

FIRST NATIONS LAND MANAGEMENT ACT

FEDERAL RATIFICATION LEGISLATION FOR THE *FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT*

EXECUTIVE SUMMARY

The *Framework Agreement on First Nation Land Management (Framework Agreement)* requires that it be ratified on behalf of Canada by an act of Parliament and that the act be consistent with the Framework Agreement. Parliament enacted the *First Nations Lands Management Act (FNLMA)* in June of 1999.

While, the *FNLMA* repeats and restates certain content, it does not replace or supersede the language or previously agreed to principles contained in the *Framework Agreement*. It is the *Framework Agreement* that is the operative document as it is signed and ratified by both Canada and First Nations.

United Nations Declaration on the Rights of Indigenous Peoples: In the 2018 amendments to the *Framework Agreement* and *FNLMA*, Canada agreed to wording that confirms its commitment to implementing the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

Ratification Process: The *FNLMA* follows the *Framework Agreement* in restating what a Land Code must contain, how a Land Code is approved by the community, the role of the independent Verifier and Ratification Officer.

First Nation Land: The *FNLMA* restates that title to First Nation Land will not be affected and that these lands will continue to be reserves or lands set aside in the Yukon. First Nation Lands cannot be sold or surrendered.

In the event a First Nation agrees to exchange lands, the new land received by the First Nation must:

- Be of equal size or larger
- Be converted to reserve land

Land Code: Land Codes enacted in accordance with the Framework Agreement have the force of law and are given “Judicial Notice”.

First Nation Powers: The powers of a First Nation to govern its First Nation Land and natural resources, receive and use land revenues, and its legal capacity for land purposes are restated in the *FNLMA*. These powers are to be exercised for the use and benefit of the First Nation.

Transfer of First Nations Moneys: The *FNLMA* repeats, that all revenue moneys and capital moneys of the First Nation previously collected and held by Canada will be transferred to the First Nation when its Land Code comes into force.

First Nation Laws: The law-making powers of a First Nation under its Land Code reappear in *FNLMA*. First Nation laws may cover any matter related to First Nation Land and natural resources, 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 *FNLMA* repeats Canada's obligation to set up a separate register to record interests granted by First Nations under their Land Codes. Canada has established the First Nations Lands Register which is guided by regulations jointly developed by the Lands Advisory Board and Canada.

First Nation Expropriation: The *FNLMA* repeats 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 also restated, 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 Unlike the Indian Act, First Nation Lands are not subject to expropriation by provincial governments, provincial agencies, municipalities or utilities such as railways, pipelines or power companies.

Limited Federal Expropriation: The protections against the expropriation of First Nation Land by the federal government, which were negotiated in the *Framework Agreement*, are repeated in the *FNLMA*. These include provisions on limited expropriation in cases where it is justifiable and necessary for a federal public purpose that serves the national interest.

The *FNLMA* also restates Canada's obligation to provide replacement land to the First Nation, which would become First Nation Land, in order to protect the land base of the First Nation. The *FNLMA* repeats provisions on compensation and the resolution of disputes over expropriation.

Liability Protection: Canada will remain liable for actions taken before the Land Code comes into force. The First Nation will assume responsibility for its land governance actions after that date.

Application to other First Nations: The *FNLMA* only applies to the First Nation signatories set out in the schedule to the Act and the *Framework Agreement* is fully implemented when an individual First Nation ratifies it by enacting its Land Code. That ratification by a First Nation does not affect any other First Nation. If other First

Nations become signatories to the *Framework Agreement*, the Governor in Council may add them to this schedule.

EFFECT ON OTHER FEDERAL LEGISLATION

Indian Act: The *FNLMA* confirms that the land management provisions of the *Indian Act* do not apply to any of signatory First Nations that ratify the *Framework Agreement* and adopt a Land Code, or to their members or their First Nation Lands.

Expropriation Act: The *FNLMA* makes it clear that the new rules specified in the *Framework Agreement* for protection of First Nation Land from expropriation override other **federal** legislation like the *Expropriation Act*. Under the *Framework Agreement*, provincial legislation granting powers of expropriation cannot apply at all.

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: Operational First Nations will enact their own laws on this topic