *FAL* must include provisions respecting, or require the council to establish 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 reasonable 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;
- e. specifying how any undisclosed or any alleged but not admitted conflicts of interest of councillors are to be addressed. [£21, 22, Schedule A]

PART THREE – FINANCIAL MANAGEMENT

13.0 FISCAL YEAR

13.1 Mandatory period – A *FAL* must establish the fiscal year of the first nation as the period beginning on April 1st of one year and ending on March 31st in the next year. [£23]

14.0 FINANCIAL PLANS

14.1 Mandatory planning - A *FAL* must require the preparation of a multi-year financial plan for the first nation for purposes of informing financial decision-making. [£24]

14.2 Mandatory content – The multi-year financial plan referred to in standard 14.1 must include the current year and the next four years and must set out local revenues as a separate component of the financial plan. [£24]

15.0 BUDGETS

15.1 Mandatory preparation - A *FAL* must require the preparation of an annual budget for all financial matters of the first nation for the next fiscal year. [*E25(1), 26(1)*]

15.2 Mandatory for local revenue account -A *FAL* must require the preparation, approval and amendment of the component of the annual budget respecting the first nation's local revenue account to comply with the Act, its regulations and the standards established by the First Nations Tax Commission. [*E29*]

15.3 Budget Contents

15.3.1 Mandatory content - A *FAL* must require that the first nation budget

- a. encompass all the operations for which the first nation is responsible,
- b. identify each anticipated source of revenue and estimate the amount of revenue from each of these sources,
- c. identify each anticipated category of expenditure and estimate the amount of expenditure for each category, and
- d. identify any anticipated surplus or authorized deficit and the application of year end surplus funds. [*E25(1)*]

15.3.2 Mandatory for revenue categories - If the first nation has a land code in force, the *FAL* must require the revenue categories respecting moneys derived from first nation lands to be categorized and shown separately from other revenues with a sub-category for any revenues from natural resources obtained from first nation lands. [*E25(2), (3)*]

15.4 Budget Process

15.4.1 Mandatory approval of annual budget - A *FAL* must require the council to approve its annual budget no later than March 31 for the next fiscal year. [*E26(3)*]

15.4.2 Mandatory amendment of final budget - The *FAL* must require the council to approve any amendments of the component of the annual budget respecting the first nation's local revenue account as soon as practical after the start of the fiscal year. [*E26(4)-(6)*]

15.4.3 Mandatory information or involvement -A *FAL* must include provisions respecting, or require the council to make policies or procedures or give directions respecting, the means by which members of the first nation will be involved in or informed about

- a. the multi-year financial plan for the first nation,

- b. the annual budget, and
- c. budget deficits or extraordinary expenditures. [£30]

15.4.4 Mandatory approval of amended budget - A *FAL* must require the council to approve any change to the annual budget. [£28]

16.0 FINANCIAL MANAGEMENT AND CONTROLS

16.1 Funds and Revenues

16.1.1 Mandatory fund and revenue controls - A *FAL* must establish the means for effectively managing and controlling all first nation funds and revenues, including internal controls for financial institution accounts and asset management. [£31(1)-(3), 32(1), (2), 51]

16.1.2 Mandatory for local revenues – A *FAL* must require the first nation to place all local revenues in a local revenue account, separate from other moneys of the first nation, as required by section 13 of the Act. [£31(2)]

16.1.3 Mandatory for cash management - A *FAL* must establish provisions respecting, or require the council to make policies or procedures or to give directions respecting, effective cash management. [£32, all of 41-48]

16.2 Expenditures

16.2.1 Mandatory expenditure controls – A *FAL* must establish the means for managing effectively all first nation expenditures, including internal controls respecting financial institution accounts and the procurement of goods and services. [£39, 40]

16.2.2 Mandatory for local revenues – A *FAL* must require that expenditures of local revenues only be made if and as permitted under a law made under section 5(1)(b) of the Act. [£33(2)]

16.2.3 Mandatory appropriations for expenditures - A *FAL* must require that expenditures of first nation funds only be made if and as permitted under the budget of the first nation in effect at the time of the expenditure, with such reasonable exceptions to address unforeseen events for which the *FAL* provides or for which a council policy or procedure established under authority of the *FAL* provides. [£35(1), (2), 36(1)-(4), 37(1)-(3), 38(1), (2)]

16.3 Borrowing

16.3.1 Mandatory debt provisions - A *FAL* must include provisions respecting the incurring of debt by the first nation, debt management and use of borrowed funds. [£49(1), (2), 50, 52 - 56]

16.3.2 Mandatory provisions - A *FAL* must include provisions respecting the granting of security by the first nation. [£49, 50(3), 57]

16.3.3 Mandatory deficits provisions - A *FAL* must include provisions respecting the management of and any limitations on budget deficits. [£27]

17.0 RISK MANAGEMENT

17.1 Mandatory risk management of for-profit activities - A *FAL* must include provisions that, or require the council to establish policies or procedures or give directions that limit or manage the risks associated with a first nation carrying on for-profit activities. [£59(1)-(4)]

17.2 Mandatory guarantee/indemnity provisions - A *FAL* must include provisions respecting the granting of first nation guarantees and indemnities, including any limits on amounts and any approvals required. [£60(1)-(4), 102(1)-(3)]

17.3 Investments

17.3.1 Mandatory investment provisions - A *FAL* must specify the type of investments in which first nation funds may be invested including a requirement that any government transfer funds or local revenue funds only be invested in investments specified in section 82(3) of the Act and in investments in securities issued by FNFA. [£61(1), 62]

17.3.2 Mandatory financial institution provisions - A *FAL* must include provisions identifying the financial institutions or types of financial institutions in which the first nation may invest funds. [£62]

17.4 Lending

17.4.1 Mandatory lending provisions - A *FAL* must include provisions respecting, or require the council to establish policies or procedures or give directions respecting, effective management of the lending of first nation funds and the collecting of funds loaned. [£63, 64(2)]

17.4.2 Permitted lending to first nation members - A *FAL* may establish a program for the lending of first nation funds to first nation members if the program provides for universal accessibility, has published terms and conditions and is transparent. [£63]

17.5 Insurance

17.5.1 Mandatory insurance - A *FAL* must include provisions respecting requirements for liability, property and other insurance of the first nation, including insurance respecting assets under the first nation's care or control. [£66]

17.5.2 Permitted insurance - A *FAL* may include provisions respecting liability insurance obtained for the benefit of councillors, officers or employees of the first nation. [£66(2)]

17.6 Operations controls

17.6.1 Mandatory operations controls - A *FAL* must contain provisions respecting, or require the council to 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. [£58]

17.6.2 Mandatory information technology controls - A *FAL* must contain provisions respecting, or require the council to establish policies or procedures or give directions respecting, internal controls for information technology used by the first nation in its operations in order to ensure the integrity of the system and its data base. [£82]

18.0 FINANCIAL REPORTING

18.1 Mandatory controls for reliable reporting - A *FAL* must contain provisions respecting, or require the council to establish policies or procedures or give directions respecting, the establishment and implementation of an effective system of internal controls that ensures the reliable reporting of the first nation's financial results. [All of £67-76]

18.2 Mandatory monthly reporting - A *FAL* must provide for the preparation of monthly financial information respecting the financial affairs of the first nation and its provision to the councillors and the finance and audit committee. [£68(1), (2)]

18.3 Mandatory quarterly reporting - A *FAL* must provide for the preparation of quarterly financial statements respecting the financial affairs of the first nation and for their provision to the councillors and the finance and audit committee. [£69(1)-(3)]

18.4 Annual financial statements

18.4.1 Mandatory preparation - A *FAL* must provide for the preparation of annual financial statements respecting the financial affairs of the first nation and for their provision to the councillors and the finance and audit committee. [£70(1)-(6)]

18.4.2 Mandatory requirements - A *FAL* must require annual financial statements for the first nation

- a. to be prepared in accordance with generally accepted accounting principles,
- b. to include financial information in respect of the local revenue account that will be required to satisfy the requirements of the *Local Revenue Account Financial Reporting Standards*, and

- c. if the first nation has a land code in force, to include the same revenue categories respecting revenues from first nation lands as are required by standard 15.3.2 to be included in the first nation's budgets. [E70(1) and (3)]

18.5 Special purpose reports

18.5.1 Permitted special purpose reports - A *FAL* may require the senior financial officer to prepare and the auditor to review any special purpose reports required by an agreement or a law. [E70(4)]

18.5.2 Mandatory special purpose reports - A *FAL* must require the senior financial officer to prepare and the auditor to review the following special purpose reports for each fiscal year:

- a. the report referred to in standard 9.0;
- b. a report setting out all payments made by the first nation to honour guarantees and indemnities;
- c. a report setting out all debts and obligations forgiven by the first nation during the fiscal year;
- d. if a 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, referred to in standard 15.3.2. [E70(4),75(1)]

19.0 AUDITS

19.1 Mandatory audit standards - A *FAL* must require the annual financial statements to be audited in accordance with generally accepted audit standards, established by the Canadian Institute of Chartered Accountants. [E71(1), (2)]

19.2 Auditor

19.2.1 Mandatory appointment - A *FAL* must provide for the appointment and dismissal of the first nation's auditor. [E72(1), (4)]

19.2.2 Mandatory qualifications - A *FAL* must require the auditor

- a. to be independent of the first nation, and
- b. to be a public accounting firm or public accountant
 - i. in good standing with the Canadian Institute of Chartered Accountants, the Certified General Accountants Association of Canada or the Society of

Management Accountants of Canada and their respective counterparts 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. [E72(3)]

19.2.3 Mandatory engagement letter - A *FAL* must require the auditor's engagement letter to require the auditor to confirm that the financial statements and the audit comply with Board standards and all applicable laws. [E72(2)]

19.2.4 Mandatory duties - A *FAL* must require the auditor to provide

- a. an audit opinion on the annual financial statements of the first nation, and
- b. an audit opinion or review comments on the special purpose reports referred to in standard 18.5. [E71(4)]

19.2.5 Mandatory authority - The *FAL* must give the auditor the authority necessary to enable the auditor to carry out its audit responsibilities, including the following:

- a. to have access to all records, including all books, accounts and vouchers, council minutes, council resolutions, first nation laws and agreements to which the first nation is a party, and to question persons respecting any such information;
- b. to call a meeting of the finance and audit committee, and to receive notices of, attend and be heard at finance and audit committee meetings;
- c. with reasonable exceptions (such as a meeting called to consider the retention or dismissal of an auditor), to attend all council meetings where matters relating to the annual audit, including the annual financial statements, will be considered and to receive notices of those meetings;
- d. to be heard at any council and first nation members meeting that the auditor has the right to attend and that concerns the auditor as auditor of the first nation.

[E73(1)-(6)]

19.3 Mandatory completion date - A *FAL* must require the audit for a fiscal year to be completed and provided to the council not more than 120 days after the end of the fiscal year. [E74(1), (2)]

19.4 Mandatory review and approval - A *FAL* must require the council to review and approve the first nation's audited annual financial statements. [E74(2), 75(1)]

19.5 Mandatory signing - A *FAL* must require the audited statements to be signed by

- a. the chief of the first nation or the council chairperson,
- b. the chairperson of the finance and audit committee, and
- c. the senior financial officer. [£75(1)]

19.6 Mandatory first nation member access - A *FAL* must require that members of the first nation be given access to the audited annual financial statements and special purpose reports. [£75(2)]

19.7 Local revenue account

19.7.1 Mandatory audit - A *FAL* must require the local revenue account of the first nation

- a. to be audited at least once each calendar year in accordance with the *Local Revenue Account Financial Reporting Standards*, and
- b. to be reported on separately from other accounts. [£71(3)]

19.7.2 Mandatory access - A *FAL* must require that the audit report of the local revenue account be made available to persons referred to in section 14(2) of the Act. [£75(3)]

20.0 RECORDS AND INFORMATION

20.1 Mandatory property provisions - A *FAL* must include provisions or require the council to establish policies or procedures or give directions to ensure that the records of the first nation, however produced, used or received remain the property of the first nation. [£77]

20.2 Operations Manual

20.2.1 Mandatory operations manual - A *FAL* must require the preparation and maintenance of a current operations manual for the first nation's administrative systems. [£78(1)]

20.2.2 Mandatory access - A *FAL* must require the operations manual to be made available to councillors, committee members, officers and employees and, as appropriate, to contractors or agents - subject to reasonable exceptions for those parts of the manual that are appropriate for only limited distribution. [£78(2), (3)]

20.3 Mandatory record keeping, storage, etc. - A *FAL* must include provisions respecting, or require the council to establish policies or procedures or give directions respecting, the preparation, maintenance, security, storage, access to and disposal of records of the first nation. [£79]

20.4 Mandatory local revenue account records - A *FAL* must require 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*, to be kept by the tax administrator. [£80]]

20.5 Mandatory requirements for confidentiality, etc. - A *FAL* must include provisions respecting, or require the council to establish policies or procedures or give directions respecting, the confidentiality, control and release of first nation information that is in the possession of the first nation, the council, councillors, committee members, employees, contractors or agents of the first nation. [£81(1), (2)]

PART FOUR – TANGIBLE CAPITAL ASSETS INCLUDING CAPITAL PROJECTS

21.0 TANGIBLE CAPITAL ASSETS INCLUDING CAPITAL PROJECTS

21.1 Mandatory council obligations - A *FAL* must include provisions to ensure that the first nation's tangible capital assets are

- a. recorded in an assets register,
- b. adequately safeguarded,
- c. maintained in accordance with a lifecycle management program, and
- d. planned, financed, managed and constructed to acceptable community standards. [£83-90]

21.2 Mandatory reserve fund - A *FAL* must require the council to invest and manage a tangible capital asset reserve fund to be applied for the purposes set out in standard 21.0. [£85]

21.3 Mandatory life cycle-planning - A *FAL* must require documented lifecycle planning for tangible capital assets over a recognition threshold including the development, maintenance and updating of an assets register. [£87, 88]

21.4 Mandatory capital project budgeting – A *FAL* must require

- a. the short and long term forecasting of costs for maintenance and replacement of tangible capital assets,
- b. the annual budgeting of maintenance and replacement of tangible capital assets, and
- c. the annual review by the finance and audit committee of any scheduled capital projects and their budgets. [£84-88]

21.5 Mandatory contract and tendering provisions - A *FAL* must include provisions respecting, or require the council to establish policies and procedures or give directions respecting, the

following matters relating to 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;
- h. holdbacks, work approvals, payment and audit procedures. [£89]

21.6 Mandatory first nation member information or involvement - A *FAL* must include provisions respecting, or require the council to establish policies or procedures or give directions respecting, the involving or informing of first nation members in tangible capital asset projects and borrowings for the construction of new tangible capital asset projects. [£91]

PART FIVE – BORROWING MEMBER REQUIREMENTS

22.0 BORROWING MEMBER ISSUES

22.1 Mandatory compliance with Board standards - A *FAL* of a borrowing member must require the first nation to remain in compliance with all applicable Board standards. [£92, 93(1)]

22.2 Council obligation where non-compliant - A *FAL* of a borrowing member must require that, on the council becoming aware that the first nation is not operating in compliance with Board standard referred to in standard 22.1, the council must, without delay, take such measures as are required for the first nation to rectify any such non-compliance and to operate in compliance with the standard. [£93(2)]

PART SIX – LAND MANAGEMENT

23.0 LAND MANAGEMENT ISSUES

23.1 Mandatory provisions respecting land code - If the first nation has a land code in force, a *FAL* must require the first nation to comply with the *First Nations Land Management Act* and any land code made by the first nation as required or permitted under that Act. [£94, 95(1)]

23.2 Mandatory accountability to first nation members - If the first nation has a land code in force, a *FAL* must provide a method, or require the council to establish a policy that provides a method, for ensuring the accountability to first nation members for the management of first

nation land and moneys derived from first nation land as required under the first nation's land code to satisfy section 6(1)(e) of the *First Nations Land Management Act*. [£95(2)]

PART SEVEN – OIL AND GAS AND MONEYS MANAGEMENT

24.0 OIL AND GAS MONEYS MANAGEMENT ISSUES

24.1 Mandatory provisions respecting oil and gas - If the first nation has a financial administration code in force under the *First Nations Oil and Gas and Moneys Management Act*, a *FAL* must require the first nation to comply with the *First Nations Oil and Gas and Moneys Management Act* and any financial code made by the first nation as required or permitted under that Act [£96, 97]

PART EIGHT – MISCELLANEOUS

25.0 FINANCIAL MISCONDUCT

25.1 Mandatory provisions respecting reporting - A *FAL* must establish the means by which a person may report any alleged misappropriation or irregularity in the financial administration of the first nation and how these reports must be considered. [£98(1), 99]

25.2 Mandatory obligation to report - A *FAL* must require

- a. councillors, officers and employees, and
- b. contractors and agents engaged in financial administration activities

to report any circumstances referred to in standard 25.1. [£98(2), (3)]

25.3 Mandatory protection for whistleblowers - A *FAL* must include provisions protecting a person from reprisals for reporting any circumstances referred to in standard 25.1. [£100(1)-(3)]

25.4 Mandatory contents - A *FAL* must include provisions, or require the council to establish policies or procedures or give directions respecting the reporting of circumstances referred to in standard 25.1, the conduct of inquiries or investigations into these reports and the fair treatment of persons against whom reports have been made. [£99, 100]

25.5 Mandatory enforcement - A *FAL* must provide for enforcement of the *FAL* by the council, membership and other persons. [£21(2), 22(4)]

25.6 Mandatory recovery of moneys - A *FAL* must provide for the recovery of amounts expended or forfeited due to the failure of a person to comply with the requirements of the *FAL*. [£101]

26.0 FAL REVIEW

26.1 Mandatory review - A *FAL* must provide for periodic review of the *FAL*, including

- a. the assessment of its effectiveness in establishing sound financial administration for the first nation, and
- b. the identification of any changes to the *FAL* that may better serve that objective.

[£103(1)]

26.2 Mandatory first nation member information or involvement - A *FAL* must include provisions respecting, or require the council to establish policies or procedures or give directions respecting, the means by which membership will be informed about or involved in the approval of any proposed amendments to the *FAL*. [£103(2) – (4)]

27.0 ANNUAL OPERATIONS REPORT

27.1 Mandatory annual operations report - A *FAL* must require the first nation to prepare and publish an annual report on the operations and financial performance of the first nation for each fiscal year. [£76(1), (2)]

27.2 Mandatory publication date - A *FAL* must require the annual report of the first nation to be published not later than 120 days after the end of the fiscal year. [£76(1)]

27.3 Mandatory content of report - A *FAL* must require the annual report of the first nation to 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. [£76(2)]

27.4 Mandatory supply of report - A *FAL* must require the annual report of the first nation

- a. to be made available to members of the first nation, and
- b. to be provided to the Board and the First Nations Finance Authority. [£76(3)]

28.0 PROVISION OF LAW TO FIRST NATION FINANCE AUTHORITY

28.1 Mandatory provision - If a first nation intends to become a borrowing member, a *FAL* must require the council to provide a copy of its financial administration law to the First Nations Finance Authority as soon as practical after the law is approved by the Board. [£104]

29.0 COMING INTO FORCE

29.1 Permitted date of coming into force - A *FAL* may set out the date on which the law comes into force. [*£105*]

29.2 Mandatory limitations on date of coming into force - If a *FAL* is made by the council of a borrowing member, the date set for the coming into force of the *FAL* must not be earlier than the day after the date on which the *FAL* is approved by the Board. [*£105*]



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