

FIRST NATIONS LAND MANAGEMENT ACT

(BILL C-49)

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* (*Act*) was required under the *Framework Agreement on First Nation Land Management* (*Framework Agreement*) for two purposes:

- to ratify;
- and bring into effect the *Framework Agreement*.

The *Act* is to be consistent with the *Framework Agreement* and to apply in the same manner to the First Nations who 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 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 governance regime and remove its First Nation Land from the Minister's control under the *Indian Act*. The *Framework Agreement* was ratified by Canada by enacting the *Act* and, as of April 2019, 82 First Nations have ratified the *Framework Agreement* by enacting their own Land Codes.

IMPLEMENTATION OF THE FRAMEWORK AGREEMENT

United Nations Declaration on the Rights of Indigenous Peoples: In a first for Canada, in the most recent December 13, 2018 amendments to the *Framework Agreement* and *Act*, the introductory clauses commit Canada to implementing the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

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 Ratification Officer.

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

Land Code: Land Codes enacted in accordance with the *Framework Agreement* have the force of law and are validly recognized by Canadian courts.

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 included in the *Act*. These powers are to be exercised for the use and benefit of the First Nation.

Transfer of First Nations Moneys: The *Act* provides 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 are set out in the *Act*. The 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 *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 repeated in the *Act*. 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 *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 *Act* contains 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 *Act* only applies to the First Nation signatories set out in the schedule. 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 *Act* confirms that the land management provisions of the *Indian Act* do not apply to any of signatory First Nations that adopt a Land Code, their members or their First Nation Land. This will also apply to other eventual First Nation signatories.

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 First Nation now enact its own laws on this topic.