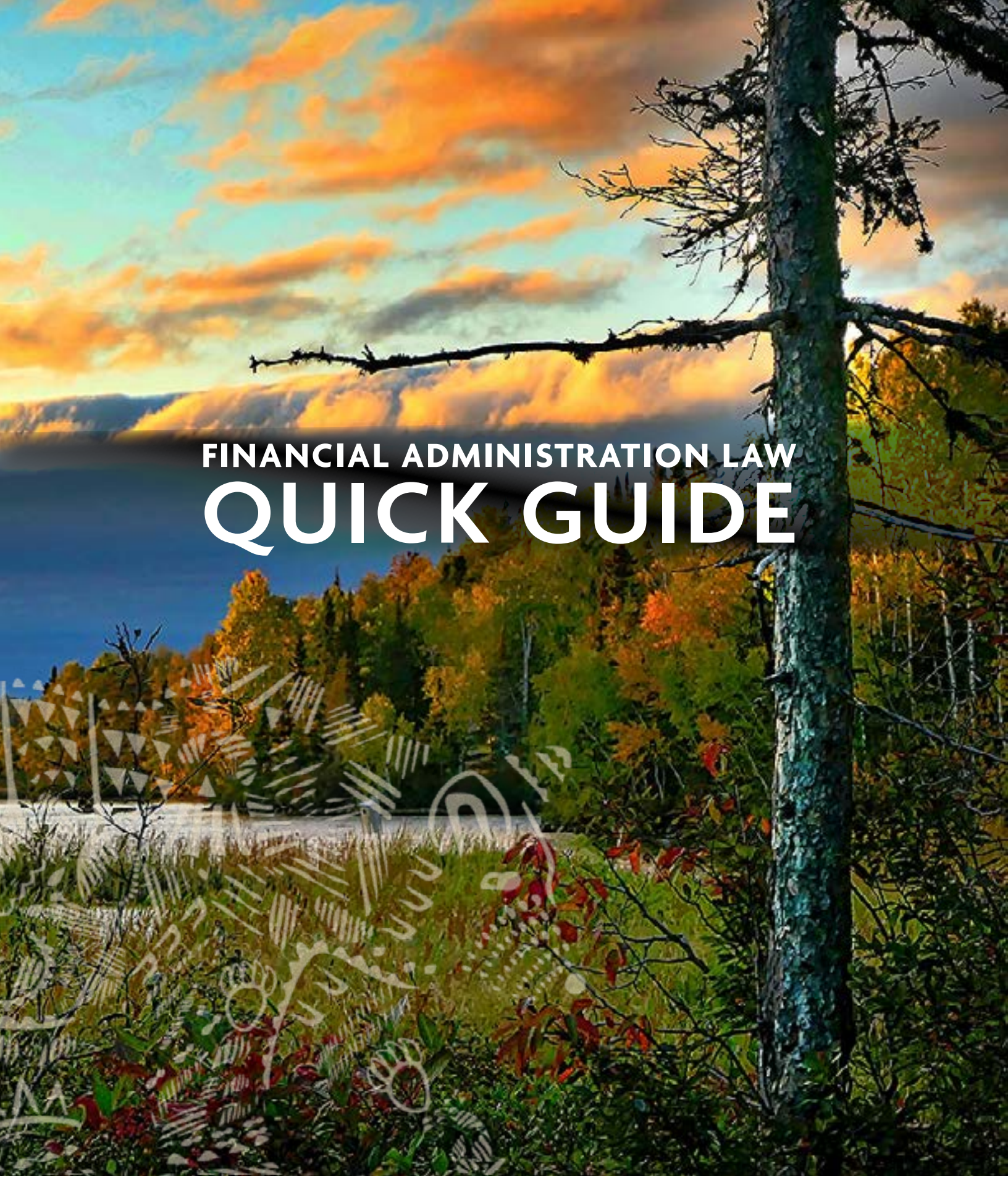

FINANCIAL ADMINISTRATION LAW
QUICK GUIDE

First Nations **FINANCIAL MANAGEMENT BOARD**

CONSEIL DE GESTION FINANCIÈRE des Premières Nations

This Quick Guide is a tool to help First Nations learn what is included in the Financial Administration Law (FAL) provided by the First Nations Financial Management Board (FMB).

CAUTION: This document is not meant to replace the official Sample FAL that the FMB has provided. This is a plain-language guide and does not replace FMB Standards or independent legal advice. This guide is based on the April 1, 2019 version of FMB's Standards.

Please contact an FMB Relationship Manager to obtain a copy of our Sample FAL.

The First Nations Financial Management Board (the "FMB") is a First Nations-led non-profit organization that supports First Nations in developing sound finance and administrative governance practices. In addition to this guide, the FMB offers other templates, workshops, and videos.

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INTRODUCTION

This Quick Guide was developed to help First Nations governments understand what is included in the Sample **Financial Administration Law (FAL)** provided by the First Nations Financial Management Board (FMB).

This Quick Guide includes the same major headings used in the FMB Sample FAL. Each section of this Quick Guide gives a short summary of what is included in the same section of the Sample FAL. We hope this plain language will help First Nations governments to understand what must be included in their own FAL.

There are two versions of the Sample FAL. One is for First Nations that collect local revenues, meaning property taxes. The other version is for First Nations that do not collect local revenues. Otherwise, the Sample FAL cover the same matters.

Most of the Sample FAL wording is mandatory and must be included in your FAL. However, some things can be changed to meet your Nation's needs. These items are described at the end of the Quick Guide.

What is the FAL?

The FAL is a set of finance and **governance** practices to assist Councils and staff to make informed decisions and run their First Nations well. A Nation that lives by its FAL commits to good governance and finance practices over the long term.

How to Use This Quick Guide

The headings of each section in this guide are the same headings that appear in the Sample FAL provided by the FMB. Under each heading is a summary of the legal language that is in the Sample FAL. We encourage you to use this document as a companion to the Sample FAL. We hope this Quick Guide will support a good understanding of the Sample FAL.

GOVERNANCE is how an organization manages decision-making. Governance describes who has power, who makes decisions, how others make their voices heard, and what goes into reports and financial statements. The policies and activities of a First Nation flow from its governance structure.

Parts of a FAL

The FAL contains several parts. Together, these parts form a set of practices for governance and financial management. When you pass the FAL, you commit your First Nation to living by these practices. The main parts are:

ADMINISTRATION

This part sets out the roles and responsibilities of the people who manage your First Nation's financial practices and bring your FAL to life. Administration includes councillors, committee members, employees, and contractors. This part also sets out rules to help the people who manage your First Nation to avoid conflicts of interest.

FINANCIAL MANAGEMENT

This part sets out practices for managing every part of your First Nation's finances. The contents include:

- planning and budgeting
- controls for managing revenues and expenses
- rules for borrowing
- risk management
- financial reporting
- information technology

TANGIBLE CAPITAL ASSETS

This part describes practices for managing your First Nation's **tangible capital assets**. This part also includes practices for managing new **capital projects** such as the construction of a new building.

TANGIBLE CAPITAL ASSETS are what the First Nation owns that are expected to last more than 1 year, such as buildings and computers.

CAPITAL PROJECTS are plans to add, change, or replace capital assets.

REPORTING BREACHES

This part of the FAL deals with a process for reporting financial misconduct.

MISCELLANEOUS

This part includes the rules for First Nations that borrow from the First Nations Finance Authority.

Headings in a Sample FAL

The headings or titles in the Sample FAL are divided into Parts, Divisions, Sections, Sub-Sections, and Paragraphs. Understanding these terms may help when you are reading the Sample FAL.

- **PARTS** are the main topics included in the FAL and show up with Roman numerals (I, II, III, and so on).
- **DIVISIONS** show up when a PART is divided into different topics, and they are numbered (DIVISION 1, DIVISION 2, and so on). Divisions appear in PART III and PART IV of the FAL.
- **SECTIONS** are the main content of the document. Each new section begins with a number followed by a period (1., 2., 3., and so on).
- **SUB-SECTIONS** show up when the content of a SECTION is divided into smaller bits of information. Sub-Sections begin with a number in parentheses ( ) following the section number (1. (1), 1. (2) and so on).
- **PARAGRAPHS** show up when the content of a SUB-SECTION is divided into even smaller bits of information, usually when there is a list. Paragraphs begin with a lowercase letter in parentheses ((a), (b), (c), and so on).

Which Sample FAL is Right for my Nation?

Two different Sample FALs are available to download from the FMB website.

If your Nation **collects local revenues** or wants to in the future (meaning property taxes), use the one called Sample FAL for First Nations – *With Local Revenues.* **Please contact an FMB Relationship Manager for a copy of the Sample FAL.**

If your Nation **does not collect local revenues** and does not intend to in the future, use the version called Sample FAL for First Nations – *No Local Revenues*. **Please contact an FMB Relationship Manager for a copy of the Sample FAL.**

NOTE: this Quick Guide includes information for Nations that collect local revenues. These sections will appear with a black box around them (like this paragraph) and would not be included in the FAL of a First Nation that does not collect local revenues.

SAMPLE FINANCIAL ADMINISTRATION LAW SUMMARY

PART I - CITATION

The Preamble and this part introduces the purpose of the FAL and defines the terms used in it. This information helps the reader to interpret what the FAL means. The Citation (what the FAL is called) will be used to publish the FAL in the *First Nations Gazette*.

PART II - INTERPRETATION AND APPLICATION

This part includes the definitions and application. The FAL only applies to the First Nations government. It does not apply to other bodies such as economic development corporations.

PART III - ADMINISTRATION

The Administration part of the Sample FAL talks about the people who are involved in **financial administration** for the First Nation and what they are expected to do.

Division 1 - Council

Division 1 talks about the role of Council. The Sample FAL says that **Council** always has the final responsibility for everything that has to do with the financial administration of the First Nation.

Councillors can ask other people to do some things related to finances. If this happens, Council is still responsible for those activities being done well.

Only Council can do the following activities:

- approve Council policies
- appoint members, the chair, and the vice-chair of the Finance and Audit Committee
- approve budgets and financial statements of the First Nation
- approve borrowing of the First Nation

FINANCIAL ADMINISTRATION means how the finances of a First Nation are managed.

COUNCIL means the elected Council of the First Nation, including the Chief of the First Nation.

COUNCILLOR means a member of the Council of a First Nation, including the Chief of the First Nation.

Council must create policies to manage the finances of the First Nation. These policies will include things like buying and managing the First Nation's property and equipment.

Council must also make sure that the Nation's human resources are set up to support good financial management. All policies and procedures must be written down so that they can be viewed by anyone who needs to see them.

Each year the director of finance will report on payments made to councillors. This report will show the amount of money paid to each councillor as **remuneration** and as **expenses.**

The report must include payments made by the First Nation and by any **entity** of the First Nation. The report must show all payments made to a councillor, whether the councillor was acting in the role of councillor or in any other role.

REMUNERATION means salaries, wages, commissions, bonuses, fees, honoraria, dividends, and any other benefits.

EXPENSES include the costs of transportation, accommodation, meals, hospitality, and incidental (minor) expenses.

ENTITY means any corporation, partnership, joint venture or organization that is controlled by the First Nation.

Division 2 - Finance and Audit Committee

FINANCIAL COMPETENCY means the person can read and understand financial statements.

INDEPENDENT means the person does not have any kind of financial relationship with the First Nations government that could interfere with that person's ability to have good judgment as a member of the committee.

The Finance and Audit Committee members play an important role. This committee offers advice and recommendations to Council about how to manage the First Nation's finances. However, all final decisions are made by Council.

This committee must have at least 3 people on it. The majority of the committee members must have **financial competency.** All committee members must be **independent.** Council sets the rules for who can be a member of the committee. Council also decides under what circumstances a member of the committee should be removed.

If the committee has 3 members, at least 1 member must be a councillor. If the committee has 4 or more members, at least 2 members must be councillors. Having 1 or more councillors on the committee helps with good communication between Council and the committee.

A committee member's **independence** helps ensure there is no **conflict of interest**. Committee members (including councillors) can be **independent** if their other responsibilities do not interfere with their ability to have good judgment as a member of the Finance and Audit Committee.

CONFLICTS OF INTEREST happen when people may benefit personally from decisions made when they are in their professional, elected, or appointed roles.

The amount of time that a person is on the committee (also called the term of appointment) must be long enough so that members have a good understanding of the Nation's finances. The committee members must also have staggered terms of appointment. Committee members may be compensated for their service on the committee.

This division of the Sample FAL also describes how the Finance and Audit Committee operates. The Committee Procedures include governance topics like **quorum**, voting, and how often the committee meets.

A QUORUM is the smallest number of members that must be present to make a decision.

The Sample FAL describes key activities of the Finance and Audit Committee. The committee leads all financial planning activities. Its tasks include reviewing a **strategic plan** and a multi-year financial plan. It also monitors financial performance and reviews financial statements.

A STRATEGIC PLAN sets out the long-term vision for the First Nation and is described in Part IV of the FAL.

In addition, the Finance and Audit Committee is in charge of audit and oversight activities. These activities make sure that there are independent reviews of the First Nation's financial management. Council may also give other finance-related duties to the committee.

Division 3 - Officers and Employees

This division of the FAL describes specific jobs that are needed for strong financial management. The Chief Administrative Officer reports to Council. This person heads the overall management of the day-to-day activities of the Nation. The duties of the Chief Administrative Officer are listed in this Division.

The Director of Finance reports to the Chief Administrative Officer. The Director of Finance is responsible for the day-to-day financial activities of the First Nation. The duties of the director are listed.

A Tax Administrator is required if the First Nation is collecting local revenues (property taxes). The Tax Administrator reports to the Director of Finance. The duties of the Tax Administrator are listed in the Sample FAL.

It is Council's job to determine the organizational structure of the First Nation. This includes describing who does which activities and how everyone works together. Council must do its best to make sure that the people hired to work for the First Nation are qualified and competent.

Division 4 – Conduct Expectations

This division of the FAL talks about how people are expected to behave when carrying out financial duties. An important part concerns conflicts of interest. Council must make sure there are policies and procedures in place to avoid conflicts of interest.

Everyone who works for the First Nation is expected to behave in a certain way. The Sample FAL lists the behaviours that are expected, especially when it comes to financial matters. These behaviours include acting honestly and in good faith. Everyone working for the First Nation is expected to understand and avoid conflicts of interest.

PART IV- FINANCIAL MANAGEMENT

Division 1 - Financial Plans and Annual Budgets

This division of the FAL talks about financial management plans and budgets. It says that the fiscal year for the First Nation is from April 1 to March 31 of the following year. It also describes important tools that help Council make financial decisions. These tools include a strategic plan and a **multi-year financial plan**. These documents help Council consider the future over the longer term. They also help to provide a vision and direction that can be helpful when making financial decisions.

A MULTI-YEAR FINANCIAL PLAN describes the First Nation's expected income and spending for a 5-year period starting with the current fiscal year.

The annual budget takes a shorter-term view. It looks at everything that the First Nation plans to do to spend money and earn money in the coming year. The FAL sets out the timeline for budget planning. There may be a situation where a First Nation is planning to spend more money than it will earn, which results in a deficit. If a deficit is expected, this section describes what needs to happen. The multi-year financial plan should show what will be done to deal with any deficits.

Council must provide ways for First Nation members to be informed and involved in financial planning.

Division 2 - Revenues and Expenditures

If the First Nation is collecting local revenues (property taxes), these must be collected in a separate bank account. The money from the local revenue can only be used according to an approved budget or an urgent measure according to a process set out in the *First Nations Fiscal Management Act*.

The First Nation is only allowed to spend money that has been approved in the budget. Council must create policies and procedures to guide how money is managed. Financial controls must be in place to show how money comes in, goes out, and is tracked.

Division 3 - Borrowing

If the First Nation borrows money, there must be policies and procedures in place for the borrowing. These guidelines should show how the debt will be managed and how the borrowed funds will be used. Policies and procedures should also describe how Nation members will be informed or involved in borrowing for new capital projects.

If the First Nation uses its local revenues (property tax) to borrow money from the First Nations Finance Authority, then the First Nation cannot use those same monies to borrow from anyone else.

Division 4 - Risk Management

Council must create policies and procedures to guide financial decision-making in for-profit activities. Risks can occur when a First Nation conducts business activities to make a profit. If the First Nation plans to go into business, Council must set guidelines for these activities.

A GUARANTEE is a promise to satisfy a promise that another person has agreed to fulfill if that person fails to do so.

AN INDEMNITY is a promise to "make a person whole" from specific losses they have suffered.

Before the First Nation gives a **guarantee** on behalf of the Nation, Council must consider the risks of that guarantee. The Director of Finance must write a report about those risks.

The First Nation can only give an **indemnity** in certain situations. The FAL describes these situations and what kind of guidelines Council must set and follow when providing indemnities.

If the First Nation invests its money, Council must set standards for how this will be done. Council also must create policies and procedures if the Nation loans money to others. The Nation can loan money to its members, but a loan program must be created first. The loan program must be able to be used by any Nation member. The terms of loans to members must be clear. Council must create guidelines for proper management of a loan program.

The Chief Administrative Officer must identify risks to the First Nation's finances. At least once a year, the officer must share a report about the risks with the Finance and Audit Committee. The committee must recommend what insurance the Nation should carry. Insurance can also be bought to protect a councillor or officer from liability.

Council also must deal with the risk of fraud. Councillors must put guidelines in place to manage the risk of fraud. There must also be internal checks in place to make sure that the First Nation is operating effectively.

Division 5 - Financial Reporting

This Division describes good financial reporting practices in Canada. All accounting is to be done according to the Generally Accepted Accounting Principles (GAAP) from the Chartered Professional Accountants of Canada. First Nations use the Public Sector Accounting Standards for GAAP.

If the First Nation is collecting local revenues (property tax) over $400,000, then those revenues must be accounted for and reported on separately from other revenues that the Nation brings in.

If the First Nation has a loan from the First Nations Finance Authority that is secured by "other revenues" such as royalties, then the "other revenues" used to secure the loan must be accounted for separately.

The Director of Finance must prepare regular financial statements. These must be provided on a monthly, quarterly, and annual basis. There may also be reports needed for special purposes. The statements and reports show the financial health of the First Nation. The Finance and Audit Committee reviews these documents and tells Council whether the Committee thinks they should be approved. The expected timelines and content for these reports are listed in the FAL.

If the First Nation is collecting local revenues (property tax), extra financial reporting is required. At least once a year, a financial statement for local revenues must be prepared. Council needs to create policies and procedures for reporting on local revenues.

An independent auditor must be appointed each year. The auditor will offer an opinion on the annual financial statements of the First Nation from an outside point of view. The auditor's duties are described in the FAL. The Finance and Audit Committee reviews the audited financial statements. Before the annual financial statements can be made public, they must be approved by Council. All First Nation members must be able to see and review the audited financial statements.

An annual report must be created that describes the operations and financial performance of the First Nation. This report will include the progress that has been made towards goals that Council may have set. The report also must include or reference the audited financial statements. Any member of the Nation must be able to get the annual report.

Division 6 - Information And Information Technology

All records made by the First Nation are the property of the Nation. Council must set guidelines for how records will be maintained and controlled. These policies must say who has access to records. There must also be guidelines on how information technology (electronic data) is used. It must be clear how the First Nation's financial information will be protected.

If the First Nation is collecting local revenues, the Tax Administrator must keep separate records.

If the First Nation has a loan from the First Nations Finance Authority, the Director of Finance must keep separate records. These records must show all other revenues of the First Nation.

PART V- TANGIBLE CAPITAL ASSETS

Tangible capital assets are things that can be used or rented, last longer than a year, are used regularly, and will not be sold as part of regular operations. Council must keep track of tangible capital assets and make sure that they are well taken care of.

There must be a reserve fund with money set aside for **tangible capital asset projects**. Council must have guidelines for these projects to make sure that strong management practices are followed. First Nation members must be informed about or involved in tangible capital asset projects.

Council also must put in place a life-cycle management program. This kind of program makes sure that capital assets are inspected and repaired on a regular basis. It also means planning to replace the asset at the right time. The steps are part of the life-cycle management program that is described in the FAL.

TANGIBLE CAPITAL ASSETS include any physical thing that the First Nation owns that lasts more than 1 year. Property, buildings, and equipment are tangible capital assets. The word "tangible" refers to things you can touch or hold.

A TANGIBLE CAPITAL ASSET PROJECT means buying, building, repairing, or replacing a tangible capital asset (does not include routine maintenance).

PART VI - REPORTING BREACHES

This part of the FAL deals with a process for reporting financial misconduct. If anyone has reason to believe that financial rules or guidelines have not been followed, they must tell the chair of the Finance and Audit Committee. If a financial misconduct report is filed, it must be checked out and taken seriously. Everyone must do their best to keep the identity of the person raising the concern confidential.

There are rules for who is responsible for paying back money that was improperly spent. If an officer or employee thinks that money is being improperly spent, they must tell Council in writing.

If councillors or officers are sued as a result of their jobs, they may be indemnified by the First Nation. One example of an indemnity that the First Nation could provide, is that the First Nation may pay what is needed for the person's legal defence. Another example is that the First Nation may pay an amount that is owed.

PART VII -MISCELLANEOUS

This part describes general rules for First Nations. First Nations must comply with all FMB standards. If a Nation borrows from the First Nations Finance Authority, or has a Certificate issued by the FMB, they must maintain their compliance over time. Note that FMB Standards change based on changes to accounting principles over time. If FMB becomes aware of non-compliance, then FMB may intervene to remedy the circumstances.

> **If the First Nation collects local revenues and the Nation comes under FMA intervention, the FMB will handle the local revenues to the extent necessary to remedy any default. In such a case, the FMB can act in place of Council to manage local revenues and the local revenue account.**

If the First Nation is using other revenues to secure a loan from the First Nations Finance Authority, and the First Nation comes under FMA intervention, the FMB will handle the other revenues to the extent necessary to remedy any default on the loan.

The First Nation's FAL must be reviewed on a regular basis. This is to make sure that it continues to support good financial management and meet FMB Standards. Council must create guidelines for how First Nation members will be told if changes are made to the FAL. Any changes to the FAL must be reviewed and approved by the FMB for them to be in force.

Coming into Force – How the FAL Takes Effect

When does the FAL come into effect? The Sample FAL brings sections into effect in a gradual way. This means that not all the sections of the FAL are "in force" right away.

Some sections of the Sample FAL are highlighted in yellow **(like this)**. When your FAL is passed by Council, then only the sections that have yellow highlighting would come into effect the day after the FAL is approved by the FMB Board.

Other sections of the Sample FAL are highlighted in green **(like this)**. These sections of the FAL will not come into effect until January 1 of the following year.

The rest of the Sample FAL that is not highlighted (like this) must come into effect within 36 months from when your First Nation chooses to borrow money from the First Nations Finance Authority. Council may choose to bring these sections into force earlier. These sections make sure that the FAL meets the FMB's Standards and may not be removed, whether the Nation borrows or not.

There are many options for a First Nation to bring its FAL or sections of the FAL into force. A First Nation might choose different options depending upon its unique situation.

IMMEDIATE ACTIONS

What Sections of the FAL are in effect immediately? (THE YELLOW HIGHLIGHTED SECTIONS)

- ✓ Council is responsible for all financial matters of the First Nation.
- ✓ The **fiscal year** of the First Nation becomes April 1 to March 31 of the following year.
- ✓ An **Annual Budget** must be produced in a way that complies with the relevant sections of the FAL.
- ✓ The First Nation must follow **GAAP** when preparing its annual financial statements.
- ✓ **Separate accounting** must be used for **local revenues** (if there are any) and other revenues (if there is a loan from the First Nations Finance Authority secured by other revenues).
- ✓ **Monthly, quarterly, and annual financial reports** must be prepared, as well as a separate report for local revenues (if there are any).
- ✓ An **independent auditor** must be appointed to review and comment on the First Nation's annual financial statements and any special purpose reports.
- ✓ If the First Nation comes under FMA intervention, the FMB will manage the local revenues and/or the other revenues to the extent necessary to remedy any default.

What Sections Of The Fal Are In Effect January 1 Of The Following Year?

(THE GREEN HIGHLIGHTED SECTIONS)

- ✓ Council must appoint members to a **Finance and Audit Committee**.
- ✓ Council must appoint a **Chief Administrative Officer.**
- ✓ Council must appoint a **Director of Finance**.
- ✓ Council must create an **organizational chart** that describes the governance, management, and administration of the First Nation.
- ✓ Council must create policies and procedures related to **conflicts of interest** and how to avoid them.
- ✓ **Councillors, officers, and employees** must address their conflicts of interest and abide by a **code of conduct** related to financial matters of the First Nation.
- ✓ Council must create a **Strategic Plan** and a **Multi-year Financial Plan.**
- ✓ There must be guidelines about how **First Nation members will be informed** of or involved in important financial and planning matters.
- ✓ An **Annual Report** must be produced and shared.
- ✓ There must be a way for someone to **report** when they think the rules or guidelines related to financial management have not been followed.

CUSTOMIZING YOUR FAL

Most of the Sample FAL wording is mandatory and must be included in your FAL. However, some things can be changed to meet to your Nation's needs and unique situation. Common customizations that have been made by other First Nations include the following:

✓ Adding important background information to the **preamble** about previous FALs.

✓ Changing **what officers are called** so the titles reflect the ones that are used by the Nation. For example, the director of finance may be called chief financial officer instead. The responsibilities of the officers stay the same.

✓ Changing the section about **loans to members** to say, "the First Nation **must not** make a loan to any member."

✓ Changing the section that requires the **annual financial statements** to be signed by the Chief or the Council chair to remove the option of the Council chair's signature.

For more information on customizing your FAL, please talk to FMB staff.

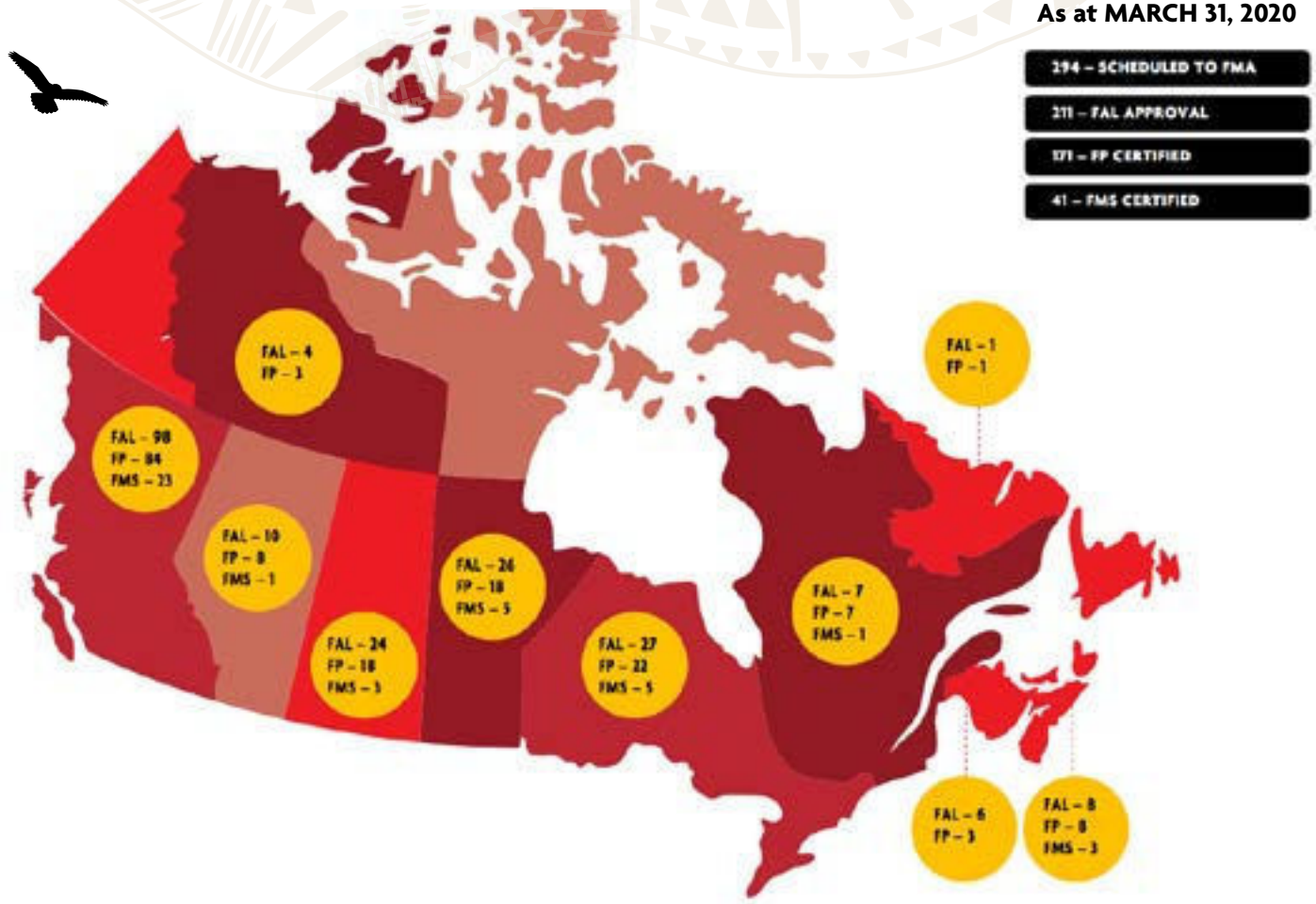
Steps for FAL Development and Approval

1. Pass a Council Resolution to opt into the *First Nations Fiscal Management Act*.
2. Request a presentation from FMB.
3. Request a sample FAL.
4. Request financial assistance to seek independent legal advice.
5. Develop the FAL.
6. If proposing changes to the sample FAL:
    a. submit Word version to FMB for informal consideration
    b. await confirmation from FMB on proposed changes
7. If no changes to the sample FAL – have Chief & Council sign three originals and formally submit the FAL.
8. FMB reviews and issues compliance approval.

GOVERNANCE
FINANCE
HUMAN RESOURCES
INFORMATION MANAGEMENT

NOTES

As at MARCH 31, 2020



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