

MANITOBA TREATY LAND ENTITLEMENT FRAMEWORK AGREEMENT IMPLEMENTATION MONITORING COMMITTEE (IMC)

POLICIES AND PROCEDURES

Introduction

The Manitoba Treaty Land Entitlement Framework Agreement (the “FA”) contains a number of provisions setting out the roles and responsibilities of the Independent Monitoring Committee (the “IMC”) and the Senior Advisory Committee (the “SAC”) as well as procedures for dispute resolution.

Part I of this document summarizes the provisions of the FA to provide guidance in regard to the mandate and role of the IMC. Part II of the document sets out policies and procedures developed in accordance with Article 34 that are intended to complement the FA and to facilitate the resolution of issues or disputes that may arise in implementing the FA or any Entitlement First Nation’s Treaty Entitlement Agreement (“TEA”). Part II may have to be amended from time to time to respond to changing circumstances and to address new issues as this process evolves.

PART I – THE FRAMEWORK AGREEMENT

1. *Establishment of the IMC – Art. 34*

- Comprised of 5 members, one appointed by Canada, one by Manitoba, two by the TLEC, and one Independent Chairperson appointed by all three parties – s. 34.01
- A member of the IMC may designate in writing an alternate to attend a meeting of the IMC – s. 34.02(2)
- The parties may change their members from time to time by providing notice in writing to the other parties – s. 34.02(3)
- Quorum of IMC is 4, with at least one member representing each of the parties and the Chairperson in attendance unless a member not in attendance has agreed otherwise – s. 34.02(4)

2. *Consensus Model Decision Making – s. 34.06*

- Except in matters requiring the direction of the Chairperson under Articles 34, 35, and 36, the IMC will operate with and by the consensus of all of its members
- Where the IMC is unable to resolve an issue or matter in dispute, it shall refer the matter in dispute for resolution in accordance with Article 34 and 35

- The IMC “will be guided by the principle that the parties each have a continuing obligation to act in good faith in implementing this Agreement and any Treaty Entitlement Agreement (TEA) including the resolution of any issue or matter in dispute.”
- IMC may make rules of procedure to govern its operation not inconsistent with Article 34

3. *Responsibilities of the IMC – s. 34.07*

- The IMC shall be “generally responsible for facilitating the implementation of this Agreement and any Treaty Entitlement Agreements”, including:
 - (a) establishing a budget of the reasonable estimated costs of its operation for each fiscal year from April 1 to March 31;
 - (b) monitoring the progress of implementation;
 - (c) making recommendations to the parties for the resolution of any matter in dispute relating to implementation;
 - (d) resolving any issue or matter in dispute relating to implementation which is referred to it by a party or an Entitlement First Nation (EFN);
 - (e) considering the appropriate method of resolution of an issue or matter in dispute in accordance with Art. 35
- The IMC shall meet upon the call of the Chairperson subject to Subsections 34.03(1) and 34.05(1)
- The IMC shall operate within the budget unless the parties agree otherwise

4. *Technical Support and Independent Professional Advice – s. 34.08*

- The Chairperson may, where the other members agree, retain technical support and independent professional advisors, including legal counsel, from time to time as necessary to assist in the proper discharge of its responsibilities
- Technical advisors shall provide advice, guidance, opinions to the IMC and the Chairperson to assist in the resolution of disputes
- Where the members of the IMC do not agree to retain technical advisors, the Chairperson may retain technical support or advisors on behalf of himself within the established budget

5. *Responsibilities of Chairperson – s. 34.09*

- In addition to other responsibilities set out in Art. 35 and 36, the Chairperson will be responsible for the general administration of the IMC including:

- (a) calling meetings;
 - (b) chairing all meetings;
 - (c) keeping written minutes and records of meetings and decisions of the IMC, decisions and notices of the Senior Advisory Committee (SAC), decisions and Awards of Adjudicators, and all other information necessary to complete the Annual Report;
 - (d) distributing minutes to members of IMC on timely basis;
 - (e) recommending budget of estimated costs of operation for fiscal year to IMC;
 - (f) submitting to each of the parties an invoice for the reasonable costs incurred by the IMC and the Chairperson in each month;
 - (g) maintaining records of all costs and preparing annual financial statements;
 - (h) ensuring timely payment of expenditures of the IMC upon receipt of payment from parties;
 - (i) if directed by parties, engaging an independent auditor to complete audit of IMC financial affairs.
- The Chairperson shall call a meeting of the IMC at least once every 3 months or at the request of at least two members representing at least two parties – the Chairperson shall provide at least 14 days notice in writing unless all members agree otherwise
 - The Chairperson shall assist the IMC in determining the sufficiency of information relating to implementation and may, if necessary, request any member of the IMC to take steps the Chairperson deems appropriate to ensure the sufficiency of that information
 - In order to facilitate the resolution of issues or matters in dispute, the Chairperson may:
 - (a) propose time periods for the parties to respond to an issue or dispute;
 - (b) direct any member to submit a report to the IMC about any issue or matter in dispute and propose solutions within a time period identified by the Chairperson;
 - (c) identify strengths and weaknesses of proposed solutions to an issue or matter in dispute;
 - (d) direct members of the IMC to assist in resolving an issue or dispute by consensus;
 - (e) propose solutions to an issue or dispute
 - where the IMC makes a decision on a means to resolve an issue or dispute, the Chairperson shall record the decision in the minutes or records and provide notice of the decision to the parties and any EFN specifically effected
 - where the Chairperson determines the IMC is unable to make a decision on a means to resolve an issue, the Chairperson will record that no decision was made, any means recommended by

the Chairperson and any direction to IMC members to consider the recommendation within a specified time period, and any response by the IMC members to the recommendations of the Chairperson

- where an issue is not resolved by the IMC, the Chairperson will refer the issue or matter in dispute to the SAC – the Chairperson may set out in writing to the SAC any means recommended by the Chairperson for resolving the issue or matter in dispute, any response of the IMC members to recommendations of the Chairperson, and the Chairperson’s recommendation on the proposed time period within which the SAC should attempt to resolve the issue
- the Chairperson:
 - (a) may request and receive recommendations from any IMC member on any aspect of implementation of this Agreement or a TEA;
 - (b) will, on behalf of the IMC, provide to the President of the TLEC, the Minister of Indian Affairs, and the Minister of Northern Affairs Manitoba an annual report including: a summary of progress of implementation; recommendations of the IMC for improvement of implementation; a summary of the issues or matters in dispute which have been resolved during the reporting period; a summary of the outstanding issues or matters in dispute at the end of the period; and recommendations for improvement of implementation;
 - (c) may provide other reports to the President of the TLEC, the Minister of Indian Affairs, and the Minister of Northern Affairs Manitoba on behalf of the IMC as he deems appropriate;
 - (d) will provide an unaudited annual financial statement to the President of the TLEC, the Minister of Indian Affairs, and the Minister of Northern Affairs Manitoba on behalf of the IMC including a statement of all funds received by the IMC from the parties during the fiscal year, how funds were disbursed, and a statement of all contributions in kind to the costs of the IMC;
 - (e) the annual report for each year shall be delivered on or before June 30

6. *Senior Advisory Committee – s. 34.10*

- The SAC consists of the President of the TLE Committee, the Regional Director General (Manitoba) or the Asst. Deputy Minister (Claims and Indian Government) of DIAND, and the Deputy Minister of Northern Affairs for Manitoba
- One member of the Council for an EFN specifically effected by an issue may also participate in meetings of the SAC where that issue is addressed
- The SAC shall meet only when all members are in attendance unless a member not in attendance has agreed otherwise
- Decisions of SAC shall be by consensus

- Where the SAC makes a decision on a means to resolve an issue, it shall set its decision in writing and send it to the Chairperson who will record the decision in the minutes or records of the IMC
- Where the SAC does not make a decision on a means to resolve an issue within the time period proposed by the Chairperson or such longer period that the SAC may agree on, the SAC shall provide notice in writing to the Chairperson who will record in the minutes or records of the IMC that the SAC made no decision on a means to resolve an issue and the appropriate dispute resolution mechanism to be used to resolve the issue where the SAC agrees on the mechanism to be used
- Where the SAC provides notice in writing to the IMC as above, the IMC will within 30 days: (a) where the SAC agrees on a means to resolve an issue, refer the matter for resolution in accordance with that agreement; or (b) where there is no agreement by the SAC, refer the matter to an appropriate method of dispute resolution in accordance with s. 35.02
- Where the IMC does not refer the issue for dispute resolution within 30 days, the Chairperson shall refer the matter for dispute resolution in accordance with s. 35.02

7. ***Dispute Resolution – Art. 35***

- S. 35.01 provides for the identification by the IMC of persons qualified in alternative dispute resolution to act as Adjudicators, the appointment of Adjudicators from time to time to resolve issues or matters in dispute, and the determination of rates of remuneration by the IMC
- S. 35.02 defines the “methods of dispute resolution” as (a) fact finding; (b) mediation; (c) non-binding arbitration; and (d) binding arbitration in accordance with the *Commercial Arbitration Act* – the resolution of issues or disputes shall be through a *progressive process* from fact finding to binding arbitration unless determined otherwise by the SAC in accordance with para. 34.10(6)(b) or by the Chairperson in accordance with para. 34.10(7)(b)
- All matters resolved by binding or non-binding arbitration will be in writing by the Adjudicator
- An Adjudicator appointed to resolve an issue may not be appointed to deal with the same issue or dispute unless all parties, including the EFN, agree
- S. 35.03 sets out the procedure for dispute resolution other than by binding arbitration – subject to directions provided by the IMC or SAC, the Chairperson has the responsibility in consultation with members of the IMC to:
 - (a) Prepare written directions to the Adjudicator for the dispute resolution process;
 - (b) Provide the Adjudicator with information about the issue or matter in dispute, including a written definition of the issue, any report on or proposed solution of the issue submitted to the IMC by any party, and any means of resolving the issue recommended by the Chairperson;

- (c) To determine a time period for completion of dispute resolution recognizing that the parties agree the following time frames should apply unless the issue is complex: (i) 3 days for fact finding; (ii) 5 days for mediation; and (iii) 7 days for binding or non-binding arbitration
- (d) To determine other appropriate procedures to ensure a timely and cost efficient resolution of the issue

Procedure for Binding Arbitration – s. 35.04

- The IMC shall prepare and submit to the Adjudicator a reference setting out in writing the questions to be determined and any other terms of reference to define his/her jurisdiction
- Where the IMC does not prepare and submit a reference on a timely basis or the Chairperson refers the matter for binding arbitration, the Chairperson shall prepare and submit a reference to the Adjudicator after consulting with other members of the IMC
- The Adjudicator shall make an Award addressing the issue which may include a determination of the facts, an interpretation of the FA or TEA, a determination that one or more of the parties or EFNs is required to take certain action to give effect to the FA or TEA, or a finding that an Event of Default has occurred
- An Adjudicator shall not have jurisdiction to make an Award which:
 - (a) requires any of the parties or an EFN to change any of its policies but the Adjudicator may identify inconsistencies or deficiencies in such policies and make recommendations which affect the implementation of the FA or TEA – the party which receives such recommendations shall have due regard for its obligations under the FA or TEA
 - (b) subject to s. 36.04(2), requires any party or EFN to make a payment for damages or loss alleged to have been suffered
- the resolution of an issue referred to binding arbitration that is resolved by the consent of the parties and any EFN involved shall issue as an Award

Appeal of Binding Arbitration Awards – s. 35.05

- An Award, other than one issued as a result of the matter being resolved by consent, may be appealed to the Manitoba Court of Queen’s Bench within 30 days of the date of the Award on the grounds of: (a) failure of the Adjudicator to consider the matter fairly; (b) bias; (c) failure of Adjudicator to act within jurisdiction; (d) error of law, including an error in the interpretation of the FA or TEA
- The Court of Queen’s Bench may (a) dismiss the appeal; (b) allow the appeal and remit the matter to the Adjudicator or IMC to appoint a different Adjudicator to be reconsidered; (c) allow the appeal and substitute its decision in place of the Award where this would reasonably resolve the issue; and (d) make an order for costs
- There is no right of appeal from a decision of the Court of Queen’s Bench

Default of Obligations in Dispute Resolution Methods – s. 35.06

- Where a party withdraws the issue or matter in dispute, the method of dispute resolution will end
- Where a party does not comply with a time period for the provision of information to the Adjudicator, the method of dispute resolution may proceed
- Where a party does not appear at any hearing, the method of dispute resolution will proceed based on the information before the Adjudicator and a finding, direction, decision or Award may be rendered

Costs of Dispute Resolution – s. 35.07

- The costs of dispute resolution will be paid equally by the parties involved except where a party does not comply with time periods to provide information or does not appear at a hearing in which case the Adjudicator may determine the payment of costs as may be reasonable in the circumstances taking into account the Manitoba Court of Queen's Bench rules on costs and the principle that the unsuccessful party normally pays the reasonable costs of the proceedings and other parties
- The Adjudicator may determine the allocation and payment of costs of binding arbitration
- Where a binding arbitration is resolved by consent of the parties, the Adjudicator may determine costs unless the parties have agreed otherwise

Record and Report of Issues or Matters in Dispute and Events of Default – s. 35.08

- The Chairperson will maintain a record of all issues or matters in dispute and Events of Default and the means identified to resolve them
- The record may be used to identify problem areas in implementation which require consideration by the parties, as information to assist the Adjudicator, or for the annual report or any other reports furnished by the IMC

8. *Material Failure – Art. 36*

- Where a party or EFN alleges failure to materially comply with a fundamental term or condition of the Framework Agreement or TEA, notice in writing shall be provided to the other party containing:
 - (a) identification of the fundamental term or condition of the Framework Agreement or TEA;
 - (b) a description of the circumstances of alleged material failure; and
 - (c) a statement that
 - (i) the party receiving the notice may remedy the material failure or refer the matter to the IMC within 30 days of receipt of the notice; and

- (ii) where the matter is not remedied within 30 days the matter may be referred to binding arbitration to determine whether the party has failed to materially comply with that term or condition
- The party in receipt of such notice may, within 30 days, remedy the alleged material failure or refer the matter to the IMC
- Where a party in receipt of such notice refers the matter to the IMC, the IMC shall consider the matter on a priority basis within 30 days of the matter being referred to it
- Where a party in receipt of such notice does not remedy the matter within 30 days, the party or EFN which has provided notice of an alleged material failure may refer the matter directly to the Chairperson by notice in writing
- Where the IMC does not resolve the matter on a priority basis or a matter is referred to the Chairperson in accordance with subs. (4), the Chairperson shall refer the matter directly to binding arbitration to determine whether the party or EFN against which the allegation has been made has failed to materially comply with a fundamental term or condition

Matters Constituting Events of Default – s. 36.02

- The following constitute Events of Default by a party or EFN:
 - (a) failure to comply with any Award of an Adjudicator in binding arbitration within the time period specified or, where no time period is specified, within a reasonable time period provided that no appeal of the Award has been filed pursuant to subs. 35.05(1) or the failure of that party to comply with the Award does not result from the failure of any other party to undertake or perform any action as an obligation under the Framework Agreement or TEA or a condition precedent to complying with the terms of the Award;
 - (b) an Adjudicator in binding arbitration has determined that (i) a party or EFN has, repeatedly and in a manner which clearly establishes a pattern, materially failed to comply with its obligations under the Framework Agreement or TEA; and (ii) the failure of a party to comply with its obligations was not the result of a party, an EFN or any Person to undertake or perform any action as an obligation or condition precedent to complying with the Framework Agreement or TEA
 - (c) a party or EFN has failed to comply with a decision of the Manitoba Court of Queen's Bench made in accordance with Subs. 35.05(2) within the time period specified or within a reasonable time period if none is specified, provided that the failure of that party to comply with the decision does not result from the failure of any other party to undertake or perform any action as an obligation under the Framework Agreement or TEA or a condition precedent to complying with the terms of the decision
 - (d) an Adjudicator in binding arbitration has determined that a party or an EFN has materially failed to comply with a fundamental term or condition of the Framework Agreement or TEA and has not remedied that material failure within 30 days of receipt of notice in writing from another party in accordance with Subs. 36.01(1)

Identification of Means of Resolving Events of Default – s. 36.03

- Any party or EFN that admits, or is determined by an Adjudicator to have committed, an Event of Default shall determine and identify reasonable means of remedying the Event of Default

Loss or Damage as a Result of an Event of Default – s. 36.04

- Where an Adjudicator has determined that party or EFN has committed an Event of Default, a party or EFN which has suffered loss or damages may refer the matter of that loss or damage to the IMC as an issue or matter in dispute
- Where an issue or matter in dispute relating to loss or damages suffered is referred to an Adjudicator to be resolved by binding arbitration, the Adjudicator may make an award setting damages to be paid by the party or EFN committing the Event of Default to the party or EFN suffering the loss or damages

9. *Issues or Matters in Dispute Which May be Referred to IMC*

The following is a summary of provisions in the Framework Agreement which provide for issues or matters in dispute to be referred to the IMC for dispute resolution. This summary is not exhaustive:

- **3.01(5)** – Any issues or circumstances encountered in and considerations affecting the Selection or Acquisition of land which are not addressed by the General Principles for Land Selection or Acquisition may be referred to the IMC if the parties are unable to address such issues on their own
- **3.02(6)** – Disputes between Manitoba and an EFN re: selection of a parcel less than 1,000 acres
- **3.03(4)** – Disputes between Manitoba and an EFN re: determination of a “reasonable use area” for Tourist Lodge or Outcamp
- **3.03(30) and (31)**– Where there is a conflict between the Selection of Crown Land within a Forest Plan and an area to be harvested or subject to road construction within 3 years, the IMC may assist an EFN and Forest Operator in negotiating an agreement
- **3.03(33)** – The IMC may resolve a dispute where Canada and Manitoba considers that a selection within land subject to forest plans is not eligible for selection
- **3.03(37)** – The Mathias Colomb Cree Nation may refer issues pertaining to the selection dated June 27, 1996 to IMC on priority basis if agreement not reached with Forest Operators within one year of date of execution of its TEA
- **3.11** – Any issues or matters in dispute relating to the Selection or Acquisition of land not resolved by the parties

- **4.02** – Requests for the extension of an EFN’s land selection period
- **6.02(8)** – Where Canada or Manitoba advises an EFN that a selection or acquisition is not eligible to be set apart as reserve in accordance with the Principles set out in the Framework Agreement, the matter may be referred to the IMC if not resolved by the parties within 120 to 180 days
- **8.06** – Where Canada does not set apart land as a reserve despite a recommendation by the Minister of Indian Affairs to do so
- **9.01(6)** – Where the parties are unable to reach agreement on the nature and extent of a right to land in severalty
- **11.03(5) and (6)** – Where an EFN and a third party owning mineral rights are unable to reach an agreement with respect to reasonable access to the surface of land selected or acquired by an EFN, the IMC may determine the terms and conditions for reasonable access
- **20.11(6) and 21.11(7)** – Where the opinion of the auditor of the Third Party Interest (TPI) and Implementation Accounts are not unqualified or where it is to the effect that the TLEC is not operating the Accounts in accordance with the Framework Agreement
- **27.03(5)** – If Manitoba breaches any of its obligations under the Framework Agreement, Canada or any EFN may refer the matter to the IMC
- **34.07(1)(d)** – Any issue or matter in dispute relating to the implementation of the Framework Agreement or any Treaty Entitlement Agreement may be referred to the IMC by a party or an EFN
- **36.01** – Where a party or an EFN alleges that another party has materially failed to comply with a material term or condition of the Framework Agreement or a Treaty Entitlement Agreement

As a general comment, it is important to carefully review the specific provisions of the Framework Agreement to ensure that the parties have fulfilled any procedural requirements before referring a matter to the IMC. For example, certain provisions may set out notice requirements to other parties involved in the dispute, impose a requirement to consult, set a specified time period to remedy a problem before a matter may be referred to dispute resolution, or require that the parties exhaust reasonable efforts to resolve the issue on their own before referring a matter to the IMC.

PART II – IMC POLICIES AND PROCEDURES

10. *IMC Meetings*

- The main responsibilities of the IMC are two-fold in nature:
 - (i) to monitor the progress of implementation; and
 - (ii) to facilitate the resolution of any issue or matter in dispute relating to implementation referred to it by a party or an EFN

- The Chairperson shall generally call a meeting of the IMC every 4 – 6 weeks, and at least once every 3 months by distributing written notice and a draft agenda to all members of the IMC, or by agreeing on the next meeting date at an IMC meeting. The required quorum is 4, with at least one member representing each of the parties and the Chairperson in attendance unless a member not in attendance has agreed otherwise.
- With respect to Alternate Representatives of the Parties, Alternate Representatives may be appointed for up to a one year period subject to further notice, rather than on a meeting by meeting basis, however prior to a meeting whereat an Alternate Representative will be serving as the Party representative, written notice is to be provided to the Chairperson and the other Party representatives.
- Other persons involved in the implementation of the Framework Agreement and any TEA may be invited by members of the IMC to participate in the meetings to address a matter and thereby assist the IMC in monitoring the progress of implementation or resolving any issue or matter in dispute. Where an IMC member intends to bring other personnel to the IMC meeting, they should notify the Chairperson and other IMC members in writing at least two working days prior to the meeting. For example, the IMC members may invite representatives from Manitoba Hydro, the Canada Customs and Revenue Agency, Department of Finance, etc. where it is necessary to discuss issues within their respective areas of responsibility. The involvement of non IMC member participation in the discussion, including Alternate Representatives identified by the Parties who are not serving as their Party's representative for that specific meeting, is limited to providing information, and is subject to approval by the Chairperson. Where the IMC considers it appropriate, they may invite such persons to actively participate in a discussion of such issues but they may not participate in any decisions made by the IMC. Where appropriate, such decisions may be made during *in camera* sessions of the IMC.
- The Chairperson is to distribute a draft agenda setting out the proposed items for discussion to members of IMC two weeks before the scheduled meeting date.
- The draft agenda may contain three parts to assist the IMC in discharging its responsibilities:
 - (i) a section for general status reports from the parties in relation to the community approval process, land selections, acquisitions, the reserve creation process, responses to undertakings accepted by a Party at a previous IMC meeting, and any other matter that will assist the IMC in monitoring the progress of implementation of the Framework Agreement and any TEA;
 - (ii) a section for discussion of specific issues raised by the Chairperson, an IMC member, or any of the parties to the Framework Agreement or TEA for discussion purposes at an IMC meeting; and
 - (iii) a section providing for discussion of general issues relating to the administration of the IMC, such as review of meeting summaries, reviewing budgets, scheduling meeting dates, and other such matters.
- Where the Chairperson, an IMC member, or any of the parties wishes to raise a specific issue for discussion at an IMC meeting, they shall respond to the Chairperson's circulation of a draft agenda with a written request that a topic be added to the agenda, and when requested by the Chairperson provide a brief written summary of the issue and any relevant documents to the Chairperson one

week prior to the next IMC meeting wherever practicable. The summary and documents shall be distributed to IMC members and they should provide sufficient information to allow for meaningful discussion of the issue among members of the IMC. The requirement to provide a summary of the issue in advance may be dispensed with by the Chairperson where he is satisfied that IMC members already have sufficient information to allow for meaningful discussion of the issue.

- Where a specific issue has been raised for discussion, other members of the IMC should furnish a brief written reply to facilitate discussion at the meeting.
- In some cases, issues or matters in dispute may be resolved by agreement of the parties at an operational level. In other cases, the IMC may be asked to make a decision with respect to the issue by consensus among members of the IMC. Where such issues cannot be resolved by agreement of the parties or by consensus, they may be referred to dispute resolution in accordance with the Framework Agreement.
- The representatives of the Parties are to make best efforts to submit their response to their undertakings from previous IMC meetings to the Chairperson at least one week in advance of the next IMC meeting to facilitate meaningful discussion on the matter at that meeting. Upon receipt, the Chairperson is to ensure that representatives of all other Parties receive a copy of these submissions. If the party is not able to submit documentation in advance of the meeting, they will request extended time on the Agenda to review the document with IMC members, so as to ensure that decisions are not unduly delayed.
- The Chairperson is to distribute a draft summary of the meeting to all members of the IMC within 1 week of the meeting. The IMC members are to review and provide any comments or suggested revisions to the Chairperson within 1 week of receipt. The Chairperson is then, if required, to circulate a revised second draft to all members of the IMC within 3 days, and the IMC members are to review and provide any comments within 2 days of receipt. Wherever possible, the meeting summary will be finalized and confirmed within 3 weeks.
- While all IMC members are to respond to draft meeting summaries which have been distributed by the Chairperson, by either providing comments or confirming that they are in agreement with the meeting summary; lack of a response by a Party representative within these target time frames will be interpreted by the Chairperson and the IMC as agreement with the meeting summary.
- In appropriate cases, the Chairperson may direct that the parties provide a written report and documents to facilitate discussion of a certain issue within a time period identified by the Chairperson. Generally, the role of the Chairperson is to facilitate discussion and to seek consensus among IMC members, but the Chairperson may take a proactive role in any discussions by identifying the strengths and weaknesses of proposed solutions or making recommendations to the parties on how to resolve a particular issue or matter in dispute.
- When an issue is not resolved by consensus among the IMC or SAC and it is necessary to appoint an Adjudicator, the IMC shall include a written definition of the issues in dispute, any report on the proposed solution of the issue submitted by any party, and any means of resolving the issue recommended by the Chairperson. Any admissions or reports and information provided by the parties on a “without prejudice” basis shall not be disclosed to the Adjudicator unless the parties consent in writing to the release of such documents.

APPROVED BY THE IMC AND CHAIRPERSON ON March 31, 2020

This document has been reviewed and approved by the IMC as indicated by the signature of the IMC Chairperson.

A handwritten signature in cursive script that reads "Laron Bill".

IMC Independent Chair

Attachment #1: IMC Process Upon Receipt of an Issue or Matter in Dispute (I/M)

IMC PROCESS UPON RECEIPT OF AN ISSUE OR MATTER IN DISPUTE (I/M)

There are three main documents to be reviewed in determining the steps that IMC normally follows upon receipt of a referral of an “issue or matter in dispute” (I/M):

I) DOCUMENTS CONSULTED by the IMC:

- 1) MFA: The MFA is the Agreement that describes the roles and responsibilities of the IMC, and any and all other documents need to be consistent with the MFA.
- 2) Policies and Procedures Manual: The Implementation Monitoring Committee may from time to time make rules of procedure to govern its operation not inconsistent with Article 34, MFA. (MFA 34.06(4))

- The IMC Policies and Procedures Document (June 23, 2010) has been adopted by the IMC pursuant to MFA Article 34.06(4)
- The IMC Policies and Procedures Document is divided into two parts.

Part I summarizes the provisions of the MFA to provide guidance in regard to the mandate and role of the IMC.

Part II sets out policies and procedures developed in accordance with MFA Article 34 that are intended to;

- a) complement the MFA, and
 - b) facilitate the resolution of issues or matters in dispute that may arise in implementing the MFA, or the TEA of any EFN.
- 3) This Protocol developed by the IMC for the Referral and Review of an I/M: The Protocol for the Referral and Review of an I/M is intended to be utilized by a Party or EFN when either is referring an I/M to the IMC. It is essentially a full description of the I/M from the point of view of the referring Party/EFN. The protocol is intended to ensure that all of the relevant data is submitted to enable the referral to be dealt with as soon as possible.

II) PURPOSE:

When a referral is made by a Party or an EFN, the IMC’s responsibility is to resolve any issue or matter in dispute relating to the implementation of the Agreement or any TEA (Article 34.07(1)(d) and consider the appropriate method of resolution of an issue or matter in dispute relating to the implementation of the Agreement or any TEA in accordance with Article 35 of the Agreement 34.07(1)(e).

III) IMC DECISION MAKING:

- 1) Except in matters requiring the direction of the Chairperson, the IMC operates with and by the consensus of all of its members. (34.06(1))
- 2) Where the IMC is unable to resolve an I/M on a consensual basis, it shall refer the I/M for resolution as provided in MFA Articles 34 and 35. (34.06(2))
- 3) In order to facilitate the resolution of the I/M, the Chairperson may take a number of steps set out below (34.09(5))
 - a) Propose time periods for Parties to respond to the referred I/M,
 - b) Direct any IMC member to submit a report about the I/M and propose solutions to that I/M within time periods identified by the Chairperson,
 - c) Identify strengths and weaknesses of all solutions proposed to resolve an I/M,
 - d) Direct the IMC members to assist in resolving an I/M by consensus,
 - e) Propose solutions to an I/M.

IV) STEPS FOR CONSIDERING AN I/M REFERRAL LEADING TOWARDS CONSENSUS:

- 1) While there is a need for IMC consistency when considering referrals, there is also a need for flexibility to ensure the review process is best suited for the specific referral.
- 2) Depending upon the characteristics of the referral, a number of processes/methods have been followed with a goal of arriving at an IMC consensus on how the I/M should be resolved. When these initiatives fail to reach consensus, the IMC is to consider the appropriate method of resolving the I/M in accordance with MFA Article 35.
- 3) Generally, there is a need for a Referral Protocol to be developed to;
 - a) precisely determine the I/M,
 - b) assemble of the relevant facts,
 - c) assessment/interpretation of the applicable provisions of the MFA,
 - d) identify options or alternatives for resolution of the issue, and
 - e) consider the recommendations of the Chairperson.

In the event the IMC is unable to resolve an I/M, the Chairperson is obliged to provide the SAC with the Referral Protocol containing the above stated information and results of the IMC review of the referral.

- 4) The processes/methods used to reach consensus usually include:
 - a) Ensure all IMC representatives have copies of the referral, Referral Protocol, and relevant materials.
 - b) Review the referral submitted.
 - c) Discuss the referral at the next IMC Meeting, as a priority, in order for IMC to decide upon a course of action, and at that meeting discuss;

- (i) Review the specific provisions of the MFA to ensure that the referring Party/EFN has fulfilled any procedural requirements before referring an I/M to IMC. (page 10 of Policy and Procedures Manual) For example certain provisions may;
 - set out notice requirements to the other Parties involved in the dispute,
 - impose a requirement to consult, (See Appendix “A” for list of MFA provisions requiring consultation)
 - set a specified time period to remedy a problem before a matter may be referred to dispute resolution, or
 - require that the Parties exhaust reasonable efforts to resolve the I/M between themselves before referring the I/M to IMC, and to
 - (ii) Ensure that all of the information required to make an informed analysis of the I/M is contained therein, or decide if this should be requested of the referring Party/EFN,
 - (iii) Determine if an operational meeting should be convened, and attended by the Chairperson to allow the Parties an opportunity to review and resolve the I/M prior to proceeding with the reference to IMC, and to ensure that the matter is not being referred prematurely,
- d) In general the Chairperson (under 34.09(5)) requests all Parties to provide the same information as asked of the referring Party in the “Protocol for the Referral and Review of an I/M”, including;
- (i) Definitions
 - (ii) The Issue or Matter in Dispute (in the other Parties view)
 - (iii) The Facts (in the other Parties view)
 - (iv) Interpretation of the MFA (in the other Parties view)
 - (v) Proposed Resolution and Options Considered (in the other Parties view)
 - (vi) Interpretation of the MFA by the Other Involved Parties
 - (vii) Background Information (correspondence, maps, meeting summaries, and any other documents considered important by the other Parties when IMC considers the referral)
- e) Depending on the nature of the I/M, and the views submitted by the Parties to the I/M, the Chairperson may recommend that; (i) a discussion paper may be developed to analyze the situation and clarify linkages to the MFA provisions, or (ii) a Focus Group meeting be convened to discuss the matter in detail, clarify misunderstandings if any, and arrive at a consensus.
- f) If the exchange of discussion paper drafts or Focus Group meetings leads to a common understanding on matters upon which the Parties previously held divergent perspectives and opinions, the Parties will have reached consensus on the referral in accordance with the IMC Policy and Procedures Manual and will advise the referring Party. It may also be deemed appropriate and beneficial to issue an IMC Bulletin on

the topic as per the IMC Policy and Procedures Manual. Once the referral has been closed the Parties will be sent a letter advising them of the decision from the IMC and the referral will be closed.

- g) If the IMC discussions of the Chairperson's Referral Protocol, and/or discussion paper and/or Focus Group discussions do not result in a consensus; the Chairperson may update his/her summary document, as per the IMC and Focus Group discussions, and add two additional sections, And circulate this updated summary document to IMC with a time frame for comments.

If the updated Chairperson's summary document does not result in a consensus, the Chairperson's summary document serves as the information required pursuant to MFA 34.09(7)&(9) for a referral of the I/M to SAC. (i.e. the I/M summary, any means recommended by the Chairperson for resolving the I/M for consideration of the members of the IMC and any direction to the members to consider the recommendation within a specified time period, any response of the IMC members provided to a recommendation of the Chairperson, and the Chairperson's recommendation on the proposed time period within which the SAC should attempt to resolve the I/M.)

V) MONITORING OF A REFERRAL AFTER AN AWARD HAS BEEN ISSUED BY AN ARBITRATOR – REMEDIES TO EVENTS OF DEFAULT

The MFA under Section 35.08(1) states that the Chairperson is responsible for maintaining a record of all issues or matters in dispute, including Events of Default. This record includes the means identified to remedy any issue or matter in dispute and any Event of Default. In order for the Chairperson to maintain a complete record the Chairperson and the IMC monitor the implementation of Awards issued after an Arbitrator has made a decision. The IMC monitors the implementation of an Award and provides guidance until the Arbitrator's Award has been completed.

Monitoring of the Award also includes monitoring remedies to the issue or matter in dispute and monitoring remedies to Events of Default. The Chairperson and the IMC will seek updates from the Parties that are involved with the referral and the Award that has been issued by the Arbitrator.

The IMC will review each Binding Arbitration decision to confirm that the awards of each of the decisions have been fully implemented and addressed. For example, in reviewing this, IMC will consider whether:

1. "Reasonable means" have been taken to remedy the Event of Default;
2. Appropriate steps have been taken to address the "loss or damage" as a result of the Event of Default;
3. Damages set out in the Award resulting from the damages have been addressed within a timely manner.

VI) PARTICIPATION IN THE DISPUTE RESOLUTION PROCESS INCLUDING NOTICES TO WITHDRAW, REQUEST TO PLACE MATTERS IN ABEYANCE AND THE ABANDONMENT OF REFERRALS

The members of the Implementation Monitoring Committee will be guided by the principle that the parties each have a continuing obligation to act in good faith in implementing the Agreement and any Treaty Entitlement Agreement, including the timely resolution of any issue or matter in dispute. As such the active participation of the parties to a referral is important.

Notice of Withdrawal:

The term withdraw in the context of an IMC Referral means a Referring Party to the Referral has chosen to permanently close the Referral thus removing the Referral from the IMC process.

Where a Party to a Referral has chosen to withdraw their referral, a letter from the Party stating they wish to withdraw the referral is sufficient for the Chairperson to close the referral file. The Chairperson will provide notice and date of closure to the Parties of the withdrawal and will note its closure in the Annual Report.

Request to place an I/M in Dispute into Abeyance:

The term abeyance is defined by the IMC as being when a matter enters a period of temporary inactivity. A referral that has been referred to the IMC for dispute resolution can be placed into abeyance at the request of the referring party for one year when ongoing negotiations directly related to the resolution of the subject matter of the referral continue between the Parties involved in the initial Referral.

To ensure the necessary approvals have been obtained, where a Party requests that a referral be placed in abeyance, a letter confirming that the subject matter of the referral is in active negotiations between the parties, will be required prior to the IMC agreeing to place the matter into abeyance.

As an abeyance is a temporary period of inactivity, the Chairperson will seek confirmation at the one year anniversary of the matter being placed into abeyance that: (a) the Referring Party wishes to continue the abeyance period and that (b) the other party is not opposed to the approval of a further abeyance period. Where there is no opposition to the extension, the Chairperson will note in the referral file and in the Annual Report that a further one-year abeyance period was granted.

If the Referring Party requests a further extension of a referral in abeyance and the opposing Party does not agree with the request for an extension then the Chairperson may facilitate the resolution in accordance with Article 34.09(5). The Chairperson also

has the ability to deny the request for an extension where the Parties have not demonstrated action on the activities to resolve the issue or participation in the resolution of the Referral that is in abeyance.

In the event that the Protocol for the Referral and Review of an I/M in dispute or the corresponding response document from the Party(s) to the Referral are incomplete or the IMC has not received any requested information from the Parties to the Referral in order to determine the next steps to address an I/M, the IMC can place the Referral into abeyance for a period to be determined by the Chairperson, which will not exceed 8 months.

Where a matter is to be referred to Binding Arbitration the Chairperson shall give reasonable notice of 30 days for a response to be provided confirming to proceed with the process step. Where the IMC the Chairperson receives notice from the referring Party indicating that they are not prepared to continue to Binding Arbitration the IMC will close the file.

Where an I/M has been submitted to IMC and subsequently the referring party proceeds to engage in other forms of dispute resolution outside of the process provided in the Framework Agreement, such as litigation, the presumption – based on the principle that the same matter cannot proceed simultaneously in two venues, and the principle against venue picking - will be the party wishes to close their Referral. To ensure the record reflects this, the IMC will require the referring party to indicate if they are closing the Referral, and if they wish to actively maintain the Referral, they will be requested to identify how the Referral is unique from the matter proceeding outside of the IMC.

The IMC will then seek a response from the respondent party to confirm that the matters being disputed are distinct and where the respondent party agrees that the matters are distinct and agrees that the matter can be placed in abeyance, the IMC will approve a one-year abeyance period. Further abeyance periods will be subject to annual review and granted by the Chairperson as per Article 34.09(5). The Chairperson also has the ability to deny the request for an extension where the Parties have not demonstrated action on activities or participation in the resolution of the Referral that is in abeyance. Seeking independent legal advice to assist with this decision as per the MFA.

ABANDONMENT OF A REFERRAL:

The term abandon is defined by the IMC as a total desertion or absolute relinquishment. Where the IMC and/or Chairperson has made repeated attempts (a minimum of four (4) attempts over a maximum of two (2) years to obtain necessary information from a referring Party and 60 days has lapsed from the time of the last contact attempt, the IMC/Chairperson will consider the Referral as having been abandoned by the referring Party.

The Chairperson will send a letter to the Parties/EFN involved in the I/M in dispute advising that the I/M has been formally closed due to abandonment and will report the closure of the file in the annual report.

PROCEDURE FOR CLOSING A REFERRAL

When a referral file is being closed the following steps will be carried out by the IMC:

1. The IMC will document in the minutes that a decision has been reached to close the file;
2. A letter will be sent to both the referring Party and the Party to the referral indicating how a decision was reached to close the file;
3. The IMC will draft a Bulletin outlining the results of the decision and how this decision was reached i.e., Arbitrator’s ruling, Party’s agreed to resolution, IMC reached a consensus, SAC reached a consensus.

Once a referral has been closed, a Party to the original referral will not be able to refer the same matter to the IMC as an issue or matter in dispute. Events of Default that have been subject to a decision through Binding Arbitration will also not be able to refer the same matter to the IMC as an issue or matter in dispute.

In accordance with 35.06(1) of the MFA the IMC will also carry out the same procedures where a party withdraws the issue or matter in dispute: the method of dispute will end and as a result will be closed by the Chairperson.

Appendix “A”

List of MFA provisions requiring consultation:

The MFA references consultation requirements for Parties, EFNS, and outside related interest groups in a number of MFA provisions. These include the following:

- | | |
|-----------------|------------------------------------|
| 3.03(4)(a) | 12.04(4) |
| 3.03(8)(a)(iv) | 12.04(5) |
| 3.03(34) | 12.08(5)(a) |
| 3.08(1)(b) | 12.09(2) |
| 3.08(6) | 22.01(2) |
| 12.04 – heading | 22.02(2) |
| 12.04(2) | 35.03 |
| 12.04(3) | 35.04(2) |
| | Schedule “H” – 3.02(b) and 4.01(b) |



Laren Bill
IMC Independent Chairperson

March 31, 2020

Date