

Ministre des
Relations Couronne-Autochtones



Minister of
Crown-Indigenous Relations

Ottawa, Canada K1A 0H4

I, Minister of Crown-Indigenous Relations, HEREBY APPROVE, pursuant to section 83 of the *Indian Act*, the following by-law made by Okanagan Indian Band, in the Province of British Columbia, at a meeting held on October 22, 2018.

- ***Okanagan Indian Band Financial Administration By-Law, 2018***

Dated at Ottawa, Ontario, this 22 day of February, 2019.

A handwritten signature in blue ink that reads 'Carolyn Bennett'.

Hon. Carolyn Bennett, M.D., P.C., M.P.

Canada

OKANAGAN INDIAN BAND
FINANCIAL ADMINISTRATION BY-LAW
2018

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WHEREAS:

A. Pursuant to section 83 of the *Indian Act*, the Council of an Indian band may make by-laws respecting the financial administration of the Indian band; and

B. The Council of the Okanagan Indian Band considers it to be in the best interests of OKIB to make a financial administration by-law for such purposes which complies with the standards for financial administration laws established by the First Nations Financial Management Board under the *First Nations Fiscal Management Act*;

NOW THEREFORE the Council of the Okanagan Indian Band enacts as follows:

PART I - Citation

Citation

1. This by-law may be cited as the *Okanagan Indian Band Financial Administration By-law, 2018*.

PART II - Interpretation and Application

Definitions

2. (1) Unless the context indicates the contrary, in this by-law:

“Act” means the *Indian Act*;

“annual financial statements” means the annual financial statements of OKIB referred to in Division 7 of Part IV;

“appropriation” means an allocation of money under a budget to the purposes for which it may be used;

“auditor” means the auditor of OKIB appointed under section 72;

“band council resolution” means a duly passed resolution of Council;

“budget” means the annual budget of OKIB that has been approved by the Council;

“code” means a code adopted by OKIB under the *First Nations Oil and Gas and Moneys Management Act* or a land code adopted by OKIB under the *First Nations Land Management Act*;

“Council” means the Council of OKIB;

“councillor” means a member of the Council of OKIB and includes the Chief of OKIB;

“Director of Finance” means the person appointed Director of Finance under section 19;

“Executive Director” means the person appointed Executive Director under section 18;

“Finance and Audit Committee” means the Finance and Audit Committee established under section 12;

“financial administration” means the management, supervision, control and direction of all matters relating to the financial affairs of OKIB;

“financial institution” means the First Nations Finance Authority, a bank, credit union or caisse populaire;

“financial competency” means the ability to read and understand financial statements that present accounting issues reasonably expected to be raised by OKIB’s financial statements;

“financial records” means all records respecting the financial administration of OKIB, including the minutes of meetings of the Council and the Finance and Audit Committee;

“OKIB” means the Okanagan Indian Band;

“OKIB’s financial assets” means all money and other financial assets of OKIB;

“OKIB’s lands” means all reserves of OKIB within the meaning of the *Indian Act*;

“OKIB law” means any law, including any by-law or code, of OKIB made by the Council or the membership of OKIB;

“OKIB’s records” means all records of OKIB respecting its governance, management, operations and financial administration;

“fiscal year” means the fiscal year of OKIB set out in section 23;

“GAAP” means generally accepted accounting principles of the Chartered Professional Accountants of Canada, as revised or replaced from time to time, and includes any standards developed by the Public Sector Accounting Board;

“multi-year financial plan” means the plan referred to in section 24;

“officer” means the Executive Director, Director of Finance and any other employee of OKIB designated by the Council as an officer;

“record” means anything on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise;

“related body” means

(a) any agency of OKIB,

(b) any corporation in which OKIB has a material or controlling interest,

(c) any partnership in which OKIB or another related body of OKIB is a partner with a material or controlling interest, or

(d) a trust of OKIB;

“trust account” means an account at a financial institution in the name of OKIB in which funds are held in trust by OKIB for beneficiaries, whether or not such a trust is subject to the terms of a written trust agreement; and

“special purpose report” means a report described in subsection 71.

(2) Except as otherwise provided in this by-law, words and expressions used in this by-law have the same meanings as in the Act.

(3) Unless a word or expression is defined under subsection (1) or (2) or another provision of this by-law, the definitions in the *Interpretation Act* apply.

(4) All references to named enactments in this by-law are to enactments of the Government of Canada.

Interpretation

3.(1) In this bylaw, the following rules of interpretation apply:

- (a) words in the singular include the plural, and words in the plural include the singular;
- (b) words importing female persons include male persons and corporations and words importing male persons include female persons and corporations;
- (c) if a word or expression is defined, other parts of speech and grammatical forms of the same word or expressions have corresponding meanings;
- (d) the expression “must” is to be construed as imperative, and the expression “may” is to be construed as permissive;
- (e) unless the context indicates otherwise, “including” means “including, but not limited to”, and “includes” means “includes, but not limited to”; and
- (f) a reference to an enactment includes any amendment or replacement of it and every regulation made under it.

(2) This by-law must be considered as always speaking and where a matter or thing is expressed in the present tense, it must be applied to the circumstances as they arise, so that effect may be given to this by-law according to its true spirit, intent and meaning.

(3) Words in this by-law referring to an officer, by name of office or otherwise, also apply to any person designated by the Council to act in the officer’s place or to any person assigned or delegated to act in the officer’s place under this by-law.

Posting of Public Notice

4.(1) If a public notice must be posted under this by-law, the public notice is properly posted if a written notice is placed in a conspicuous and accessible place for public viewing in the principal administrative offices of OKIB.

(2) Unless expressly provided otherwise, if a public notice of a meeting must be posted under this by-law the notice must be posted at least fifteen (15) days before the date of the meeting.

Calculation of Time

5. In this by-law, time must be calculated in accordance with the following rules:

- (a) where the time limited for taking an action ends or falls on a holiday, the action may be taken on the next day that is not a holiday;
- (b) where there is a reference to a number of days, not expressed as “clear days”, between two events, in calculating that number of days the day on which the first event happens is excluded and the day on which the second event happens is included;
- (c) where a time is expressed to begin or end at, on or within a specified day, or to continue to or until a specified day, the time includes that day;
- (d) where a time is expressed to begin after or to be from a specified day, the time does not include that day; and
- (e) where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.

Conflict of Laws

6. If there is a conflict between this by-law and another OKIB law, other than a code, this by-law prevails.

Scope and Application

7. This by-law applies to the financial administration of OKIB.

PART III - Administration

DIVISION 1 - Council

Responsibilities of Council

8.(1) The Council is responsible for all matters relating to the financial administration of OKIB whether or not they have been assigned or delegated to an officer, employee, committee, contractor or agent by or under this by-law.

(2) Subject to this by-law and any other applicable OKIB law, the Council may delegate to any of its officers, employees, committees, contractors or agents any of its functions under this by-law except the following:

- (a) the approval of Council policies, procedures or directions;
- (b) the appointment of members, the chair and the vice-chair of the Finance and Audit Committee;
- (c) the approval of budgets and financial statements of OKIB; and
- (d) the approval of borrowing of OKIB.

Council Policies, Procedures and Directions

9.(1) Subject to subsection (2), the Council may establish policies and procedures and give directions respecting any matter relating to the financial administration of OKIB.

(2) The Council must establish policies or procedures or give directions respecting the acquisition, management and safeguarding of OKIB assets.

(3) The Council must not establish any policies or procedures or give any directions relating to the financial administration of OKIB that are in conflict with this by-law, the Act or GAAP.

(4) The Council must ensure that all human resources policies and procedures are designed and implemented to facilitate effective internal financial administration controls.

(5) The Council must document all its policies, procedures and directions and make them available to any person who is required to act in accordance with them or who may be directly affected by them.

Reporting of Remuneration and Expenses

10.(1) In this section:

“entity” means a corporation or a partnership, a joint venture or any other unincorporated association or organization, the financial transactions of which are consolidated in the annual financial statements of OKIB in accordance with GAAP;

“expenses” includes the costs of transportation, accommodation, meals, hospitality and incidental expenses; and

“remuneration” means any salaries, wages, commissions, bonuses, fees, honoraria and dividends and any other monetary and non-monetary benefits.

(2) Annually the Director of Finance must prepare a report separately listing the remuneration paid and expenses reimbursed by OKIB, and by any entity, to each councillor whether such amounts are paid to the councillor while acting in that capacity, or in any other capacity.

DIVISION 2 - Finance and Audit Committee

Interpretation

11. In this Division, “Committee” means the Finance and Audit Committee.

Committee Established

12.(1) The Committee of OKIB is established to provide Council with advice and recommendations in order to support Council’s decision-making process respecting the financial administration of OKIB.

(2) The Council must appoint not less than three (3) members of the Committee, a majority of whom must have financial competency and all of whom must be independent.

(3) For purposes of this section, an individual is considered to be independent if the individual does not have a direct or indirect financial relationship with OKIB government that could, in the opinion of Council, reasonably interfere with the exercise of independent judgment as a member of the Committee.

(4) The Council must establish policies or procedures or give directions

(a) setting criteria to determine if an individual is eligible to be a member of the Committee and is independent;

(b) requiring confirmation, before appointment, that each potential member of the Committee is eligible to be a member and is independent; and

(c) requiring each member of the Committee annually to sign a statement confirming that the member continues to meet the criteria referred to in paragraph (a).

(5) If the Committee consists of

(a) three (3) members, at least one (1) of the Committee members must be a councillor; and

(b) four (4) or more members, at least two (2) of the Committee members must be councillors.

(6) Subject to subsection (7), the Committee members must be appointed to hold office for staggered terms of not less than three (3) complete fiscal years.

(7) A Committee member may be removed from office by the Council if

(a) the member misses three (3) consecutively scheduled meetings of the Committee;

(b) the chair of the Committee recommends removal; or

(c) the majority of the Committee recommends removal.

(8) If a Committee member that is appointed as a councillor ceases to be a councillor for any reason during his or her term on the Committee, that Committee member will be deemed to have resigned as of the date on which he or she ceased to be a councillor.

(9) If a Committee member is removed from office, resigns or dies before the member's term of office expires, the Council must as soon as practicable appoint a new Committee member to hold office for the remainder of the first member's term of office.

Chair and Vice-chair

13. (1) The Council must appoint a chair and a vice-chair of the Committee, one of whom must be a councillor.

(2) If the Council appoints a non-councillor as chair of the Committee,

(a) the Council must ensure that notices and agendas of all Council meetings are sent to the chair;

(b) on request of the chair, the Council must provide the chair with any materials or information provided to the Council respecting matters before it; and

(c) the chair may attend and speak at Council meetings.

Committee Procedures

14.(1) The quorum of the Committee is fifty percent (50%) of the total number of Committee members, including at least one (1) councillor.

(2) Except where a Committee member is not permitted to participate in a decision because of a conflict of interest, every Committee member has one (1) vote in all Committee decisions.

(3) In the event of a tie vote in the Committee, the chair of the Committee may cast a second tiebreaking vote.

(4) Subject to subsection (5), the Executive Director and the Director of Finance must be notified of all Committee meetings and, subject to reasonable exceptions, must attend those meetings.

(5) The Executive Director or the Director of Finance may be excluded from all or any part of a Committee meeting by a recorded vote if

(a) the subject matter relates to a confidential personnel or performance issue respecting the Executive Director or the Director of Finance; or

(b) it is a meeting with the auditor.

(6) The Committee must meet

(a) at least once every quarter in each fiscal year as necessary to conduct the business of the Committee; and

(b) as soon as practical after it receives the audited annual financial statements and report from the auditor.

(7) The Committee must provide minutes of its meetings to the Council and report to the Council on the substance of each Committee meeting as soon as practicable after each meeting.

(8) Subject to this by-law and any directions given by the Council, the Committee may make rules for the conduct of its meetings.

(9) After consultation with the Executive Director, the Committee may retain a consultant to assist in the performance of any of its responsibilities.

Financial Planning Responsibilities

15.(1) The Committee must carry out the following activities in respect of the financial administration of OKIB:

(a) annually develop, and recommend to the Council for approval, short, medium and long-term financial plans;

(b) review draft annual budgets and recommend them to the Council for approval;

(c) on an ongoing basis, monitor the financial performance of OKIB against the budget and report any significant variations to the Council; and

(d) review the quarterly financial statements and recommend them to the Council for approval.

(2) The Committee may make a report or recommendations to the Council on any matter respecting the financial administration of OKIB that is not otherwise specified to be its responsibility under this by-law.

Audit responsibilities

16. The Committee must carry out the following audit activities in respect of the financial administration of OKIB:

- (a) make recommendations to the Council on the selection, engagement and performance of an auditor;
- (b) receive assurances on the independence of a proposed or appointed auditor;
- (c) review and make recommendations to the Council on the planning, conduct and results of audit activities;
- (d) review and make recommendations to the Council on the audited annual financial statements, including any special purpose reports;
- (e) periodically review and make recommendations to the Council on policies, procedures and directions on reimbursable expenses and perquisites of the councillors, officers and employees of OKIB;
- (f) monitor financial reporting risks and fraud risks and the effectiveness of mitigating controls for those risks taking into consideration the cost of implementing those controls;
- (g) conduct a review of this by-law under section 97 and, where appropriate, recommend amendments to the Council; and
- (h) periodically review and make recommendations to the Council on the terms of reference of the Committee.

Council Assigned Responsibilities

17. Without limiting section 8(2), the Council may assign to the Committee or another committee of the Council such additional activities in respect of the financial administration of OKIB as the Council considers appropriate to better ensure the sound financial administration of OKIB.

DIVISION 3 - Officers and Employees

Executive Director

18.(1) The Council must appoint a person as Executive Director of OKIB and may set the terms and conditions of that appointment.

(2) Reporting to the Council, the Executive Director is responsible for leading the planning, organization, implementation and evaluation of the overall management of all the day-to-day operations of OKIB, including the following duties:

- (a) to oversee, supervise and direct the activities of all officers and employees of OKIB;
- (b) to oversee and administer the contracts of OKIB;
- (c) to identify, assess, monitor and report on financial reporting risks and fraud risks;

(d) to monitor and report on the effectiveness of mitigating controls for the risks referred to in paragraph (c) taking into consideration the cost of implementing those controls;

(e) to perform any other duties of the Executive Director under this by-law; and

(f) to carry out any other activities specified by the Council that are not contrary to the Act or inconsistent with the Executive Director's duties specified in this by-law.

(3) The Executive Director may assign the performance of any of the Executive Director's duties or functions

(a) to an officer or employee of OKIB; and

(b) with the approval of the Council, to a contractor or agent of OKIB.

(4) Any assignment of duties or functions under subsection (3) does not relieve the Executive Director of the responsibility to ensure that these duties or functions are carried out properly.

Director of Finance

19.(1) The Council must appoint a person as Director of Finance of OKIB and may set the terms and conditions of that appointment.

(2) Reporting to the Executive Director, the Director of Finance is responsible for the day-to-day management of the systems of the financial administration of OKIB, including the following duties:

(a) to ensure the financial administration systems, policies, procedures, directions and internal controls are appropriately designed and operating effectively;

(b) to administer and maintain all charts of accounts of OKIB;

(c) to prepare the draft annual budgets;

(d) to prepare the monthly financial information required in section 68, the quarterly financial statements required in section 69 and the draft annual financial statements required in section 70;

(e) to prepare the financial components of reports to the Council and of any short, medium and long-term plans, projections and priorities referred to in subsection 15(1);

(f) to actively monitor compliance with any agreements and funding arrangements entered into by OKIB;

(g) to administer and supervise the preparation and maintenance of financial records and the financial administration reporting systems;

(h) to actively monitor compliance with the Act, this by-law, any other applicable OKIB law and any policies, procedures and directions of the Council respecting the financial administration of OKIB;

(i) to evaluate the financial administration systems of OKIB and recommend improvements;

(j) to develop and recommend procedures for the safeguarding of assets and to ensure approved procedures are followed;

(k) to develop and recommend to Council procedures for identifying and mitigating financial reporting and fraud risks and to ensure approved procedures are followed;

(l) to perform any other duties of the Director of Finance under this by-law; and

(m) to carry out any other activities specified by the Executive Director that are not contrary to the Act or inconsistent with the Director of Finance's duties under this by-law.

(3) With the approval of the Executive Director, the Director of Finance may assign the performance of any of the duties or functions of the Director of Finance to any officer, employee, contractor or agent of OKIB, but this assignment does not relieve the Director of Finance of the responsibility to ensure that these duties or functions are carried out properly.

Organizational Structure

20.(1) The Council must establish and maintain a current organization chart for the governance, management and administrative systems of OKIB.

(2) The organization chart under subsection (1) must include the following information:

(a) all governance, management and administrative systems of OKIB;

(b) the organization of the systems described in paragraph (a), including the linkages between them;

(c) the specific roles and responsibilities of each level of the organization of the systems described in paragraph (a); and

(d) all governance, management and administrative positions at each level of the organization of the systems described in paragraph (a), including

(i) the membership on the Council, Finance and Audit Committee and all other committees of the Council and OKIB,

(ii) the Executive Director, the Director of Finance and other officers of OKIB, and

(iii) the principal lines of authority and the responsibility between the Council, the committees referred to in subparagraph (i) and the officers referred to in subparagraph (ii).

(3) On request, the Executive Director must provide a copy of the organization chart under subsection (1) to a councillor, a member of a committee referred to in subparagraph (2)(d)(i), an officer, employee or contractor or agent of OKIB and a member of OKIB.

(4) In the course of discharging his or her responsibilities under this by-law, the Executive Director must recommend to the Council for approval and implementation human resource policies and procedures that facilitate effective internal financial administration controls.

(5) The Council must take all reasonable steps to ensure that OKIB hires or retains qualified and competent personnel to carry out the financial administration activities of OKIB.

DIVISION 4 - Conduct Expectations

Conduct of Councillors

21.(1) When exercising a power, duty or responsibility relating to the financial administration of OKIB, a councillor must

- (a) comply with this by-law, the Act, and any other applicable OKIB law;
- (b) act honestly, in good faith and in the best interests of OKIB;
- (c) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances; and
- (d) avoid conflicts of interest and comply with the requirements of the Schedule: Avoiding and Mitigating Conflicts of Interest, including required annual disclosures of private interests.

(2) If it has been determined under this by-law or by a court of competent jurisdiction that a councillor has contravened this section, the Council may

- (a) record the Council's displeasure in the Council minutes;
- (b) take any other appropriate action authorized under a policy of council or OKIB by-law; and
- (c) use any legal means available to it to remedy the situation.

Conduct of Officers, Employees, Contractors, etc.

22.(1) This section applies to

- (a) an officer, employee, contractor and agent of OKIB;
- (b) a person acting under the delegated authority of the Council or OKIB; or
- (c) a member of a committee of the Council or OKIB who is not a councillor.

(2) If a person is exercising a power, duty or responsibility relating to the financial administration of OKIB, that person must

- (a) comply with this by-law, the Act and any other applicable OKIB law;
- (b) comply with all policies, procedures and directions of the Council; and
- (c) avoid conflicts of interest and comply with any applicable requirements of the Schedule: Avoiding and Mitigating Conflicts of Interest, including required disclosure of potential conflicts of interest.

(3) The Council must incorporate the relevant provision of this section into the terms of the following contracts and appointments entered into or made after this section comes into force:

- (a) any applicable contracts with employees of OKIB
- (b) the appointment of every officer of OKIB;

- (c) every applicable contract of a contractor of OKIB ;
- (d) the appointment of every member of a committee who is not a councillor; and
- (e) the applicable appointments of agents of OKIB.

(4) If a person contravenes subsection (2), the following actions may be taken:

- (a) an officer or employee may be disciplined, including dismissal;
- (b) a contractor's contract may be terminated;
- (c) the appointment of a member of a committee may be revoked;
- (d) the appointment of an agent may be revoked; or
- (e) such other action as may be deemed appropriate by Council.

PART IV - Financial Management

DIVISION 1 - Financial Plans and Annual Budgets

Fiscal Year

23. The fiscal year of OKIB is April 1 to March 31 of the following year.

Multi-year Financial Plan

24. No later than March 31 of each year, the Council must approve a multi-year financial plan that

- (a) has a planning period of five (5) years comprised of the current fiscal year and the four (4) succeeding fiscal years;
- (b) is based on the projections of revenues, expenditures and transfers between accounts;
- (c) sets out projected revenues, segregated by significant category;
- (d) sets out projected expenditures, segregated by significant category;
- (e) in respect of transfers between accounts, sets out the amounts from the tangible capital asset reserve account;
- (f) shows all categories of restricted cash; and
- (g) indicates whether in any of the five (5) years of the plan a deficit or surplus is expected from the projection of revenues and expenditures for that year.

Content of Annual Budget

25.(1) The annual budget must encompass all the operations for which OKIB is responsible and must identify

- (a) anticipated revenues, segregated by significant category, with estimates of the amount of revenue from each category;
- (b) anticipated expenditures, segregated by significant category, with estimates of the amount of expenditure for each category; and
- (c) any anticipated annual and accumulated surplus or annual and accumulated deficit and the application of year-end surplus.

(2) The revenue category of moneys derived from OKIB's lands must be shown separately in the annual budget from other revenues and must include a sub-category for revenues from natural resources obtained from OKIB's lands.

(3) In subsection (2), "natural resources" means any material on or under OKIB's lands in their natural state which when extracted has economic value.

Budget and Planning Process Schedule

26.(1) On or before January 31 of each year, the Director of Finance must prepare and submit to the Finance and Audit Committee for review a draft annual budget and a draft multi-year financial plan for the next fiscal year.

(2) On or before February 15 of each year, the Finance and Audit Committee must review

(a) the draft annual budget and recommend an annual budget to the Council for approval; and

(b) the draft multi-year financial plan and recommend a multi-year financial plan to the Council.

(3) On or before March 31 of each year, the Council must review and approve the annual budget for OKIB for the next fiscal year.

Additional Requirements for Budget Deficits

27. If a draft annual budget contains a proposed deficit, the Council must ensure that

(a) the multi-year financial plan of OKIB demonstrates how and when this deficit will be addressed and how it will be serviced; and

(b) the deficit does not have a negative impact on the credit worthiness of OKIB.

Amendments to Annual Budgets

28.(1) The annual budget of OKIB must not be changed without the approval of the Council.

(2) Subject to section 35, unless there is a substantial change in the forecasted revenues or expenses of OKIB or in the expenditure priorities of the Council, the Council must not approve a change to the annual budget of OKIB.

Policy for OKIB Information or Involvement

29.(1) The Council must establish policies or procedures or give directions respecting the means by which members of OKIB must be informed about or involved in consideration of

- (a) the annual budget;
- (b) the multi-year financial plan; and
- (c) budget deficits or extraordinary expenditures.

(2) The Council must post a public notice of each Council meeting when each of the following is presented for approval:

- (a) the multi-year financial plan;
- (b) the annual budget; and
- (c) an amendment to the annual budget.

(3) Members of OKIB may attend that part of the Council meeting when the matters referred to in subsection (2) are being considered.

DIVISION 2 - Financial Institution Accounts

Financial Institution Accounts

30.(1) No account may be opened for the receipt and deposit of money of OKIB unless the account is

- (a) in the name of OKIB;
- (b) opened in a financial institution;
- (c) authorized by the Executive Director or the Director of Finance; and
- (d) authorized by band council resolution.

(2) OKIB must establish the following accounts in a financial institution:

- (a) one or more a general accounts for money from any sources other than those described in paragraphs (b) to (d);
- (b) a trust account if OKIB has money held in trust;
- (c) a land and resources account for money from revenues from OKIB's lands; and
- (d) a tangible capital asset reserve account for money set aside for purposes of section 85.

(3) OKIB may establish any other accounts not referred to in subsection (2) as may be necessary and appropriate to manage OKIB's financial assets.

Accounts Management

31.(1) The Director of Finance must ensure the safekeeping of all money received by OKIB.

(2) The Director of Finance

- (a) must deposit all money received by OKIB as soon as practicable into the appropriate accounts described in section 30; and
- (b) must not authorize payment of money from an account described in section 30 unless:
 - (i) the payment relates to the subject matter for which the account was established and is otherwise authorized or permitted under this by-law; and
 - (ii) is made in accordance with a policy or direction of the Council.

DIVISION 3 - Expenditures

Prohibited Expenditures

32.(1) Money or financial assets in a trust account must not be used for a purpose other than that permitted under the terms of the trust.

(2) Money in a tangible capital asset reserve account must not be used for any purpose other than that described in Part V.

Prohibited Agreements

33. OKIB must not enter into an agreement or undertaking that requires OKIB to expend money that is not authorized by or that contravenes this by-law.

No Expenditure Without Appropriation

34.(1) Subject to subsection 35(1), money must not be paid out of any account unless the expenditure is authorized under an appropriation.

(2) Subsection (1) does not apply to expenditures from a trust account where the expenditure is authorized under the terms of the trust.

Emergency Expenditures

35.(1) The Executive Director may approve an expenditure for an emergency purpose that was not anticipated in the budget if the expenditure is not expressly prohibited by or under this by-law or another OKIB law.

(2) The Council must establish policies and procedures to authorize expenditures under subsection (1).

(3) The expenditure under subsection (1) must be reported to the Council as soon as practicable and the Council must amend the budget to include the expenditure.

(4) Subsection (1) does not give the Executive Director the authority to borrow for the purpose of making an expenditure for an emergency purpose.

Appropriations

36.(1) An amount that is appropriated in a budget must not be expended for any purpose other than that described in the appropriation.

(2) The total amount expended by OKIB in relation to an appropriation must not exceed the amount specified in the budget for OKIB for that appropriation.

(3) Every person who is responsible for managing an appropriation must establish and maintain a current record of commitments chargeable to that appropriation.

Payments after Fiscal Year-end

37.(1) Money appropriated in a budget for a fiscal year must not be expended after the end of the fiscal year except to discharge a liability incurred in that fiscal year.

(2) If the liabilities for an appropriation under subsection (1) exceed the unexpended balance of the appropriation at the end of the fiscal year, the excess must be

(a) charged against a suitable appropriation for the following fiscal year; and

(b) reported in the financial statements for the fiscal year in which the liability was incurred.

Requisitions for Payment

38.(1) No money may be paid out of any account without a requisition for payment as required under this section.

(2) No requisition may be made or given for a payment of money unless it is a lawful charge against an appropriation or an authorized use of money in a trust.

(3) No requisition may be made or given for payment of money that results in expenditures from a trust account in excess of the unexpended balance of the trust account.

(4) No requisition may be made or given for payment of money that reduces the balance available in an appropriation or trust account so that it is not sufficient to meet the commitments chargeable against it.

(5) A requisition may apply to one or more expenditures chargeable against one or more appropriations.

(6) A requisition must identify the appropriation or trust account out of which payment is to be made and must include a statement certifying that the expenditure is not prohibited under this section and that it is

(a) in accordance with the appropriation identified in the certified statement; or

(b) allowed without the authority of an appropriation under this by-law.

(7) If a requisition is for the payment of performance of work or services or the supply of goods, the requisition must include a statement certifying that

(a) the work or services have been performed or the goods supplied, any conditions in an agreement respecting the work, services or goods have been met and the price charged or amount to be paid is in accordance with an agreement or, if not specified by agreement, is reasonable; or

(b) if payment is to be made before completion of the work or services, delivery of the goods or satisfaction of any conditions in an agreement, the payment is in accordance with the agreement.

(8) Any payment out of a trust account or a tangible capital asset reserve account must be authorized by a band council resolution.

(9) The Executive Director or Director of Finance may authorize a payment out of, or sign a requisition for payment from, any appropriation.

(10) Subject to subsection (8), a person who is responsible for managing an appropriation may authorize payment out of, or sign a requisition for payment from, the appropriation as follows:

- (a) Manager - \$1,000;
- (b) Director - \$10,000;
- (c) Director of Finance - \$50,000;
- (d) Executive Director - \$100,000; and
- (e) Chief and Council - amounts exceeding \$100,000.

Form of Payment

39. Payments by OKIB may be made by cheque, draft, electronic transfer or other similar instrument signed by either:

(1) two councillors designated by the Council, or

(2) one councillor designated by Council and either the Executive Director or the Director of Finance.

40. All payments related to requisitions approved by the Director of Finance must not be signed by the Director of Finance.

DIVISION 4 - General Matters

Advances

41. The Executive Director or the Director of Finance may approve an advance to prepay expenses that are chargeable against an appropriation in the current fiscal year or an appropriation in the next fiscal year.

Holdbacks

42. If OKIB withholds an amount payable under an agreement, the payment of the amount withheld must be charged to the appropriation from which the agreement must be paid even if the fiscal year for which it was appropriated has ended.

Deposit Money

43.(1) Money received by OKIB as a deposit to ensure the doing of any act or thing must be held and disposed of in accordance with

- (a) the agreement under which the deposit has been paid; and
- (b) in the absence of any provisions respecting that matter, any policy or directions of the Council.

(2) The Council must make policies or procedures or give directions in respect of the disposition of deposit money referred to in subsection (1).

Interest

44.(1) All interest earned on the accounts described in subsection 30(2), other than a trust account or tangible capital asset reserve account must be deposited in the general account referred to in paragraph 30(2)(a).

(2) All interest earned on

(a) a trust account must be retained in that account; and

(b) the tangible capital asset reserve account must be retained in that account.

(3) Subject to the *Interest Act*, OKIB may charge interest at a rate set from time to time by the Council on any debts or payments owed to OKIB that are overdue.

Refunds

45.(1) Money received by OKIB that is paid or collected in error or for a purpose that is not fulfilled may be refunded in full or in part as circumstances require.

(2) The Council must establish policies and procedures respecting the refund of money under subsection (1).

Write Off of Debts

46. All or part of a debt or obligation owed to OKIB may be written off

(a) if approved by the Council; or

(b) if done under the authority of a policy or direction of the Council.

Extinguishment of Debts

47. All or part of a debt or obligation owed to OKIB may be forgiven only

(a) if approved by the Council; or

(b) if done under the authority of a policy or direction of the Council.

Year-end Surplus

48.(1) Subject to subsection (2), an operating surplus at the end of the fiscal year must be paid into the general account described in paragraph 30(2)(a).

(2) An operating surplus in the tangible capital asset reserve account at the end of the fiscal year must be retained in that account.

DIVISION 5 - Borrowing

Limitations on Borrowing

49.(1) Except as specifically authorized in this by-law, OKIB must not borrow money or grant security.

(2) Subject to this by-law, if OKIB is authorized in this by-law to borrow money or grant security, the Council may authorize the Director of Finance to borrow money or grant security in the name of OKIB as specifically approved by the Council.

Borrowing for Ordinary Operations

50.(1) OKIB may incur trade accounts or other current liabilities payable within normal terms of trade for expenditures provided for in the budget for the fiscal year if the debt will be repaid from money appropriated under an appropriation for the fiscal year or is in respect of an expenditure that may be made without the authority of an appropriation under this by-law.

(2) OKIB may enter into agreements with financial institutions for overdrafts or lines of credit and, for the purpose of securing any overdrafts or lines of credit, may grant security to the financial institution in a form, amount, and on terms and conditions that the Council approves.

(3) OKIB may enter into a general security agreement or a lease for the use or acquisition of lands, materials or equipment required for the operation, management or administration of OKIB.

Financial Agreements

51.(1) OKIB may enter into the following agreements in the name of OKIB:

(a) for the purpose of efficient management of OKIB's financial assets, agreements with financial institutions and related services agreements; and

(b) for the purpose of reducing risks or maximizing benefits in relation to the borrowing, lending or investing of OKIB's financial assets, agreements with financial institutions respecting currency exchange, spot and future currency, interest rate exchange and future interest rates.

(2) With approval by band council resolution, the Director of Finance may enter into any agreements referred to in subsection (1) on behalf of OKIB.

Borrowing for Authorized Expenditures

52.(1) If the general account described in paragraph 30(2)(a) is not sufficient to meet the expenditures authorized to be made from it and the Director of Finance recommends that money be borrowed to ensure that the general account is sufficient for these purposes, OKIB may borrow an amount not exceeding a maximum amount specified by the Council and to be repaid within a specified period of time.

(2) Despite the repayment terms specified in subsection (1), if the money borrowed under subsection (1) is no longer required for the purpose for which it was borrowed, the money must be repaid as soon as possible.

Borrowing for New Capital Projects

53.(1) The Council must establish policies or procedures or give directions respecting the means by which members of OKIB must be informed about or involved in consideration of borrowing for new capital projects described in subsection 88(2).

(2) The Council must post a public notice of each Council meeting when borrowing for new capital projects described in subsection 88(2) is presented for approval.

(3) Members of OKIB may attend that part of the Council meeting when the matters referred to in subsection (2) are being considered.

Borrowing for Repayment of Debts

54. Subject to this by-law, OKIB may borrow money that is required for the repayment or refinancing of any debt of OKIB.

Use of Borrowed Money

55.(1) Subject to this section, money borrowed by OKIB for a specific purpose must not be used for any other purpose.

(2) All or some of the money borrowed for a specific purpose by OKIB and not required to be used immediately for that purpose may be temporarily invested under subsection 61(1) until required for that purpose.

(3) If some of the money borrowed for a specific purpose is no longer required for that purpose, that money must be applied to repay the debt from the borrowing.

Execution of Security Documents

56. A security granted by OKIB must be approved by band council resolution and signed by a councillor designated by the Council and by either the Executive Director or the Director of Finance or another individual designated by Council.

Operational Controls

57. The Council must establish policies or procedures or give directions respecting the establishment and implementation of an effective system of internal controls that ensures the orderly and efficient conduct of OKIB's operations.

DIVISION 6 - Risk Management

Limitation on Business Activity

58.(1) Subject to subsections (2) and (3), OKIB must not

- (a) carry on business as a proprietor;
- (b) acquire an interest in a partnership as a general partner; or
- (c) act as a trustee respecting property used for, or held in the course of, carrying on a business.

(2) OKIB may carry on a business that

(a) is ancillary or incidental to the provision of programs or services or other functions of OKIB governance; or

(b) derives income from the granting of a lease or licence of or is in respect of

(i) an interest in, or natural resources on or under, OKIB's lands or lands owned in fee simple by, or in trust for, OKIB, or

(ii) any other property of OKIB.

(3) OKIB may carry on business activities for the primary purpose of profit if the Council determines that the business activities

(a) do not result in a material liability for OKIB; or

(b) do not otherwise expose OKIB's financial assets, property or resources to significant risk.

(4) The Council may impose terms and conditions on the conduct of any business activity permitted under this section in order to manage any risks associated with that activity.

Guarantees and Indemnities

59.(1) OKIB must not give a guarantee unless the Council has considered the report of the Director of Finance under subsection (2).

(2) Before the Council authorizes a guarantee under subsection (1), the Director of Finance must prepare a report for Council identifying any risks associated with giving the guarantee and assessing the ability of OKIB to honour the guarantee should it be required to do so.

(3) OKIB must not give an indemnity unless it is

(a) authorized under section 97;

(b) necessary and incidental to and included in another agreement to which OKIB is a party; or

(c) in relation to a security granted by OKIB that is authorized under this by-law or another OKIB law.

(4) Subject to a resolution described in section 97, the Council must make policies and directions respecting guarantees and indemnities as follows:

(a) specifying circumstances under which an indemnity may be given without Council approval;

(b) designating the persons who may give an indemnity on behalf of OKIB and specifying the maximum amount of any indemnity which may be given by them;

(c) specifying any terms or conditions under which a guarantee or indemnity may be given; and

(d) specifying the records to be maintained of all guarantees and indemnities given by OKIB.

Authority to Invest

60.(1) Except as specifically authorized in this by-law or another OKIB law, OKIB must not invest OKIB's financial assets.

(2) If OKIB is authorized in this by-law to invest OKIB's financial assets, the Council may authorize the Director of Finance to invest OKIB's financial assets as specifically approved by the Council.

Approved Investments

61.(1) Money in an account described in section 30 that is not immediately required for expenditures may be invested by OKIB in one or more of the following:

- (a) securities issued or guaranteed by Canada, a province or the United States of America;
- (b) fixed deposits, notes, certificates and other short-term paper of, or guaranteed by, a financial institution, including swaps in United States of America currency;
- (c) securities issued by the First Nations Finance Authority or by a local, municipal or regional government in Canada;
- (d) commercial paper issued by a Canadian company that is rated in the highest category by at least two (2) recognized security-rating institutions;
- (e) any investments a trustee may make under an enactment of a province relating to trustees; or
- (f) any other investments or class of investments prescribed by a regulation under the *First Nations Fiscal Management Act*.

(2) Subject to the terms of the trust, money held in trust that is not immediately required for expenditures may be invested by OKIB as permitted under the terms of the trust or under the laws of the jurisdiction in which the majority of OKIB's lands are located.

(3) If OKIB has established an investment account under section 30, OKIB may invest money in that account in

- (a) a company that is incorporated under the laws of Canada or of a province or territory and in which OKIB is a shareholder;
- (b) a trust in which OKIB is a beneficiary;
- (c) securities issued by the First Nations Finance Authority or by a local, municipal or regional government in Canada;
- (d) a limited partnership in which OKIB is a partner; or
- (e) a member investment program described in section 62.

(4) Despite any other provision in this section, OKIB may only invest government transfer funds in investments specified in subsection 82(3)(a), (b), (c) or (d) of the *First Nations Fiscal Management Act* and in investments in securities issued by the First Nations Finance Authority or a municipal finance authority established by a province.

Permitted Investments in OKIB Member Activities

62.(1) OKIB may only make a loan to a member of OKIB or to an entity in which a member of OKIB has an interest if the loan is made from a program of OKIB that has been approved by the Council and that meets the requirements of this section.

(2) Before the Council establishes a program under this section, the Director of Finance must prepare a report for Council identifying any risks associated with the program and the costs of administering the program.

(3) A program referred to in subsection (1) must satisfy the following criteria:

(a) the program must be universally available to all members of OKIB;

(b) the terms and conditions of the program must be published and accessible to all members of OKIB;

(c) all loans made from the program and all payments received from those loans must be set out in an annual report that includes details about

(i) the amounts loaned,

(ii) the purposes of the loans,

(iii) subject to applicable privacy laws, the names of those receiving a loan, and

(iv) repayments of principal and interest on the loans; and

(d) all loans must be recorded in a written agreement that provides for proper security for repayment and sets out the terms for repayment of principal and interest.

(4) The Council must make policies or procedures or give directions for the operation of the program referred to in this section.

Administration of Investments and Loans

63.(1) If OKIB is authorized to make an investment or loan under this by-law, the Director of Finance may, as directed by a band council resolution, do all things necessary or advisable for the purpose of making, continuing, exchanging or disposing of the investment or loan.

(2) If OKIB is authorized to make a loan under this by-law, the Council must establish policies or procedures or give directions respecting the terms and conditions under which loans may be made, including a requirement that all loans be recorded in a written agreement that provides for proper security for repayment and sets out the terms for repayment of principal and interest.

Risk Assessment and Management

64.(1) Annually, and more often if necessary, the Executive Director must identify and assess any significant risks to OKIB's financial assets, OKIB's tangible capital assets as defined in Part V and the operations of OKIB.

(2) Annually, and more often if necessary, the Executive Director must report to the Finance and Audit Committee on proposed plans to mitigate the risks identified in subsection (1) or, where appropriate, to manage or transfer those risks by agreement with others or by purchasing insurance.

Insurance

65.(1) On recommendation of the Finance and Audit Committee, the Council must procure and maintain in force all insurance coverage that is appropriate and commensurate with the risks identified in

section 64 and any other risks associated with any assets, property or resources under the care or control of OKIB.

(2) The Council may purchase and maintain insurance for the benefit of a councillor or an officer or their personal representatives against any liability arising from that person being or having been a councillor or an officer.

Fraud Risks

66.(1) In this section:

“fraudulent financial reporting” means an intentional act in financial reporting that is designed to deceive users of financial reports and that may result in a material omission from or misstatement of financial reports;

“fraudulent non-financial reporting” means an intentional act in non-financial reporting that is designed to deceive users of non-financial reports; and

“misappropriation of assets” means the theft of OKIB assets in circumstances where the theft may result in a material omission or misstatement in financial reports.

(2) The Council must establish procedures for the identification and assessment of the following types of potential fraud in OKIB:

- (a) fraudulent financial reporting;
- (b) fraudulent non-financial reporting;
- (c) misappropriation of assets; and
- (d) corruption and illegal acts.

DIVISION 7 - Financial Reporting

GAAP

67. All accounting practices of OKIB must comply with GAAP.

Monthly Financial Information

68.(1) At the end of each month, the Director of Finance must prepare financial information respecting the financial affairs of OKIB in the form and with the content approved by the Council on the recommendation of the Finance and Audit Committee.

(2) The Director of Finance must provide the financial information in subsection (1) to the Council and the Finance and Audit Committee not more than forty-five (45) days following the end of the month for which the information was prepared.

Quarterly Financial Statements

69.(1) At the end of each quarter of the fiscal year, the Director of Finance must prepare financial statements for OKIB for that quarter in the form and with the content approved by the Council on the recommendation of the Finance and Audit Committee.

(2) The Director of Finance must provide the quarterly financial statements in subsection (1) to the Council and the Finance and Audit Committee not more than forty-five (45) days after the end of the quarter of the fiscal year for which they were prepared.

(3) The quarterly financial statements in subsection (1) must be

(a) reviewed by the Finance and Audit Committee and recommended to Council for approval; and

(b) reviewed and approved by the Council.

Annual Financial Statements

70.(1) At the end of each fiscal year the Director of Finance must prepare the annual financial statements of OKIB for that fiscal year in accordance with GAAP and to a standard that is at least comparable to that generally accepted for governments in Canada.

(2) The annual financial statements must be prepared in a form approved by the Council on the recommendation of the Finance and Audit Committee.

(3) The annual financial statements must include the following information:

(a) the financial information of OKIB for the fiscal year; and

(b) the revenue categories for OKIB's lands referred to in subsection 25(2).

(4) The Director of Finance must provide draft annual financial statements to the Finance and Audit Committee for review within forty-five (45) days following the end of the fiscal year for which they were prepared.

(5) The Finance and Audit Committee must present draft annual financial statements to the Council for review within sixty (60) days following the end of the fiscal year for which they were prepared.

Special Purpose Reports

71. The Director of Finance must prepare the following special purpose reports:

(a) a report setting out all payments made to honour guarantees and indemnities for that fiscal year;

(b) a report setting out the information required in section 10;

(c) a report setting out all debts or obligations forgiven by OKIB;

(d) a report setting out the information required in paragraph 62(3)(c);

(e) if OKIB has a land code in force, a report setting out moneys of OKIB derived from OKIB lands, categorized and shown separately from other revenues and that includes a sub-category respecting revenues from natural resources obtained from OKIB lands; and

(f) any other report required under the Act or an agreement.

Appointment of Auditor

72.(1) OKIB must appoint an auditor for each fiscal year to hold office until the later of

- (a) the end of the Council meeting when the audited annual financial statements for that fiscal year are being considered; or
- (b) the date the auditor's successor is appointed.

(2) The terms and conditions of the appointment of the auditor must be set out in an engagement letter approved by the Finance and Audit Committee and must include the auditor's obligation

(a) to confirm in writing that the annual financial statements and the audit of them comply with this by-law, or

(b) to identify in writing consequential non-compliance matters.

(3) To be eligible for appointment as the auditor of OKIB, an auditor must

(a) be independent of OKIB, its related bodies, councillors and officers and members; and

(b) be a public accounting firm or public accountant

(i) in good standing with the Chartered Professional Accountants of Canada, the Canadian Institute of Chartered Accountants, the Certified General Accountants Association of Canada or the Society of Management Accountants of Canada and their respective counterparts in the province or territory in which the public accounting firm or public accountant is practicing, and

(ii) licensed or otherwise authorized to practice public accounting in British Columbia.

(4) If the auditor ceases to be independent, the auditor must as soon as practicable after becoming aware of the circumstances

(a) advise OKIB in writing of the circumstances; and

(b) eliminate the circumstances that resulted in loss of independence or resign as the auditor.

Auditor's Authority

73.(1) To conduct an audit of the annual financial statements of OKIB, the auditor must be given access to

(a) all records of OKIB for examination or inspection and given copies of these records on request; and

(b) any councillor, officer, employee, contractor or agent of OKIB to ask any questions or request any information.

(2) On request of the auditor, every person referred to in paragraph (1)(b) must

(a) make available all records referred to in paragraph (1)(a) that are in that person's care or control; and

(b) provide the auditor with full information and explanation about the affairs of OKIB as necessary for the performance of the auditor's duties.

(3) The auditor must be given notice of

(a) every meeting of the Finance and Audit Committee; and

(b) the Council meeting where the annual audit, including the annual financial statements, will be considered and approved.

(4) Subject to subsection (6), the auditor may attend any meeting for which he or she must be given notice under this section or to which the auditor has been invited and must be given the opportunity to be heard at those meetings on issues that concern the auditor as auditor of OKIB.

(5) The auditor may communicate with the Finance and Audit Committee, as the auditor considers appropriate, to discuss any subject that the auditor recommends be considered by the Committee.

(6) The auditor may be excluded from all or any part of a meeting of the Finance and Audit Committee or the Council by a recorded vote if the subject matter relates to the retaining or dismissal of the auditor.

Audit Requirements

74.(1) The annual financial statements of OKIB must be audited by the auditor not more than one hundred and twenty (120) days after the fiscal year-end.

(2) The auditor must conduct the audit of the annual financial statements in accordance with generally accepted auditing standards established by the Chartered Professional Accountants of Canada.

(3) When conducting the audit, the auditor must provide

(a) an audit opinion of the annual financial statements; and

(b) an audit report or review engagement report on the special purpose reports referred to in section 71.

Review of Audited Annual Financial Statements

75.(1) The audited annual financial statements must be provided to the Finance and Audit Committee for its review and consideration not more than one hundred and five (105) days after the fiscal year-end for which the statements were prepared.

(2) The Council must review and approve the audited annual financial statements not more than one hundred and twenty (120) days after the fiscal year-end for which the statements were prepared.

Access to Annual Financial Statements

76.(1) Before the annual financial statements may be published or distributed, they must

(a) be approved by the Council;

- (b) be signed by
 - (i) the Chief of OKIB,
 - (ii) the chair of the Finance and Audit Committee, and
 - (iii) the Director of Finance; and
- (c) include the auditor's audit report of the annual financial statements.

(2) The audited annual financial statements must be available for inspection by members of OKIB at the principal administrative offices of OKIB during normal business hours.

Annual Report

77.(1) Not later than one hundred and eighty (180) days after the end of each fiscal year, the Council must prepare an annual report on the operations and financial performance of OKIB for the previous fiscal year.

- (2) The annual report referred to in subsection (1) must include the following:
 - (a) a description of the services and operations of OKIB;
 - (b) a progress report on any established financial objectives and performance measures of OKIB;
 - (c) the audited annual financial statements of OKIB for the previous fiscal year; and
 - (d) any special purpose reports referred to in section 71, including the auditor's report or review engagement report, as applicable.

(3) The Executive Director must provide the annual report referred to in subsection (1) to a member of OKIB as soon as practicable after a request is made by the member.

(4) The Council must establish policies or procedures respecting, or give directions respecting, an accessible process and remedy available to OKIB members who have requested but have not been provided with the annual report of OKIB including requiring

- (a) the maintenance of a register for the annual report that identifies all members who have requested a copy of the annual report, the date each request was received and the date the annual report was provided to the member; and
- (b) the Executive Director to report quarterly to the Finance and Audit Committee on the steps taken to ensure compliance with subsection (3) and council policy made under this subsection.

DIVISION 8 - Information and Information Technology

Ownership of Records

78.(1) All records that are produced by or on behalf of OKIB or kept, used or received by any person on behalf of OKIB are the property of OKIB.

(2) The Council must establish policies or procedures or give directions to ensure that the records referred to in subsection (1) remain the property of OKIB.

Operations Manual

79.(1) The Executive Director must prepare and maintain a current operations manual respecting every element of OKIB's administrative systems, including any financial administration systems referred to in this by-law.

(2) The operations manual under subsection (1) must be made available to councillors, members of the Finance and Audit Committee and all other Council committees and officers and employees of OKIB.

(3) If any part of the operations manual under subsection (1) is relevant to the services being provided by a contractor or agent of OKIB, that part of the operations manual must be made available to the contractor or agent.

Record Keeping and Maintenance

80.(1) The Executive Director must ensure that OKIB prepares, maintains, stores and keeps secure all of OKIB's records that are required under this by-law or any other applicable law.

(2) OKIB's records may not be destroyed or disposed of except as permitted by, and in accordance with, the policies, procedures or directions of the Council.

(3) All financial records of OKIB must be stored for at least seven (7) years after they were created.

(4) The Council must establish policies and procedures or give directions respecting access of any persons to OKIB's records.

Confidentiality of Information

81.(1) No person may be given access to OKIB's records containing confidential information except as permitted by, and in accordance with, the policies, procedures and directions of the Council.

(2) All persons who have access to OKIB's records must comply with all policies, procedures or directions of the Council respecting the confidentiality, control, use, copying or release of that record or information contained in those records.

Information Technology

82. The Council must establish policies or procedures or give directions respecting information technology used by OKIB in its operations to ensure the integrity of OKIB's financial administration system and its database.

PART V - Capital Projects

Definitions

83. In this Part:

"capital project" means the construction, rehabilitation or replacement of OKIB's tangible capital assets and any other major capital projects in which OKIB or its related bodies are investors;

“OKIB’s tangible capital assets” means all non-financial assets of OKIB having physical substance that

- (a) are held for use in the production or supply of goods and services, for rental to others, for administrative purposes or for the development, construction, maintenance or repair of other tangible capital assets,
- (b) have useful economic lives extending beyond an accounting period,
- (c) are to be used on a continuing basis,
- (d) are not for sale in the ordinary course of operations, and
- (e) have a historical cost of at least \$10,000;

“life-cycle management program” means the program of inspection, review and planning for management of OKIB’s tangible capital assets as described in section 87;

“rehabilitation” includes alteration, extension and renovation but does not include routine maintenance;

“replacement” includes substitution, in whole or in part, with another of OKIB’s tangible capital assets.

Council General Duties

84. The Council must take reasonable steps to ensure that

- (a) OKIB’s tangible capital assets are maintained in a good and safe condition and to the same standard as a prudent owner of those assets;
- (b) the rehabilitation or replacement of OKIB’s tangible capital assets is in accordance with a life-cycle management program described in this Part; and
- (c) capital projects for the construction of buildings or other improvements are financed, planned and constructed in accordance with procedures and to standards that generally apply to the financing, planning and construction of public buildings and other improvements of organized communities in the Okanagan region of British Columbia.

Tangible Capital Assets Reserve Fund

85. The Council must establish a tangible capital asset reserve fund for the purpose of funding expenditures for capital projects carried out under this Part.

Reports on Capital Projects

86. At each Finance and Audit Committee meeting, the Executive Director must report on the following subjects:

- (a) year to date borrowings, loans and payments in respect of each capital project;
- (b) the status of a capital project, including
 - (i) a comparison of expenditures to date with the project budget,

- (ii) a detailed description of any identified legal, financial, technical, scheduling or other problems, and
 - (iii) the manner in which a problem identified in subparagraph (iii) has been or will be addressed; and
- (c) steps taken to ensure compliance with section 89 for every capital project.

Life-cycle Management Program

87.(1) The Executive Director must establish and keep current a register of all OKIB's tangible capital assets that identifies each of these assets and includes the following information:

- (a) location and purpose of the asset;
- (b) ownership and restrictions over ownership of the asset;
- (c) year of acquisition;
- (d) last inspection date of the asset;
- (e) expected life of the asset at the time of acquisition;
- (f) assessment of condition of the asset and its remaining useful life;
- (g) estimated residual value of the asset;
- (h) insurance coverage for the asset; and
- (i) any other information required by the Council.

(2) On or before November 30 of each year, the Executive Director must arrange for the inspection and review of the state of each of OKIB's tangible capital assets to establish or update information respecting the following matters:

- (a) its present use;
- (b) its condition and state of repair;
- (c) its suitability for its present use;
- (d) its estimated remaining life;
- (e) its estimated replacement cost;
- (f) estimated dates and costs of its required future rehabilitation;
- (g) a comparison of annual operating and maintenance costs, other than rehabilitation costs, for the last five (5) fiscal years;
- (h) maintenance records for all periods up to the date of inspection; and
- (i) property and liability insurance covering the capital asset and its use or operation.

- (3) On or before December 31 of each year, the Director of Finance must prepare the following:
- (a) a schedule of annual routine maintenance, other than rehabilitation, for each of OKIB's tangible capital assets for the next fiscal year;
 - (b) five (5), ten (10) and thirty (30) year forecasts of the estimated cost for rehabilitation or replacement of OKIB's tangible capital assets;
 - (c) the proposed budget for rehabilitation of OKIB's tangible capital assets for the next fiscal year, setting out
 - (i) each proposed rehabilitation project and its schedule,
 - (ii) the estimated cost, including contingencies, of each proposed rehabilitation project, and
 - (iii) the estimated amounts and timing of money that is required to carry out each proposed rehabilitation project; and
 - (d) the proposed budget for replacement of OKIB's tangible capital assets for the next fiscal year setting out
 - (i) each proposed replacement project and its schedule,
 - (ii) the description of each asset to be replaced,
 - (iii) the estimated cost, including contingencies, of each proposed replacement project, and
 - (iv) the reasons why each proposed acquisition should be regarded as a replacement for the capital asset to be replaced.

Review by Finance and Audit Committee

88.(1) On or before January 15 of each year, the Finance and Audit Committee must review the information, schedules and budget prepared under section 87 for the following purposes:

- (a) to identify any means to reduce the costs of each rehabilitation or replacement project included in the proposed budgets;
- (b) to know the effect that each rehabilitation or replacement project included in the proposed budgets will have on the annual operating costs and routine maintenance costs in future years; and
- (c) to determine whether any significant savings might be effected by coordinating the scheduling of projects, deferring any projects or carrying out rehabilitation projects rather than replacement projects.

(2) On or before January 15 of each year, the Finance and Audit Committee must review any plans for new construction of OKIB's tangible capital assets, including the proposed schedule, budget and impact on annual operating costs and routine maintenance costs in future years.

Capital Projects – Contracts and Tenders

89.(1) The Council must establish policies or procedures or give directions respecting the management of capital projects, including the following:

- (a) project planning, design, engineering, safety and environmental requirements;
- (b) project costing, budgeting, financing and approval;
- (c) project and contractor bidding requirements;
- (d) tender, contract form and contract acceptance;
- (e) course of construction insurance;
- (f) project performance guarantees and bonding;
- (g) project control, including contract management; and
- (h) holdbacks, work approvals, payment and audit procedures.

(2) OKIB capital projects must be managed in accordance with the policies, procedures or directions referred to in subsection (1).

Capital Project Consultants

90. The Executive Director may retain the services of a professional engineer or other consultant to assist the Executive Director, Finance and Audit Committee and the Council to carry out their obligations under this Part.

Policy for Information or Involvement of Members

91. The Council must establish policies or procedures or give directions for

- (a) the provision of information to members of OKIB respecting capital projects; or
- (b) the involvement of members of OKIB in consideration of capital projects.

PART VI - Miscellaneous

Reports of Breaches and Financial Irregularities, etc.

92.(1) Subject to subsections (2) and (3), if any person has reason to believe that

- (a) an expenditure, liability or other transaction of OKIB is not authorized by or under this by-law or another OKIB law,
- (b) there has been a theft, misappropriation or other misuse or irregularity in the funds, accounts, assets, liabilities and financial obligations of OKIB,
- (c) a provision of this by-law has been contravened, or
- (d) a person has failed to comply with the Schedule that forms part of this by-law,

the person may disclose the circumstances to the chair of the Finance and Audit Committee.

(2) If a councillor becomes aware of any circumstances described under subsection (1), the councillor must report them to the chair of the Finance and Audit Committee.

(3) If an officer, employee, contractor or agent of OKIB becomes aware of any circumstances described under subsection (1), the officer, employee, contractor or agent, as the case may be, must report them to the Executive Director or the chair of the Finance and Audit Committee.

Inquiry into Report

93.(1) If a report is made to the Executive Director under subsection 92(3), the Executive Director must inquire into the circumstances reported and report the findings to the Finance and Audit Committee as soon as practicable.

(2) If a report is made to the chair of the Finance and Audit Committee under section 92, the chair must inquire into the circumstances reported and report the findings to the Finance and Audit Committee as soon as practicable.

(3) The Finance and Audit Committee may make a further inquiry into any findings reported to it under this section but, in any event, must make a report to the Council respecting any circumstances reported to the Finance and Audit Committee under this section, including the Committee's recommendations, if any.

Protection of Parties

94.(1) All reasonable steps must be taken by the Executive Director, the members of the Finance and Audit Committee and the councillors to ensure that the identity of the person who makes a report under section 92 is kept confidential to the extent practicable in all the circumstances.

(2) A person who makes a report in good faith under section 92 must not be subjected to any form of reprisal by OKIB or by a councillor, officer, employee, contractor or agent of OKIB as a result of making that report.

(3) The Executive Director and the chair of the Finance and Audit Committee must take all necessary steps to ensure that subsection (2) is not contravened and must report any contravention or suspected contravention to the Council.

(4) The Council must establish policies or procedures or give directions

(a) for the recording and safeguarding of reports made under section 92 and any records prepared during the inquiry or investigation into those reports;

(b) for the inquiry or investigation into reports made under section 92; and

(c) concerning the fair treatment of a person against whom a report has been made under section 92.

Liability for Improper Use of Money

95.(1) A councillor who votes for a resolution authorizing an amount to be expended, invested or used contrary to this by-law is personally liable to OKIB for that amount.

(2) Subsection (1) does not apply if the councillor relied on information provided by an officer or employee of OKIB and the officer or employee was guilty of dishonesty, gross negligence or malicious or willful misconduct when providing the information.

(3) An amount owed to OKIB under subsection (1) may be recovered for OKIB by OKIB, a member of OKIB or a person who holds a security under a borrowing made by OKIB.

(4) It is a good defence to any action brought against an officer or employee of OKIB for unauthorized expenditure, investment or use of OKIB's financial assets if it is proved that the officer or employee gave a written and signed warning to the Council that in his or her opinion, the expenditure, investment or use would be unlawful.

Indemnification against Proceedings

96.(1) In this section:

“indemnify” means pay amounts required or incurred to

(a) defend an action or prosecution brought against a person in connection with the exercise or intended exercise of the person's powers or the performance or intended performance of the person's duties or functions, or

(b) satisfy a judgment, award or penalty imposed in an action or prosecution referred to in paragraph (a);

“OKIB official” means a current or former councillor, officer or employee of OKIB.

(2) Subject to subsection (3), the Council may by resolution indemnify or provide for the indemnification of a named OKIB official, a category of OKIB official or all OKIB officials in accordance with the terms specified in the resolution.

(3) The Council may not pay a fine that is imposed as a result of an OKIB official's conviction for an offence unless the offence is a strict or absolute liability offence.

Periodic Review and Changes to By-Law

97.(1) On a regular, periodic basis established by a policy of the Council, the Finance and Audit Committee must conduct a review of this by-law

(a) to determine if it facilitates effective and sound financial administration of OKIB; and

(b) to identify any amendments to this by-law that may better serve this objective.

(2) The Council must establish policies or procedures or give directions for

(a) the provision of information to members of OKIB respecting any proposed amendment of this by-law; or

(b) the involvement of members of OKIB in consideration of an amendment to this by-law.

(3) The Council must post a public notice of each Council meeting when a proposed amendment to this by-law is presented for approval.

(4) Members of OKIB may attend that part of the Council meeting when the matter referred to in subsection (3) is being considered.

Coming into Force

98. The *Okanagan Indian Band Financial Administration By-law* that was enacted by Council on the 26th day of March, 2012 is hereby repealed.

99.(1) This section and the operative portions of sections 1 - 7, 23, 25, 26, 28, 67 – 70, 72 – 76 and 98 of this by-law come into force the day after this by-law is approved by the Minister under section 83 of the Act.

(2) The operative portions of sections 8, 11, 12(1), 18(1), 19(1), 20(1), 21(1), 22(2) and (4), 24, 29(1), 77, 92 – 95 of this by-law and the Schedule to this by-law come into force on January 1, 2020.

(3) Subject to subsections (1) and (2), this by-law comes into force on a date or dates established by Council resolution.

THIS BY-LAW IS HEREBY DULY ENACTED by Council on the 22nd day of October, 2018, at Vernon, in the Province of British Columbia at a duly called and conducted Council meeting at which the required quorum of 5 (9) members of Council was present throughout.

Chief Byron Louis

Councillor Valerie Chiba

Councillor Garrett Lawrence

Councillor Dean Louis

Councillor Shawna Whitney

Councillor Leland Wilson

Councillor Cindy Brewer

Councillor Timothy Isaac

Councillor Allan Louis

Councillor Sheldon Pierre Louis

Councillor Dan Wilson

SCHEDULE – Avoiding And Mitigating Conflicts Of Interest

PART I - Interpretation

Interpretation

1.(1) In this Schedule:

“spouse” means, in relation to an individual, a person to whom the individual is married or with whom the individual has lived as a common law partner for at least one (1) year in a marriage-like relationship; and

“this by-law” means the Financial Administration By-Law to which this Schedule is attached and forms a part.

(2) Except as otherwise expressly provided in this Schedule, words and expressions used in this Schedule have the same meanings as in this by-law.

(3) Sections 3 and 5 of this by-law apply to this Schedule.

(4) If there is a conflict between a provision of this Schedule and this by-law, the provision of this by-law applies.

Definition of Conflict of Interest

2.(1) In this Schedule, an individual has a “conflict of interest” when the individual exercises a power or performs a duty or function and at the same time knows or ought reasonably to have known that in the exercise of the power or performance of the duty or function there is an opportunity to benefit the individual’s private interests.

(2) In this Schedule, an individual has an “apparent conflict of interest” if a reasonably well-informed person would perceive that the individual’s ability to exercise a power or perform a duty or function of their office or position must be affected by the individual’s private interests.

(3) In this Schedule, an individual’s “private interests” means the individual’s personal and business interests and include the personal and business interests of

(a) the individual’s spouse,

(b) a person under the age of eighteen (18) years in respect of whom the individual or the individual’s spouse is a parent or acting in a parental capacity,

(c) a person in respect of whom the individual or the individual’s spouse is acting as guardian,

(d) a person, other than an employee, who is financially dependent upon the individual or the individual’s spouse or on whom the individual is financially dependent, and

(e) an entity in which the individual or the individual in combination with any other person described in this subsection has a controlling interest.

(4) Despite subsections (1) and (2), an individual’s private interests do not give rise to a conflict of interest if those interests

(a) are the same as those of a broad class of members of OKIB of which the individual is a member; or

(b) are so remote or insignificant that they could not be reasonably regarded as likely to influence the individual in the exercise of a power or performance of a duty or function.

PART II - Councillors and Committee Members

Application

3. This Part applies to all councillors of OKIB and, where applicable, to all members of Council committees.

General Obligations

4.(1) Councillors must avoid circumstances that could result in the councillor having a conflict of interest or an apparent conflict of interest.

(2) Councillors must avoid placing themselves in circumstances where their ability to exercise a power or perform a duty or function could be influenced by the interests of any person to whom they owe a private obligation or who expects to receive some benefit or preferential treatment from them.

Disclosure of Interests

5.(1) In paragraph (2)(c) “real property” includes an interest in a reserve held under

(a) a certificate of possession under the *Indian Act*; or

(b) OKIB’s traditional land holding system pursuant to a band council resolution.

(2) A councillor must file a written disclosure of the following information with the Executive Director:

(a) the names of the councillor’s spouse and any persons or entities referred to in subsection 2(3);

(b) the employer of the councillor and the councillor’s spouse;

(c) real property owned by the councillor or the councillor’s spouse; and

(d) business interests and material investments of the councillor or the councillor’s spouse, including in an entity referred to in paragraph 2(3)(e).

(3) A councillor must file a written disclosure under subsection (2) on the following occasions:

(a) within thirty (30) days of being elected to the Council;

(b) as soon as practical after a material change in the information previously disclosed; and

(c) on April 15 of each year that the councillor holds office.

(4) The Executive Director must establish and maintain a register of all information disclosed by a councillor under this section and section 6.

(5) On request of a member of OKIB or any person engaged in any aspect of the financial administration of OKIB, the Executive Director must permit that member or person to view the register referred to in subsection (4).

Gifts and Benefits

6.(1) A councillor or a person referred to in paragraphs 2(3)(a) to (d) in relation to that councillor must not accept a gift or benefit that might reasonably be seen to have been given to influence the councillor in the exercise of the councillor's powers or performance of the councillor's duties or functions.

(2) Despite subsection (1), a gift or benefit may be accepted if the gift or benefit

(a) would be considered within

(i) normal protocol exchanges or social obligations associated with the councillor's office,

(ii) normal exchanges common to business relationships, or

(iii) normal exchanges common at public cultural events of OKIB;

(b) is of nominal value;

(c) is given by a close friend or relative as an element of that relationship; or

(d) is of a type that the policies or directions of the Council have determined would be acceptable if offered by OKIB to another person.

(3) Where a gift with a value greater than five hundred dollars (\$500.00) is given to a councillor or a person referred to in subsection (1), the councillor must make a written disclosure of the gift to the Executive Director under section 5, and the gift must be treated as the property of OKIB.

(4) Subsection (3) does not apply to a gift received during a public cultural event of OKIB.

Confidential Information

7.(1) Councillors must keep confidential all information that the councillors receive while performing their duties or functions unless the information is generally available

(a) to members of the public; or

(b) to members of OKIB.

(2) Councillors must only use confidential information referred to in subsection (1) for the specific purposes for which it was provided to the councillors.

(3) Councillors must not make use of any information received in the course of exercising their powers or performing their duties or functions to benefit the councillor's private interests or those of relatives, friends or associates.

Procedure for Addressing Conflict of Interest

8.(1) As soon as a councillor becomes aware of circumstances in which the councillor has a conflict of interest, the councillor must disclose the circumstances of the conflict of interest at the next Council meeting.

(2) A councillor must leave any part of a Council meeting where the circumstances in which the councillor has a conflict of interest are being discussed or voted on.

(3) The minutes of a Council meeting must record the councillor's disclosure under subsection (1) and note the councillor's absence from the Council meeting when the circumstances in which the councillor has a conflict of interest were being discussed or voted on.

(4) A councillor must not take part in any discussions or vote on any decision respecting the circumstances in which the councillor has a conflict of interest.

(5) A councillor must not influence or attempt to influence in any way before, during or after a Council meeting any discussion or vote on any decision respecting the circumstances in which the councillor has a conflict of interest.

Procedure for Undisclosed Conflict of Interest

9.(1) If a councillor has reason to believe that another councillor has a conflict of interest or an apparent conflict of interest in respect of a matter before the Council, the councillor may request clarification of the circumstances at a Council meeting.

(2) If, as a result of a clarification discussion under subsection (1), a councillor is alleged to have a conflict of interest or an apparent conflict of interest and the councillor does not acknowledge the conflict of interest or apparent conflict of interest and take the actions required under section 8, the Council must determine whether the councillor has a conflict of interest or an apparent conflict of interest before the Council considers the matter referred to in subsection (1).

(3) The minutes of the Council meeting must record any determination made by the Council under subsection (2).

(4) If the Council determines under subsection (2) that a councillor has a conflict of interest or an apparent conflict of interest, the councillor must comply with section 8.

Obligations of Committee Members

10.(1) This section applies to all members of Council committees.

(2) Sections 4 and 6 to 9 apply to a member of a Council committee and all references in those sections to

(a) a councillor are considered to be references to a member of a Council committee; and .

(b) a Council meeting are considered to be references to a committee meeting.

PART III - Officers and Employees

Application

11. This Part applies to all officers and employees of OKIB.

General Obligations

12.(1) In the performance of their duties and functions, an officer or employee must act honestly and in good faith and in the best interests of OKIB.

(2) An officer or employee must avoid circumstances that could result in the officer or employee having a conflict of interest or an apparent conflict of interest.

(3) An officer or employee must avoid placing themselves in circumstances where their ability to exercise a power or perform a duty or function of their office or position could be influenced by the interests of any person to whom they owe a private obligation or who expects to receive some benefit or preferential treatment from them.

(4) The Executive Director must ensure that every officer and employee is informed of their obligations under this Part and must take steps to ensure that employees comply with these obligations.

Disclosure of Conflict of Interest

13. If an officer or employee believes he or she has a conflict of interest, the officer or employee must

(a) disclose the circumstances in writing as soon as practical to the Executive Director or, in the case of the Executive Director, to the chair of the Finance and Audit Committee; and

(b) refrain from participating in any discussions or decision-making respecting the circumstances of the conflict of interest until advised by the Executive Director or the chair, as the case may be, on actions to be taken to avoid or mitigate the conflict of interest.

Gifts or Benefits

14.(1) An officer or employee or a member of their family must not accept a gift or benefit that might reasonably be seen to have been given to influence the officer or employee in the exercise of their powers or performance of their duties or functions.

(2) Despite subsection (1), a gift or benefit may be accepted if the gift or benefit

(a) would be considered within

(i) normal exchanges common to business relationships, or

(ii) normal exchanges common at public cultural events of OKIB;

(b) is of nominal value;

(c) is given by a close friend or relative as an element of that relationship; or

(d) is of a type that the policies or directions of the Council have determined would be acceptable if offered by OKIB to another person.

Outside Employment and Business Interests

15.(1) If an officer or employee is permitted under their terms of employment to have outside employment or business interests, the officer or employee must disclose these employment or business interests in writing to the Executive Director or, in the case of the Executive Director, to the chair of the Finance and Audit Committee.

(2) An officer or employee must ensure that any permitted outside employment or business interests do not unduly interfere with the exercise of their powers or performance of their duties and functions and that these activities are conducted on their own time and with their own resources.

Confidential Information

16.(1) An officer or employee must keep confidential all information that the officer or employee receives while exercising their powers or performing their duties or functions unless the information is generally available

(a) to members of the public; or

(b) to members of OKIB.

(2) An officer or employee must only use any confidential information referred to in subsection (1) for the specific purposes for which it was provided to the officer or employee.

(3) An officer or employee must not make use of any information received in the course of exercising their powers or performing their duties or functions to benefit the officer or employee's private interests or those of relatives, friends or associates.

OKIB Property and Services

17.(1) Officers and employees must not use any personal property or services of OKIB for any purposes unrelated to performance of their duties or functions unless that use is otherwise acceptable under the policies or directions of the Council.

(2) Officers and employees must not acquire any personal property of OKIB unless it is done in accordance with policies or directions of the Council.

PART IV - Contractors

Application

18.(1) This Part applies to all contractors of OKIB, other than a person who has an employment contract with OKIB.

(2) In this Part, a reference to a contractor includes a reference to each employee or agent of the contractor who is engaged to perform duties or functions under the contract with OKIB.

Contractor Acting as Officer or Employee

19. If a contractor is retained to exercise the powers or perform the duties or functions of an officer or employee, the contractor must comply with Part III of this Schedule as if the contractor were an officer or employee of OKIB.

General Obligations

20.(1) A contractor must act at all times with integrity and honesty

(a) in its dealings with OKIB; and

(b) in its dealing with any third party when the contractor is representing or acting on behalf of OKIB.

(2) A contractor must not attempt to obtain preferential treatment from OKIB by offering gifts or benefits that a councillor, committee member, officer or employee is prohibited from accepting under this Schedule.

(3) A contractor must ensure that every employee or agent of the contractor who is engaged to perform duties or functions under the contract with OKIB is informed of their obligations under this Part and must take steps to ensure that these employees or agents comply with these obligations.

Confidential Information

21.(1) A contractor must keep confidential all information that the contractor receives in the course of performing their duties or functions unless the information is generally available to members of the public.

(2) A contractor must only use any confidential information referred to in subsection (1) for the specific purposes for which it was provided to the contractor.

(3) A contractor must not make use of any information received in the course of performing its duties or functions to benefit the contractor's interests or those of the contractor's relatives, friends or associates.

Business Opportunities

22. A contractor must not take advantage of a business or investment opportunity being considered by OKIB and which the contractor becomes aware of while performing services for OKIB unless OKIB has determined not to pursue the opportunity.

OKIB Property and Services

23. If a contractor has been provided the use of any property or services of OKIB in order to perform services for OKIB, the contractor must not use the property or services for any purposes unrelated to performance of those services.