

FIRST NATIONS LAND MANAGEMENT ACT

An Act providing for the ratification and bringing into effect of
The Framework Agreement on First Nation Land Management

EXECUTIVE SUMMARY

INTRODUCTION

The First Nations Land Management Act (the “Act”) was required under the *Framework Agreement* for two purposes:

- to ratify the *Framework Agreement*, and
- to implement those clauses of the *Framework Agreement* that affect third parties or other federal laws, or that are considered important enough to be repeated in the legislation.

The *Act* is intended to be consistent with the *Framework Agreement* and to apply to the First Nations (50) that are signatories to the *Framework Agreement* (set out in the schedule to the *Act*). The *Act* was previously introduced in Parliament on December 10, 1996, but the federal election that year prevented it from being enacted. The Bill leading to the enactment of the *Act*, was re-introduced as Bill C-49 in June of 1998. It was finally enacted and given royal assent on June 17, 1999.

RATIFICATION

The *Framework Agreement* is the document that sets out the terms and conditions under which a First Nation can establish its own land management regime and remove its reserve lands from the Minister’s control under the *Indian Act*. The Framework Agreement was ratified by Canada by enacting the *Act* and as at December 1, 2007, 20 First Nations have ratified the Framework Agreement by passage of their Land Codes.

IMPLEMENTATION OF THE FRAMEWORK AGREEMENT

Ratification Process: A large portion of the *Act* relates to the “opting-in process” for First Nations. It repeats many of the clauses of the *Framework Agreement* on what a land code must contain, how a land code is approved by the community, the role of the independent Verifier and so on.

First Nation Lands: The *Act* states that title to First Nation Lands will not be affected by the *Act* and that these lands will continue to be reserves and to be constitutionally protected. First Nation lands are also protected against surrender for sale. If land is ever voluntarily exchanged by a First nation for other land, the new land received by the First Nation would be protected in the same way.

Land Code: The clauses of the *Framework Agreement* on the legal effect of the Land Code are implemented by the *Act*. The Land Code will have the effect of law and will be recognized by the courts.

First Nation Powers: The powers of a First Nation to manage its reserve lands and resources, receive and use land revenues, and its legal capacity for land purposes are included in the *Act*. These powers are to be exercised for the use and benefit of the First Nation.

Transfer of Revenue: The *Act* provides that revenue moneys of the First Nation previously collected and held by Canada will be transferred to the First Nation when its land code comes into effect.

First Nation Laws: The law-making powers of a First Nation under its land code are set out in the *Act*. The laws may cover any matter related to First Nation land, including the granting of interests in land, land use, environment, and possession of matrimonial home. Provisions relating to the enforcement of First Nation laws, prosecutions and evidence are also included.

Register for First Nation Land: The *Act* authorizes Canada to set up a separate register to record interests granted by First Nations under their Land Codes.

First Nation Expropriation: The *Act* recognizes the right of a First Nation to expropriate interests in its own First Nation land for community works or other First Nation community purposes. The basic principles of this are included in the *Act*, e.g. fair compensation. The First Nation in its Land Code and laws would set out the details of how any community expropriation would work.

No Provincial Expropriation: First Nation land is immune from any expropriation by a provincial municipal government or by provincial agencies.

Limited Federal Expropriation: The protections against the expropriation of First Nation land by the federal government, which were negotiated in the *Framework Agreement*, are set out in the *Act*. These include provisions on limited expropriation to cases where it is justifiable and necessary for a federal public purpose that serves the national interest. The *Act* also requires Canada to provide alternate land to the First Nation, which would become First Nation land, in order to protect the land base of the First Nation. The Legislation contains provisions on compensation and the resolution of disputes over expropriation.

Liability Protection: Canada will remain liable for actions taken before the Land Code takes effect. The First Nation will assume responsibility for its land management actions after that date.

Application to other First Nations: The *Act* only applies to First Nations that sign on to the Framework Agreement and proceed to develop and ratify a land code. A total of 50 First Nations from across Canada are signatory to the Framework Agreement.

EFFECT ON OTHER FEDERAL LEGISLATION

Indian Act: The *Act* ensures that the land management provisions of the *Indian Act* do not apply to any of the signatory First Nations that adopt a Land Code, their members or their First Nation lands.

Expropriation Act: The *Act* makes it clear that the new rules for protection of First Nation land from expropriation over-ride other legislation like the *Expropriation Act*.

Indian Oil and Gas Act: The *Indian Oil and Gas Act* will continue to apply to any First Nation oil and gas interests and revenues.

Environment: The *Canadian Environmental Assessment Act* will no longer require a First Nation to follow possible future federal regulations for environmental assessments on reserves. The First Nation will proceed now to enact its own laws on this topic.