

## Summary of Proposed Amendments to FNFA By-law No. 2025-1

The following amendments to FNFA By-law No. 2025-1 are proposed:

- 1) **Signing officers:** Correcting language in s. 13.1 to clarify who the signing officers of FNFA are: two persons, one of whom holds the office of Chairperson, Deputy Chairperson, President or director and the other of whom holds one of the said offices or is an officer of the Authority. The previous language incorrectly used the term “director” when it should have used “officer”. It also mentioned corporate clerk and any other office created by the President. The language was simplified by using “officer”, which, under the bylaws, means President, corporate clerk and any other officer appointed by the board or the President.
- 2) **Daily fees:** Specifying in the schedule to the By-law that directors’ and the chairperson’s fees are daily fees.
- 3) **French terms:** Terms in the French version of the By-law were corrected. There was a lack of consistency in the use of the terms. For example: “administrateur” and “directeur” were both used to refer to directors; “fonctionnaire” was defined but not used in the bylaws; “administrateur” (*director*) was incorrectly used instead of “dirigeant” (*officer*); “Président” was used to refer both to the Chairperson and to the President, creating confusion as to who was being referred to; some definitions were corrected for consistency and formatting; the use of “réunion” and “assemblée” to refer to meetings of the board and meetings of the members, respectively, was corrected.
- 4) **Criminal background disclosure:** The qualifications for acting as director in s. 4.3 were amended to disqualify anyone who has been convicted or found guilty of i) a criminal offence; ii) within the past five years, a non-criminal offence; iii) anyone who has any pending charges against them. The offence or charges must relate to financial dishonesty or be relevant to the operations of the Authority, as determined by the board in its sole discretion. As well, anyone who fails to authorize and pass a background check as requested by the board is disqualified.

**BYLAW No. 202~~65~~-1:**

A bylaw relating generally to  
the conduct and management of the affairs of the Authority

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BE IT ENACTED as a bylaw of the Authority as follows:

1. INTERPRETATION

1.1 In this bylaw and all other bylaws and resolutions of the Authority, unless the context otherwise requires:

- (a) “**Authority**” means the First Nations Finance Authority, a non-profit corporation without share capital, established pursuant to section 58 of the *FMA* [*FMA* s. 58];
- (b) “**band**” means a band as defined in subsection 2(1) of the *Indian Act*;
- (c) “**board**” means the board of directors of the Authority;
- (d) “**borrowing member**” means a First Nation that has been accepted as a borrowing member by the Authority under subsection 76(2) of the *FMA* and has not ceased to be a borrowing member under section 77 of the *FMA* [*FMA* s. 2(1)];
- (e) “**bylaws**” means this bylaw and all other bylaws of the Authority as amended from time to time, and from time to time in force and effect;
- (f) “**CBCA**” means the *Canada Business Corporations Act* together with the Regulations made pursuant thereto and any statute or regulations that may be substituted therefore as amended from time to time;
- (g) “**council**” has the same meaning as “council of the band” in subsection 2(1) of the *Indian Act*;
- (h) “**director**” means a member of the board;
- (i) “**First Nation**” means a band that is named in the *FMA* Schedule;
- (j) “**FMB**” means the First Nations Financial Management Board established under subsection 38(1) of the *FMA*;
- (k) “**FMA**” means *First Nations Fiscal Management Act*, as amended from time to time;
- (l) “**FMA Schedule**” means the Schedule to the *FMA* referenced in subsections 2(1) and 2(3) of the *FMA*;
- (m) “**investing member**” means a First Nation that has invested in a short-term investment pool managed by the Authority [*FMA* s. 57];
- (n) “**long-term loan**” [Intentionally Deleted];
- (o) “**meeting of members**” means any meeting of members, whether annual or special;

- (p) “**member**” means a borrowing member or investing member [*FMA* s. 57];
- (q) “**Minister**” means the Minister of Crown-Indigenous Relations [*FMA* s. 2(1)];
- (r) “**officer**” means the President, corporate clerk and any other officer appointed by the board or the President;
- (s) “**ordinary resolution**” means a resolution passed by a majority of the votes cast by the members who voted in respect of that resolution;
- (t) “**person**” includes an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative;
- (u) “**President**” means the president appointed by the board to act as the chief executive officer of the Authority [*FMA* s. 69(1)];
- (v) “**recorded address**” means, in the case of a member, its address as recorded in the members’ register; and, in the case of a director, officer, auditor or member of a committee of the board, his latest address recorded in the records of the Authority;
- (w) “**representative**” in respect of a First Nation that is a member, means the chief or a councillor of the First Nation who is designated as a representative by a resolution of its council [*FMA* s. 57] and for greater certainty there shall be only one representative for each member;
- (x) “**short-term loan**” [Intentionally Deleted];
- (y) “**special meeting**” of members means a special meeting of all members entitled to vote at an annual meeting of members;
- (z) “**special resolution of the board**” means a resolution passed by a majority of not less than two-thirds of the votes cast by the directors who voted in respect of that resolution; and
- (aa) “**special resolution**” of the members means a resolution passed by a majority of not less than two-thirds of the votes cast by the representatives of members who voted in respect of that resolution or their proxies, or signed by all the representatives of members entitled to vote on that resolution.

1.2 In this bylaw where the context requires, words importing the singular include the plural and vice versa and words importing gender include the masculine, feminine and neutral genders.

1.3 Unless the context otherwise requires, words and expressions used in this bylaw and not otherwise defined have the same meaning:

- (a) firstly, as in the *FMA*, if they are defined in the *FMA*;

- (b) secondly, as in the applicable provisions of the *CBCA*, if they are not defined in the *FMA* and are defined in those provisions of the *CBCA*; and
- (c) thirdly, as in the *Indian Act*, if they are not defined in the *FMA* or the *CBCA*.

1.4 The *Canada Not-for-profit Corporations Act* does not apply to the Authority [*FMA* s. 66(1)].

1.5 As set out in subsection 66(2) of the *FMA*, certain provisions of the *CBCA* apply to the operation of the Authority and the corporate clerk shall maintain records in that regard as required by section 6.8.

## 2. PURPOSE OF AUTHORITY

2.1 Purpose – The purposes of the Authority are to:

- (a) secure for its borrowing members, through the use of property tax revenues,
  - (i) loans that have terms of one year or longer to finance or refinance capital assets for the provision of local services on reserve lands, or
  - (ii) loans that have terms of less than one year to meet cash-flow requirements for operating or capital purposes or to refinance a short-term debt incurred for capital purposes;
- (b) secure for its borrowing members, through the use of other revenues, loans for any purpose that promotes a First Nation's economic or social development;
- (c) secure the best possible credit terms for its borrowing members;
- (d) provide investment services to First Nations and entities referred to in any of paragraphs 50.1(1)(a) to (e) of the *FMA*; and
- (e) provide advice regarding the development of financing mechanisms for First Nations [*FMA* s. 74].

## 3. MEMBERS

3.1 Becoming a Borrowing Member – A First Nation may apply to the Authority to become a borrowing member. The board shall accept a First Nation as a borrowing member only if the FMB has issued to the First Nation a certificate in respect of their financial performance under subsection 50(3) of the *FMA* and has not subsequently revoked it [*FMA* s. 76].

3.2 Ceasing to be a Borrowing Member – A borrowing member that has obtained a loan from the Authority may cease to be a borrowing member only with the consent of all other borrowing members [*FMA* s. 77] or if it is deleted from the *FMA Schedule* pursuant to paragraph 2(3)(b) of the *FMA*.

3.3 Becoming an Investing Member – A First Nation becomes an investing member when it has completed the administrative procedures established by the Authority to become an investing member and when it has invested in a short-term investment pool managed by the Authority [*FMA s. 57*].

3.4 Ceasing to be an Investing Member – A First Nation ceases to be an investing member when it no longer is investing in a short term investment pool managed by the Authority.

3.5 Units in Capital Account – Where any public body performing a function of government and providing municipal services within a local jurisdiction becomes a member of the Authority or acquires any of the services of the Authority during the first five years of the existence of the Authority, they shall each have an interest in the capital account of the Authority on the following basis:

- (a) where the body becomes a borrowing member in the first five years, that body shall have three units in the capital account;
- (b) where the body becomes an investing member but does not become a borrowing member in the first five years, that body shall have two units in the capital account; and
- (c) any other body acquiring the services of the Authority shall have one unit in the capital account,

but any body having units shall forthwith forfeit the appropriate number of units if their status entitling them to the units changes.

3.5.1 Notwithstanding section 3.5, a public body performing a function of government but not providing municipal services within a local jurisdiction shall continue to hold any units in the capital account of the Authority that were granted to it under section 3.5 as it read before January 1, 2008, but only for so long as that body continues to use the services of the Authority.

3.6 Composition of Capital Account – The capital account of the Authority shall consist of the retained earnings of the First Nations Finance Authority Inc., as transferred to the Authority on April 1, 2006.

3.7 Distribution of Capital Account – Immediately before any dissolution of the Authority, the capital account, minus any amount required to pay the liabilities of the Authority, shall be distributed to the public bodies having an interest in it, according to the number of units that they have in it.

3.8 Limitations on Capital Account – For greater certainty:

- (a) any asset contributing to the creation of the capital account shall, during the existence of the Authority, be available as permanent or working capital of the Authority as its directors see fit;
- (b) the capital account may be reduced if the liabilities of the Authority are in excess of its other assets; and

- (c) the capital account will not be increased as the net value of the Authority is increased.

#### 4. DIRECTORS

4.1 Powers – The business and affairs of the Authority shall be managed by the board [FMA s. 61(1)].

4.2 Number of Directors – The number of directors shall be set by resolution of the board, subject to minimum of five (5) directors and a maximum of eleven (11) directors. The directors shall include a Chairperson and a Deputy Chairperson and shall be elected from among the representatives of borrowing members [FMA s. 61(1)].

4.3 Qualifications – The directors shall be representatives of members of the Authority. The following persons are disqualified from being a director:

- (a) anyone who is less than 18 years of age;
- (b) anyone who is found, under the laws of a province, to be unable, other than by reason of minority, to manage their property or is declared to be incapable by any court in a jurisdiction outside Canada of unsound mind and has been so found by a court in Canada or elsewhere;
- (c) a person who is not an individual; or
- (d) a person who has the status of bankrupt [FMA s. 66(2)(f) and CBCA s. 105(1)].
- (e) anyone who has been convicted or found guilty of (i) a criminal offence relating to financial dishonesty or relevant to the operations of the Authority, as determined by the board in its sole discretion, for which a pardon has not been granted or subject to a record suspension that remains in effect; or (ii) any non-criminal offence relating to financial dishonesty or relevant to the operations of the Authority, as determined by the board in its sole discretion, within the past five years;
- (f) anyone who has any pending charges against them relating to financial dishonesty or relevant to the operations of the Authority, as determined by the board in its sole discretion; or
- (d)(g) anyone who fails to authorize and pass a background check, as determined by the board in its sole discretion.

4.4 [Intentionally Deleted]

4.5 [Intentionally Deleted]

4.6 Nomination of Directors – A representative of a borrowing member may nominate:

- (a) a representative of a borrowing member for election as Chairperson or Deputy Chairperson; and
- (b) any representative for election as a director other than the Chairperson or Deputy Chairperson [*FMA s. 61(2)*].

4.7 Election of Directors – Directors shall be elected by representatives of borrowing members [*FMA s. 61(3)*].

4.8 Timing of Election – The election shall take place at each annual meeting at which an election of directors is required.

4.9 Term of Office – The directors shall hold office on a part-time basis for a term of one year [*FMA s. 63(1)*]. A director ceases to hold office once his successor is elected at the first annual meeting following his election.

4.10 Additional Terms – A director is eligible to be re-elected for a second or subsequent term of office [*FMA s. 63(2)*]. If an election of directors is not held at the proper time, the incumbent directors shall continue in office until their successors are elected.

4.11 Ceasing to be a Director – A person ceases to be a director when:

- (a) the person dies;
- (b) the person ceases to be qualified for election as a director under section 4.3;
- (c) the person resigns;
- (d) the person ceases to hold office as a chief or councillor of a First Nation that is a borrowing member [*FMA s. 63(3)(a)*];
- (e) the person's designation as a representative of a borrowing member is revoked by a resolution of the council of that First Nation [*FMA s. 63(3)(b)*];
- (f) the person is removed from office before the expiry of the term of the appointment by a special resolution of the board [*FMA s. 63(3)(c)*]; or
- (g) the person misses three consecutive meetings without reasonable cause as determined by the board and is removed by special resolution of the board.

4.12 Effective Date of Resignation – A resignation of a director becomes effective at the time a written resignation is sent to the Authority, or at the time specified in the resignation, whichever is later [*FMA s. 66(2)(g) and CBCA s. 108(2)*]. A written resignation delivered personally to the President or the corporate clerk shall be deemed to be sent to the Authority at the time of such delivery.

4.13 Vacancies – Subject to the provisions of this bylaw, a quorum of the board may fill a vacancy in the board, except a vacancy resulting from an increase in the number or minimum number of directors or from failure to elect the number or minimum number of

directors required by this bylaw. If the directors fill a vacancy, the representatives of the borrowing members shall elect a new director to the position so filled at the next meeting of members.

If there is not a quorum of directors, or if there has been a failure to elect the minimum number of directors required by this bylaw, the directors then in office shall forthwith call a special meeting of the borrowing members to fill the vacancy, and, if they fail to do so or if there are no directors then in office, the meeting may be called by any borrowing member.

## 5. MEETINGS OF DIRECTORS

5.1 Place of Meetings – Meetings of the board may be held at any place in or outside Canada.

5.2 Quorum – Two-thirds of the directors constitutes a quorum at any meeting of the board [*FMA s. 64*], and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

5.3 Calling of Meetings – Meetings of the board shall be held from time to time at such place, at such time and on such day as the Chairperson, the President or any two directors may determine, and the corporate clerk shall call meetings when so directed or authorized. Notice of the time and place of every meeting so called shall be given to each director not less than 48 hours before the time when the meeting is to be held, except that no notice of a meeting shall be necessary if all the directors are present or if those absent have waived notice of or otherwise signified their consent to the holding of such meeting. A notice of a meeting of directors need not specify the purpose of or the business to be transacted at the meeting except where this bylaw requires such purpose or business to be specified, including any proposal to:

- (a) submit to the members any question or matter requiring approval of the members;
- (b) fill a vacancy among the directors or in the office of an auditor;
- (c) issue securities;
- (d) approve any annual financial statements; or
- (e) adopt, amend or repeal bylaws.

5.4 Regular Meetings – The board may appoint a day or days in any month or months for regular meetings at a place and hour to be named. A copy of any resolution of the board fixing the place and time of regular meetings of the board shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meetings except where this bylaw requires the purpose thereof or the business to be transacted thereat to be specified.

5.5 First Meeting of New Board – Each newly elected board may without notice hold its first meeting following a meeting of members at which such board is elected, provided that a quorum of directors is present.

5.6 Majority Required for Resolutions – At all meetings of the board, every question, except those requiring a special resolution, shall be decided by a majority vote of more than 50% of the directors present [*FMA s. 65*].

5.7 Casting Vote – In the case of an equality of votes on any question at a meeting of the board, the Chairperson of the meeting shall be entitled to a second or casting vote.

5.8 Dissent of Director – A director who is present at a meeting of directors or committee of directors is deemed to have consented to any resolution passed or action taken at the meeting unless the director has dissented in accordance with the *CBCA* [*FMA s. 66(2)(n) and CBCA s. 123*].

5.9 Conflict of Interest – A director shall disclose his interest in any material contract or transaction or proposed material contract or transaction with the Authority in accordance with section 7.7 and shall be liable for failure to do so as provided for in section 7.8 [*FMA s. 66(2)(m) and CBCA s. 120*].

5.10 Waiver of Notice – A director may in any manner waive a notice of a meeting of directors; and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

5.11 Participation by Telephone – A director may participate in a meeting of directors or of a committee of directors by means of such telephone or other communications facilities as permit all persons participating at the meeting to hear each other, and a director participating in such a meeting is deemed to be present at the meeting.

5.12 Adjournment – Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting.

5.13 Appointment of Committee of Directors and Delegation of Powers – The board may appoint one or more committees of directors and officers of the Authority and delegate to such committees any of the powers of the directors, subject to any limitations that the board may impose. The board shall appoint an audit committee of the directors to review the financial statements of the Authority before they are approved by the directors [*CBCA ss. 158(1) and 171(3)*].

5.14 Resolution in Lieu of Meeting – A resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors, is as valid as if it had been passed at a meeting of directors or committee of directors. A copy of every such resolution shall be kept with the minutes of the proceedings of the directors or committee of directors. Unless a ballot is demanded, an entry in the minutes of a meeting to the effect that the chairperson of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without

proof of the number or proportion of the votes recorded in favour of or against the resolution [*FMA s. 66(2)(k) and CBCA s. 117*].

5.15 Chair of Meetings – The Chairperson, or in the absence of the Chairperson, the Deputy Chairperson, shall chair all meetings of the board. In the absence of the Chairperson and the Deputy Chairperson, the remaining directors will appoint a chair for the meeting from amongst themselves.

## 6. CHAIRPERSON, DEPUTY CHAIRPERSON AND OFFICERS

6.1 Chairperson of the Board – The representatives of the borrowing members may nominate from time to time and shall elect a representative of a borrowing member as Chairperson of the board, who shall be a director [*FMA s. 61(2)*]. The Chairperson shall chair all meetings of members and of the board, and have such other powers and duties as the board may specify.

6.2 Deputy Chairperson – The representatives of the borrowing members may from time to time elect a representative of a borrowing member as Deputy Chairperson of the board, who shall be a director [*FMA s. 61(2)*]. In the event of the absence or incapacity of the Chairperson, or if the office of Chairperson is vacant, the Deputy Chairperson shall assume the duties and functions of the Chairperson [*FMA s. 62*].

6.3 Chairperson and Deputy Chairperson – For greater certainty, the same person cannot be both the Chairperson and the Deputy Chairperson.

6.4 Appointment of President – The board shall appoint a President to act as the chief executive officer of the Authority (*FMA, s. 69(1)*). The board may specify the duties of the President and, in accordance with this bylaw, delegate to the President powers to manage the business and affairs of the Authority.

6.5 Term and Remuneration of President – The terms of employment and remuneration of the President shall be determined from time to time by resolution of the board.

6.6 Removal of the President – The President shall be subject to removal at any time with or without cause, but only by special resolution of the board.

6.7 Power of President Regarding Officers – Subject to the bylaws of the Authority and the authority of the board:

- (a) the President shall have the general supervision of the conduct and management of the Authority, may employ any other officers and employees that are necessary to conduct the work of the Authority [*FMA s. 69(2)*] and shall have such other powers and duties as the board may specify; and
- (b) the President may, from time to time, appoint such officers, if any, as the President determines, and the duties, terms of employment and remuneration of the officers and employees appointed by the President shall be determined from time to time by the President and those officers

and employees shall, in the absence of agreement to the contrary, be subject to removal by the President at any time with or without cause.

The President may appoint the same person to carry out the duties of more than one officer.

6.8 Corporate Clerk – The President may from time to time appoint a corporate clerk. The corporate clerk shall:

- (a) attend all meetings of the directors, members and committees of the board and shall enter or cause to be entered in books kept for that purpose minutes of all proceedings at such meetings and a written record of any unwritten waivers of notice of any such meeting;
- (b) give, or cause to be given, when instructed, notices required to be given to members, directors, auditors and members of committees;
- (c) be the custodian of all books, papers, records, documents and other instruments belonging to the Authority;
- (d) maintain in the corporate records of the Authority a complete set of the provisions of the *FMA* and the *CBCA* which specifically apply to the operation of the Authority, including any amendments to those provisions that may be made from time to time; and
- (e) perform such other duties as may from time to time be prescribed by the President.

6.9 Auditor – The representatives of the members shall, at each annual meeting, appoint an auditor to hold office until the close of the next annual meeting [*FMA* s. 66(2)(s) and *CBCA* s. 162(1)]. The auditor shall meet the qualification requirements and shall be entitled to the rights and subject to the duties set out in ss. 161, 162, 168, 169, 170, 171(3) to (9) and 172 of the *CBCA* [*FMA* ss. 66(2)(s), (t), (u), (v), (w), (x)].

6.10 Assistants to Officers – Any of the powers and duties of an officer to whom an assistant has been appointed by the President may be exercised and performed by such assistant, unless the President otherwise directs.

6.11 Variation of Duties – From time to time, consistent with and subject to the *FMA* and this bylaw, the board may vary, add to or limit the powers and duties of the Chairperson, the Deputy Chairperson and the President and the President may vary, add to or limit the powers and duties of any officer appointed by the President.

6.12 Agents and Attorneys – The board shall have power from time to time to appoint agents or attorneys for the Authority in or outside of Canada with such powers of management or otherwise (including the power to sub-delegate) as may be thought fit.

6.13 Fidelity Bonds – The board may require such officers, employees and agents of the Authority as it deems advisable to furnish bonds for the faithful performance of their duties, in such form and with such surety as the board may from time to time prescribe.

6.14 Conflict of Interest - An officer shall disclose his interest in any material contract or transaction or proposed material contract or transaction with the Authority in accordance with section 7.7 and shall be liable for failure to do so as provided for in section 7.8 [*FMA s. 71(c)*].

6.15 President, Officers and Employees – No director may be the President or an officer or employee of the Authority.

## 7. DUTIES, POWERS AND LIABILITY OF DIRECTORS AND OFFICERS

7.1 Duty of Care – The directors and officers of the Authority in exercising their powers and performing their duties shall:

- (a) act honestly and in good faith with a view to the best interests of the Authority; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances [*FMA s. 68(1)*].

7.2 Approval and Distribution of Financial Statements – The directors shall approve of and distribute financial statements to the members in accordance with sections 155, 158 and 159 of the *CBCA* [*FMA s. 66(2) (p), (q) and (r)*].

7.3 Powers of the Board – The board may by resolution exercise the following powers:

- (a) borrow money in an amount authorized by the resolution;
- (b) issue securities of the Authority;
- (c) lend securities to generate income, if the loan is fully secured;
- (d) enter into agreements for risk management purposes, including swaps; and
- (e) provide for:
  - (i) payments related to the issuance of securities, the registration, transfer, management and redemption of securities,
  - (ii) the re-issuance, reinstatements or other disposition of lost, stolen, destroyed or damaged securities or interest coupons,
  - (iii) the examination, cancellation or destruction of securities and of materials used in their production, or
  - (iv) the timing of the issuance of securities [*FMA s. 75(1)*].

7.4 Bylaws –

- (a) The directors may, by resolution, make, amend or repeal any bylaws:
  - (i) respecting the calling and conduct of meetings of the board, including holding a meeting by teleconference;
  - (ii) fixing fees to be paid to directors for attendance at meetings of the board and the reimbursement of reasonable travel and living expenses to directors;
  - (iii) respecting the duties and conduct of the directors, officers and employees of the Authority and the terms and conditions of employment and of the termination of employment of officers and employees of the Authority;
  - (iv) respecting the signing and sealing of securities and interest coupons issued by the Authority; and
  - (v) generally for the conduct and management of the affairs of the Authority [*FMA s. 71*].
- (b) The directors shall submit a bylaw, or an amendment or a repeal of a bylaw, made under subsection (a) to the members at the next meeting of members and the members may, by ordinary resolution, confirm, reject or amend the bylaw, amendment or repeal [*FMA s. 66(2)(e) and CBCA s. 103(2)*].
- (c) A bylaw, or an amendment or a repeal of a bylaw, is effective from the date of the resolution of the directors under subsection (a) until it is confirmed, confirmed as amended or rejected by the members under subsection (b) or until it ceases to be effective under subsection (d) and, where the bylaw is confirmed or confirmed as amended, it continues in effect in the form in which it was so confirmed [*FMA s. 66(2)(e) and CBCA s. 103(3)*].
- (d) If a bylaw, an amendment or a repeal is rejected by the members, or if the directors do not submit a bylaw, an amendment or a repeal to the members as required under subsection (b), the bylaw, amendment or repeal ceases to be effective and no subsequent resolution of the directors to make, amend or repeal a bylaw having substantially the same purpose or effect is effective until it is confirmed or confirmed as amended by the members [*FMA s. 66(2)(e) and CBCA s. 103(4)*].

7.5 Limit of Liability – Directors and officers are not liable for a failure to comply with section 7.1 if they rely in good faith on:

- (a) a written report of the auditor of the Authority or financial statements represented by an officer of the Authority as fairly reflecting the financial condition of the Authority; or

- (b) a report of a lawyer, notary, accountant, engineer, appraiser or other person whose position or profession lends credibility to a statement made by that person [*FMA s. 68(2)*].

7.6 Further Limit of Liability – Subject to subsections 119 (1) and (4) and subsection 120(8) of the *CBCA* and sections 7.1 and 7.5 of this bylaw, no director or officer or employee shall be liable for the acts, receipts, neglects or defaults of any other director, officer or employee, or for joining in any receipt or other act for conformity, or for any loss, damage or expense happening to the Authority through the insufficiency or deficiency of title to any property acquired for or on behalf of the Authority, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Authority shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any of the monies, securities or effects of the Authority shall be deposited, or for any loss occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever, which shall happen in the execution of the duties of his office or in relation thereto, unless the same are occasioned by his own willful neglect or default [*FMA s. 66(2)(l) and (m)*].

7.7 Disclosure of Interests in Contracts – Every director or officer of the Authority who is a party to a material contract or transaction or proposed material contract or transaction with the Authority; is a director or officer of, or an individual acting in a similar capacity with; or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Authority, shall disclose in writing to the Authority or request to have entered in the minutes of a meeting of directors, or committee of directors, the nature and extent of their interest at the time and in the manner required section 120 of the *CBCA*. Any such contract or transaction or proposed contract shall be disclosed by the director or officer to the board or the members as required by section 120 of the *CBCA* and the approval of the board or the members of the contract or transaction shall be sought by the officer or director even if such contract or transaction is one that in the ordinary course of the Authority's business would not require approval by the board, and a director interested in a contract or transaction so referred to the board shall not vote on any resolution to approve the same except as provided by the applicable provisions of the *CBCA* [*FMA s. 66(2)(m) and CBCA s. 120*].

7.8 Liability for Failure to Disclose Interest – If a director or an officer of the Authority fails to comply with this section, a court may, on application of the Authority or any of its members, set aside the contract or transaction on any terms that it thinks fit, or require the director or officer to account to the Authority for any profit or gain realized on it, or do both those things [*FMA s. 66(2)(m) and CBCA s. 120(8)*].

## 8. LIMITATION ON LIABILITY OF MEMBERS

8.1 CREDIT ENHANCEMENT FUND – The Credit Enhancement Fund shall be established under subsection 85(1) of the *FMA* with a financial contribution from Canada. Members shall not be required, without their written agreement, to make any contribution to the credit enhancement fund. Notwithstanding any other provision in this bylaw, this provision cannot be amended without the unanimous agreement of the members.

## 9. REMUNERATION AND INDEMNIFICATION

9.1 Fees and Expenses – The directors shall be paid a fee for attending at meetings of the board, as set out in the Schedule to this bylaw [*FMA s. 67 and 71*]. Any amendment to the Schedule by a resolution of the directors shall be effective until the next meeting of members when such amendment shall be confirmed by resolution of the members, or in the absence of such confirmation by the members, the amendment shall cease to be effective from the date of the meeting of members [*CBCA s. 103(3)*]. In addition, directors shall be reimbursed for reasonable travel and living expenses incurred in attending board, committee or member meetings or otherwise in respect of the performance by them of their duties, as set out in the Schedule to this bylaw [*FMA s. 71(b)*].

9.2 Indemnity of Directors and Officers – The Authority shall indemnify a director or officer of the Authority, a former director or officer of the Authority, or a person who acts or acted at the Authority's request as a director or officer of a body corporate of which the Authority is or was a member or creditor, and his heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of the Authority or such body corporate if:

- (a) the person acted honestly and in good faith with a view to the best interests of the Authority, or as the case may be, to the best interests of the other entity for which the individual acted as director or officer or in a similar capacity at the Authority's request; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the person had reasonable grounds for believing that his conduct was lawful [*FMA s. 66(2)(o) and CBCA s. 124*].

## 10. MEETINGS OF MEMBERS

- (a) Annual Meetings – The annual general meeting of members of the Authority shall be held at such time and on such day in each year as the board may from time to time determine, for the purpose of: presenting the annual report and audited financial statements of the Authority [*FMA s. 66(2)(p), FMA s. 70(a) and CBCA s. 155*];
- (b) having the representatives of the borrowing members elect the board [*FMA ss. 61(3) and 70(b)*];
- (c) appointing auditors [*FMA s. 66(2)(s) and CBCA s. 162*];
- (d) confirming, rejecting or amending any bylaws or any amendments of bylaws [*FMA s. 66(2)(e) and CBCA s. 103(1) to (4)*]; and
- (e) dealing with such other business of the Authority as may be presented by the board [*FMA s. 70(c)*].

10.1 Special Meetings – The directors may at any time call a special meeting of members, for the transaction of any business which may properly be brought before such a meeting of members. All business transacted at an annual meeting of members, except consideration of the financial statements, auditor’s report, election of directors and re-appointment of the incumbent auditor, is deemed to be special business.

10.2 Meetings Called by Members – The directors shall call a special meeting of all members or of just the borrowing members on written request of no less than 34% of the borrowing members.

10.3 Place of Meetings – Meetings of members shall be held at such place within Canada as the directors from time to time determine, or if all the members entitled to vote at the meeting so agree, at some place outside Canada.

10.4 Notice of Meetings – Notice of the time and place of each meeting of members shall be sent not less than 21 days and not more than 50 days before the date of the meeting to the auditor of the Authority, to each director, and to each person whose name, at the close of business on the day next preceding the giving of the notice, appears on the records of the Authority as a representative of a member entitled to vote at the meeting. Notice of a meeting of members shall state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to permit the members to form a reasoned judgment thereon; and
- (b) the text of any special resolution or bylaw to be submitted to the meeting.

A representative of a member and any other person entitled to attend a meeting of members may in any manner and at any time waive notice of or otherwise consent to a meeting of members.

10.5 Persons Entitled to be Present – The only persons entitled to attend a meeting of members shall be the representatives of the members entitled to vote thereat, or their proxy holder, the directors and the auditor of the Authority and others who although not entitled to vote are entitled or required under any provision of the *FMA*, the applicable provisions of the *CBCA*, or the bylaws of the Authority to be present at the meeting. Any other persons may be admitted only on the invitation of the Chairperson of the meeting or with the consent of the meeting.

10.6 Quorum – A quorum at any meeting of the members shall be the lesser of (i) 25 borrowing members or (ii) 5% of the borrowing members, present through their representative or by proxy, entitled to vote at the meeting. If a quorum is present at the opening of a meeting of members, the members present may proceed with the business of the meeting even if a quorum is not present throughout the meeting.

10.7 Right to Vote - At any meeting of members, unless the bylaws otherwise provide, each representative of a member is entitled to one vote. At any meeting of just the borrowing members, each representative of a borrowing member is entitled to one vote and the investing members shall not be entitled to attend or vote at the meeting.

10.8 Designation of Representatives – Every member that is a First Nation may, by resolution of its council designate the chief or a councillor of the First Nation as a representative to attend and act at the meeting [*FMA s. 57*]. A designation shall be in writing and certified by the chief or a member of council to be made by a resolution of council. The board may specify in a notice calling a meeting of members a time, preceding the time of such meeting by not more than 48 hours exclusive of non-business days, before which time the designations to be used at such meeting must be deposited. A designation shall be acted upon only if, prior to the time so specified, it shall have been deposited with the Authority or an agent thereof specified in such notice or, where no time is specified in such notice, the designation has been received by the corporate clerk of the Authority or by the Chairperson of the meeting or any adjournment thereof prior to the time of voting.

10.9 Proxies – Every representative of a member entitled to vote at a meeting of members may, by means of a proxy, appoint a proxy holder or one or more alternate proxy holders who are not required to be members to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy. A proxy shall be in writing and executed by the representative of the member or by his attorney authorized in writing and shall conform with the requirements of this bylaw. The board may specify in a notice calling a meeting of members a time, preceding the time of such meeting by not more than 48 hours exclusive of non-business days, before which time the proxies to be used at such meeting must be deposited. A proxy shall be acted upon only if, prior to the time so specified, it shall have been deposited with the Authority or an agent thereof specified in such notice or, where no time is specified in such notice, the proxy has been received by the corporate clerk of the Authority or by the Chairperson of the meeting or any adjournment thereof prior to the time of voting.

10.10 Majority Votes – Unless otherwise required by the applicable provisions of the *CBCA* or the bylaws of the Authority, all questions proposed for the consideration of the members at a meeting shall be decided by a majority of the votes cast thereon. In case of an equality of votes either upon a show of hands or upon a poll, the Chairperson of the meeting shall be entitled to a second or casting vote.

10.11 Show of Hands – Subject to the applicable provisions of the *CBCA*, at all meetings of members every question shall be decided by a show of hands unless a ballot thereon be required by the Chairperson or be demanded by a representative of a member or proxy holder present and entitled to vote. Upon a show of hands every person present and entitled to vote, has one vote. After a show of hands has been taken upon any question, the Chairperson may require or any member or proxy holder present and entitled to vote may demand a ballot thereon. Whenever a vote by show of hands shall have been taken upon a question, unless a ballot thereon be so required or demanded, a declaration by the Chairperson that the vote upon the question has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes of the meeting shall be *prima facie* evidence of the fact without proof of the number or proportion of the votes recorded in favor of or against the question. The result of the vote so taken and declared shall be the decision of the Authority on the question. A demand for a ballot may be withdrawn at any time prior to the taking of the ballot.

10.12 Ballots – If a ballot is required by the Chairperson of the meeting or is demanded and the demand is not withdrawn, a ballot upon the question shall be taken in such manner as the Chairperson of the meeting directs.

10.13 Adjournment – The Chairperson of a meeting of members may, with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn the meeting from time to time and from place to place.

10.14 Chair of Meetings – The Chairperson, or in the absence of the Chairperson, the Deputy Chairperson, shall chair all meetings of the members. In the absence of the Chairperson and the Deputy Chairperson, the directors at the meeting will appoint a chair for the meeting from amongst themselves.

10.15 Remote Meetings – Notwithstanding any other provision of these bylaws, if authorized by the directors in their sole discretion, and subject to such guidelines and procedures as the directors may adopt, members and proxy holders not physically present at a meeting of members may, by means of remote communication (1) participate in a meeting of members; and (2) be deemed present in person and vote at a meeting of members, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (a) the Authority shall implement reasonable measures to verify that each member deemed present and permitted to vote at the meeting by means of remote communication is a member or proxy holder; and (b) the Authority shall implement reasonable measures to provide such members and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (c) if any member or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Authority.

## 11. FINANCIAL YEAR

11.1 Fiscal Year – The fiscal year of the Authority shall end on the 31<sup>st</sup> day of March in each year, until changed by resolution of the board.

11.2 Annual Budget – At the beginning of every fiscal year, prior to July 31<sup>st</sup>, the President shall prepare an annual budget of the Authority and present it to the board for approval [*FMA s. 73*].

11.3 Annual Report – The Chairperson shall, within four months after the end of each fiscal year, submit to the members of the Authority and the Minister a report of the operations of the Authority for that fiscal year, which report will include the financial statements of the Authority and its auditor's opinion on them [*FMA s. 88*].

## 12. NOTICES

12.1 Method of Giving Notice – Any notice, communication or other document to be given by the Authority to a representative, member, director, officer or auditor or a member of a committee of the board of the Authority under any provision of the bylaws or otherwise, shall be sufficiently given if delivered personally to the person to whom it is to

be given, or if delivered to the person's recorded address, or if mailed by prepaid post in a sealed envelope addressed to him at his recorded address or if sent to him at his recorded address by means of any prepaid transmitted or recorded communication. The corporate clerk may change the address on the records of the Authority of any member in accordance with any information believed by him to be reliable. A notice, communication or document so delivered shall be deemed to have been given when it is delivered personally or at the address aforesaid; a notice, communication or document so mailed shall be deemed to have been given when it is deposited in a post office or public letter box; and a notice so sent by means of transmitted or recorded communication, shall be deemed to have been given when it is delivered to the appropriate communication company or agency or its representative for dispatch. If the person receiving a notice has notified the Authority that they will accept notices by facsimile or by e-mail and has provided in that notification a facsimile number or e-mail address, then notices may be given to that person in that fashion. The facsimile number or e-mail address of any such person may only be changed on the records of the Authority if that person has notified the Authority of that change. Notices given in that fashion shall be deemed to have been given at the time they are sent. For greater certainty, notices shall not be given by voice mail.

12.2 Computation of Time – In computing the date when notice must be given under any provision of the bylaws requiring a specified number of days notice of any meeting or other event, the date of giving the notice shall be excluded and the date of the meeting or other event shall be included.

12.3 Omissions and Errors – The accidental omission to give any notice to any member, director, officer or auditor or a member of a committee of the board of the Authority or the non-receipt of any notice by any member, director, officer or auditor or a member of a committee of the board of the Authority or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

12.4 Waiver of Notice – Any representative, member, director, officer or auditor or member of a committee of the board of the Authority may at any time waive the sending of any notice, or waive or abridge the time for any notice, required to be given under the bylaws or otherwise and such waiver or abridgement, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in the giving or in the time of such notice, as the case may be. Any such waiver or abridgement shall be in writing except that a waiver of notice of a meeting of members or of the board or a committee of the board may be given in any manner. However any such unwritten waiver of notice shall be recorded in writing by the corporate clerk of the meeting.

12.5 Signatures to Notices – The signatures to any notice to be given by the Authority may be written, stamped, typewritten or printed or partly written, stamped, typewritten or printed.

13. EXECUTION OF DOCUMENTS

13.1 Signing Officers – Deeds, transfers, assignments, contracts and obligations of the Authority may be signed by two persons, one of whom holds the office of Chairperson, Deputy Chairperson, President or director and the other of whom holds one of the said offices or ~~is an officer of the Authority the office of corporate clerk, assistant corporate clerk, director or any other office created by the President~~. Notwithstanding this, the board may at any time and from time to time by resolution direct the manner in which and the person or persons by whom any particular deed, transfer, contract or obligation or any class of deeds, transfers, contracts or obligations may be signed.

14. HEAD OFFICE

14.1 Head Office – The head office of the Authority shall be on reserve lands of the Westbank First Nation or at a location on other reserve lands as determined by the board [*FMA* s. 72].

15. EFFECTIVE DATE

15.1 Effective Date – This bylaw shall come into force when enacted by the directors, subject to the provisions of the *FMA* and the corresponding applicable provisions of the *CBCA*.

## SCHEDULE

	<u>Daily f</u> Fee for directors, not including the Chairperson, attending a meeting of the directors	\$540.00
	<u>Daily f</u> Fee for the Chairperson attending a meeting of directors	\$720.00