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ANCIENT SPIRIT, MODERN MIND

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**REPORT TO THE PEOPLE'S ASSEMBLY**

***Financial Administration Act  
Amendment Act, 2020***

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**FOR CONSIDERATION AT THE  
SPECIAL PEOPLE'S ASSEMBLY**

July 25, 2020

Prepared by: Ratcliff & Co. LLP, on behalf of the Executive Director

Date: June 29, 2020

## INTRODUCTION

The People's Assembly will be asked to consider the following motion:

The People's Assembly hereby approves the amendments to Huu-ay-aht legislation set out in the attached *Financial Administration Act Amendment Act, 2020*.

## DISCUSSION

The Legislature has enacted the *Financial Administration Act Amendment Act, 2020* (the "amending act") in order to make amendments to Huu-ay-aht legislation and, in particular, the *Financial Administration Act* ("FAA"). The changes set out in the amending act will not be brought into force until after they are approved by the People's Assembly.

The amendments relate to the obligations imposed by Huu-ay-aht law on entities that are even partially owned or controlled by Huu-ay-aht special investment bodies, which are captured by the definition of "Huu-ay-aht body" in the current laws. The reason for these proposed amendments is to facilitate Huu-ay-aht's ability to make major investments and undertake major capital infrastructure projects in collaboration with other commercial entities and First Nations. The current definition poses an obstacle to potential transactions under consideration and, more generally, could deter other potential partners from participating in projects with Huu-ay-aht through its special investment bodies.

Huu-ay-aht law imposes obligations on the Huu-ay-aht government and other entities owned and controlled directly or indirectly by the government, which are defined as "Huu-ay-aht public bodies". There are a number of such requirements—relating primarily to financial and other reporting requirements—which, while appropriate to impose on the Huu-ay-aht government and some entities that it directly controls, are impractical or overly onerous to apply to private entities that are only partially owned or controlled by a Huu-ay-aht special investment body.

This issue is addressed in the amending act by changing to the definition of "Huu-ay-aht public body" to exclude entities owned or controlled by a Huu-ay-aht special investment body. The definition of "Huu-ay-aht public body" is repeated in a number of other acts. The proposed amendments therefore change that definition in the *Land Act*, *Interpretation Act*, *Code of Conduct and Conflict of Interest Act* and *Freedom of Information and Protection of Privacy Act* in addition to making that change in the FAA.

While the entities in question will no longer be subject to the requirements imposed on "Huu-ay-aht bodies" a number of safeguards will persist to protect Huu-ay-aht's interests in relation to entities owned or controlled by Huu-ay-aht special investment bodies. Corporate governance principles and fiduciary obligations apply to these relationships and these will require the board of directors of Huu-ay-aht special investment bodies to exercise their management responsibilities in the best interests of Huu-ay-aht. The board will be required to exercise available contractual and corporate rights to obtain relevant financial information from subsidiaries or affiliates and nominate directors who will achieve desired business outcomes. Executive Council has the power to appoint the directors to the special investment body boards and to remove them if they fail to achieve the desired outcomes.

## **OPTIONS & IMPLICATIONS**

People's Assembly approval is required before any amendments to the *Financial Administration Act* may be brought into force.

The current legislation poses a potential obstacle to transactions currently under consideration and, more generally, could deter other potential partners from participating in projects with Huu-ay-aht through its special investment bodies. Unless and until the amendments are brought into force, these obstacles will remain.

## **RECOMMENDATION**

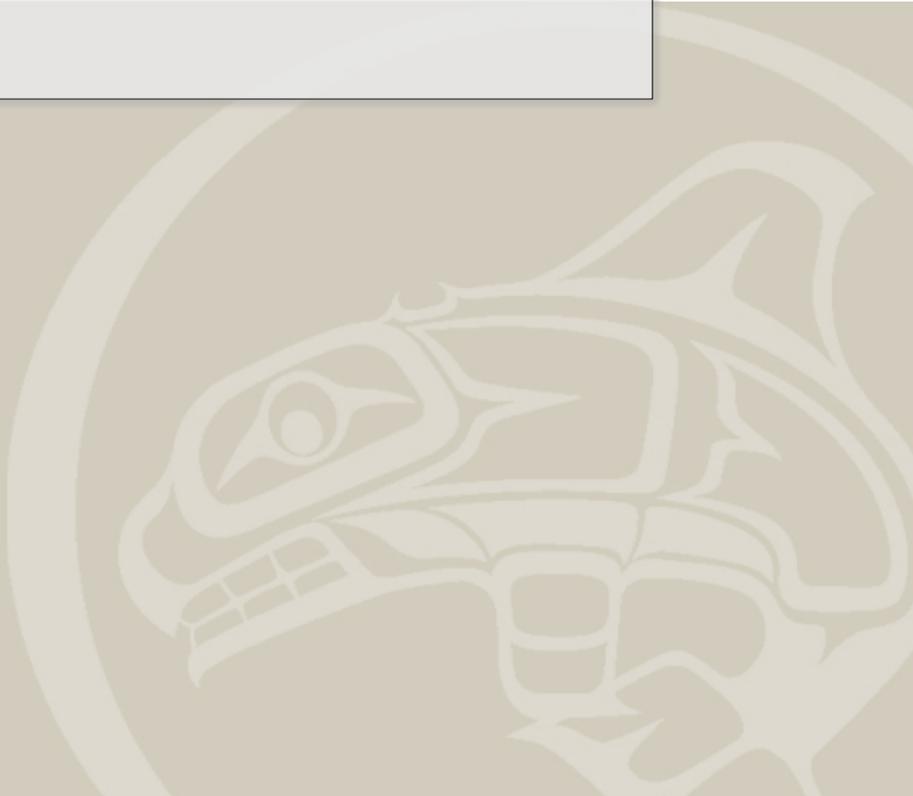
The *Financial Administration Act Amendment Act, 2020* was recommended by the Finance Committee, supported by the Hāwiih Council and approved by Executive Council before it was enacted by the Legislature. A recommended resolution approving the amendments set out in the *Financial Administration Act Amendment Act, 2020* is attached.



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**FINANCIAL ADMINISTRATION ACT  
AMENDMENT ACT, 2020**





## REGISTRY OF LAWS CERTIFICATION

I certify that the *Financial Administration Act Amendment Act, 2020* was passed by Executive Council on:

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**Chief Councillor, Robert Dennis**

I certify that the *Financial Administration Act Amendment Act, 2020* is enacted as law on:

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**Ta'yii Hawilth, Derek Peters**

I certify that the *Financial Administration Act Amendment Act, 2020* came into force on:

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**Law Clerk, Coraleah Johnson**



*Financial Administration Act Amendment Act, 2020*

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- 1 Amendments
- 2 Commencement
- 3 Consolidation

**Amendments**

- 1 (1) *Section 3 of the Financial Administration Act, HFNA 7/2011 is amended as follows:*

- (a) *by replacing the definition of “Huu-ay-aht public body” with:*

“**Huu-ay-aht public body**” means any entity that is owned or controlled, directly or indirectly, by government except for a Huu-ay-aht business enterprise or an entity owned or controlled, directly or indirectly, by a Huu-ay-aht special investment body;

- (b) *by replacing the definition of “Huu-ay-aht special investment body” with:*

“**Huu-ay-aht special investment body**” means a Huu-ay-aht body prescribed by Executive Council under section 62.1(1);

- (2) *Schedule 1 of the Interpretation Act, HFNA 14/2011 is amended by adding the following definition:*

“**Huu-ay-aht special investment body**” means a Huu-ay-aht body prescribed by Executive Council under section 62.1(1) of the *Financial Administration Act*;

- (3) *Section 2 of the Code of Conduct and Conflict of Interest Act, HFNA 4/2011; section 2 of the Freedom of Information and Protection of Privacy Act, HFNA 2/2012; Schedule 1 of the Interpretation Act, HFNA 14/2011 and section 2 of the Land Act, HFNA 9/2011 are each amended by replacing the definition of “Huu-ay-aht public body” with:*

“**Huu-ay-aht public body**” means any entity that is owned or controlled, directly or indirectly, by government except for a Huu-ay-aht business enterprise or an entity owned or controlled, directly or indirectly, by a Huu-ay-aht special investment body;

**Commencement**

- 2 This act comes into force by resolution of Executive Council.

**Consolidation**

- 3 The Law Clerk is directed to consolidate the *Financial Administration Act*, HFNA 7/2011, the *Interpretation Act*, HFNA 14/2011, the *Code of Conduct and Conflict of Interest Act*, HFNA 4/2011, the *Freedom of Information and Protection of Privacy Act*, HFNA 2/2012 and the *Land Act*, HFNA 9/2011.



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**FINANCIAL ADMINISTRATION ACT**

**PROPOSED AMENDMENTS**

**OFFICIAL CONSOLIDATION**

**Current to March 22, 2019**

*The Huu-ay-aht Legislature enacts this law to establish a comprehensive financial administration system for the effective and efficient management of Huu-ay-aht resources.*

- “**Executive Director**” means the Executive Director appointed under section 86;
- “**Finance Committee**” means the committee established under section 6;
- “**financial plan**” means the financial plan under section 17;
- “**government**” means government as defined in the *Government Act*;
- “**government employee**” means a Huu-ay-aht employee
- (a) employed by government, and
  - (b) other prescribed Huu-ay-aht employees;
- “**Huu-ay-aht body**” means government and Huu-ay-aht public bodies;  
HFNA 2/2013, s. 49(a).
- “**Huu-ay-aht business enterprise**” means Huu-ay-aht business enterprise as defined in the *Economic Development Act*;  
HFNA 2/2013, s. 49(b).
- “**Huu-ay-aht employee**” means an individual employed by a Huu-ay-aht body and who is not exempt by regulation;
- “**Huu-ay-aht Fiscal Financing Agreement**” means the Huu-ay-aht First Nations Fiscal Financing Agreement among the Huu-ay-aht, Her Majesty the Queen in right of Canada and Her Majesty the Queen in right of British Columbia, as deposited in the Registry of Laws and Official Records and includes amendments to that agreement made in accordance with it;
- “**Huu-ay-aht Lands**” means Huu-ay-aht Lands as defined in the *Land Act*;
- “**Huu-ay-aht legislation**” means Huu-ay-aht Acts and the regulations made under them;
- “**Huu-ay-aht public body**” ~~means an entity other than a Huu-ay-aht business enterprise, that is owned or controlled, directly or indirectly, by government;~~  
means any entity that is owned or controlled, directly or indirectly, by government except for a Huu-ay-aht business enterprise or an entity owned or controlled, directly or indirectly, by a Huu-ay-aht special investment body;
- “**Huu-ay-aht special investment body**” ~~means:~~
- ~~(a) a Huu-ay-aht body prescribed by Executive Council under s. 62.1(1), and;~~
  - ~~(b) a Huu-ay-aht body held or controlled, whether directly or indirectly, by a Huu-ay-aht special investment body prescribed by Executive Council under s. 62.1(1).~~ means a Huu-ay-aht body prescribed by Executive Council under section 62.1(1);
- “**Maa-nulth First Nations Tax Treatment Agreement**” means the Maa-nulth First Nations Tax Treatment Agreement among the Maa-nulth First Nations, Her Majesty the Queen in right of Canada and Her Majesty the Queen in right of British Columbia, as deposited in the Registry of Laws and Official Records and includes amendments to that agreement made in accordance with it;
- “**recommendation**” includes a recommendation under section 69 (5) of the *Government Act* and a report under section 69 (6) of that Act;
- “**spending authority**” means an authorization in a Huu-ay-aht Act to spend money or incur an expenditure;
- “**statutory spending authority**” means an authorization in a Huu-ay-aht Act other

# HUU-AY-AHT FIRST NATIONS



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## CODE OF CONDUCT AND CONFLICT OF INTEREST ACT

### **PROPOSED AMENDMENTS**

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#### OFFICIAL CONSOLIDATION

Current to March 12, 2015

*The Huu-ay-aht Legislature enacts this law to hold Huu-ay-aht public officers to the highest ethical standards in the performance of their duties.*

**Purpose**

- 1 The purpose of this Act is to establish a code of conduct to ensure that in carrying out their duties, HUU-AY-AHT public officers
- (a) adhere to the highest ethical standards,
  - (b) avoid conflicts of interest,
  - (c) uphold and obey HUU-AY-AHT laws, and
  - (d) act in the best interests of present and future generations of HUU-AY-AHT citizens.

**Definitions**

- 2 In this Act:
- “**contractor**” means a person under contract with a HUU-AY-AHT body to perform work or services who is not
- (a) a HUU-AY-AHT employee, or
  - (b) exempt by regulation;
- “**director**” means a person who holds a position as a member, commissioner, director, or trustee of a HUU-AY-AHT public body;  
HFNA 2/2013, s. 48(a)
- “**eligible voter**” means an eligible voter as defined in the *Election Act*;
- “**Executive Director**” means the individual appointed as Executive Director under the *Financial Administration Act*;
- “**government**” means government as defined in the *Government Act*;
- “**government employee**” means a HUU-AY-AHT employee
- (a) employed by government, and
  - (b) other prescribed HUU-AY-AHT employees;
- “**government member**” means government member as defined in the *Government Act*;
- “**HUU-AY-AHT body**” means government and HUU-AY-AHT public bodies;  
HFNA 2/2013, s. 48(b)
- “**HUU-AY-AHT business enterprise**” means HUU-AY-AHT business enterprise as defined in the *Economic Development Act*;  
HFNA 2/2013, s. 48(c)
- “**HUU-AY-AHT citizen**” means a HUU-AY-AHT citizen as defined in the *Citizenship and Treaty Enrolment Act*;
- “**HUU-AY-AHT employee**” means an individual employed by a HUU-AY-AHT body and who is not exempt by regulation;
- “**HUU-AY-AHT public body**” ~~means an entity other than a HUU-AY-AHT business enterprise that is owned or controlled, directly or indirectly, by government;~~  
means any entity that is owned or controlled, directly or indirectly, by government except for a HUU-AY-AHT business enterprise or an entity owned or controlled, directly or indirectly, by a HUU-AY-AHT special investment body;
- “**Law Clerk**” means Law Clerk as defined in the *Government Act*;



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**FREEDOM OF INFORMATION AND  
PROTECTION OF PRIVACY ACT  
PROPOSED AMENDMENTS**

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**OFFICIAL CONSOLIDATION**

Current to March 30, 2015

*The Huu-ay-aht Legislature enacts this law to ensure that Huu-ay-aht bodies are open, accountable and transparent and to ensure that the personal privacy of individuals is protected.*

**“government”** means government as defined in the *Government Act*;

**“head of a Huu-ay-aht body”** means

- (a) if the Huu-ay-aht body is government, the Executive Director, and
- (b) if the Huu-ay-aht body is a Huu-ay-aht business enterprise or a Huu-ay-aht public body, the person or group of persons designated under section 29 as the head of the Huu-ay-aht business enterprise or the head of the Huu-ay-aht public body;

**“Huu-ay-aht body”** includes government, Huu-ay-aht public bodies and Huu-ay-aht business enterprises;

**“Huu-ay-aht business enterprise”** means Huu-ay-aht business enterprise as defined in the *Financial Administration Act*;

**“Huu-ay-aht public body”** ~~means an entity other than a Huu-ay-aht business enterprise that is owned or controlled, directly or indirectly, by government;~~ means any entity that is owned or controlled, directly or indirectly, by government except for a Huu-ay-aht business enterprise or an entity owned or controlled, directly or indirectly, by a Huu-ay-aht special investment body;

**“Huu-ay-aht public record”** means a record designated by Executive Council under section 4;

**“law enforcement”** means any of the following:

- (a) policing, including criminal intelligence operations;
- (b) investigations that lead or could lead to a penalty or sanction being imposed under an Act or otherwise by law;
- (c) proceedings that lead or could lead to a penalty or sanction being imposed under an Act or otherwise by law;

**“personal information”** means recorded information about an identifiable individual other than contact information of a public officer;

**“public disclosure”** means disclosure of information to any member of the public;

**“public officer”** means public officer as defined in the *Code of Conduct and Conflict of Interest Act*;

**“record”** means a record as defined in the *Interpretation Act* but excludes a transitory record;

**“third party”** means

- (a) in relation to general information, any person, group of persons, organization or entity, other than a Huu-ay-aht body,
- (b) in relation to personal information, any person, group of persons, organization or entity other than a Huu-ay-aht body or an individual the personal information is about;

**“transitory record”** means a record of temporary usefulness that is needed only for a limited period of time in order to complete a routine action or prepare a substantive record.

### Scope of this Act

- 3 (1) Subject to this section, this Act applies to all records in the custody or under the control of a Huu-ay-aht body.



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**INTERPRETATION ACT**

**PROPOSED AMENDMENTS**

**OFFICIAL CONSOLIDATION**  
Current to November 28, 2019

The Huu-ay-aht Legislature enacts this law to provide assistance in interpreting Huu-ay-aht legislation.

“**Huu-ay-aht law**” includes Huu-ay-aht Acts, regulations, orders, written policies, customary laws and common law in relation to those Huu-ay-aht Acts, regulations, orders, written policies and customary laws;

“**Huu-ay-aht legislation**” means Huu-ay-aht Acts and the regulations made under them;

“**Huu-ay-aht public body**” ~~means an entity other than a Huu-ay-aht business enterprise, that is owned or controlled, directly or indirectly, by government;~~ means any entity that is owned or controlled, directly or indirectly, by government except for a Huu-ay-aht business enterprise or an entity owned or controlled, directly or indirectly, by a Huu-ay-aht special investment body;

“**Huu-ay-aht special investment body**” means a Huu-ay-aht body prescribed by Executive Council under section 62.1(1) of the *Financial Administration Act*;

“**Huu-ay-aht treaty participant**” means a Huu-ay-aht treaty participant under the *Citizenship and Treaty Enrolment Act*;

“**Huu-ay-aht Tribunal**” means the tribunal established under the *Tribunal Act*;

“**includes**” means includes, but is not limited to;

“**land title legislation**” means the *Land Title Act* (British Columbia);

“**local government**” means a local government under the *Local Government Act* (British Columbia);

“**mail**” refers to the deposit of the matter to which the context applies in the Canada Post Office at any place in Canada, postage prepaid, for transmission by post, and includes deliver;

“**material adopted by reference**” means

(a) a code of, or standard set by, a provincial, national, international, First Nations, indigenous or other code or standard making body, or

(b) a map, plan, geological survey, illustration, diagram, photograph, graph or table or any other similar record or thing,

that is reasonably available to persons likely to be affected by it and is adopted or incorporated by reference into an Act or regulation, but is not attached to or accompanying the Act or regulation;

“**may**” is to be construed as permissive and empowering;

“**medical practitioner**” means a registrant of the College of Physicians and Surgeons of British Columbia entitled under the *Health Professions Act* (British Columbia) to practice medicine and to use the title “medical practitioner”;

“**minor**” means a person under the age of majority;

“**month**” means a period calculated from a day in one month to a day numerically corresponding to that day in the following month, less one day;

“**municipality**” means, as applicable,

(a) the corporation into which the residents of an area are incorporated as a municipality under the *Local Government Act* (British Columbia), the *Vancouver Charter* (British Columbia) or any other Act, or

(b) the geographic area of a municipal corporation;

“**must**” is to be construed as imperative;

“**now**” must be construed as referring to the time of commencement of the enactment containing the word;

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## LAND ACT

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### OFFICIAL CONSOLIDATION

Current to March 12, 2015

*The HUU-ay-aht Legislature enacts this law to provide a fair and effective system for the management, protection and disposition of interests in HUU-ay-aht Lands.*

- “Huu-ay-aht land registry”** means the land registry established under Part 9;
- “Huu-ay-aht Lands”** means Treaty Lands and Other Huu-ay-aht Lands;
- “Huu-ay-aht public body”** ~~means an entity other than a Huu-ay-aht business enterprise, that is owned or controlled, directly or indirectly, by government;~~  
means any entity that is owned or controlled, directly or indirectly, by government except for a Huu-ay-aht business enterprise or an entity owned or controlled, directly or indirectly, by a Huu-ay-aht special investment body;
- “instrument of disposition”** means the instrument disposing of an interest in Huu-ay-aht Lands under this Act;
- “interest holder”** means the holder of an instrument of disposition and any successor or permitted assign;
- “land title office”** means the Victoria land title office under the *Land Title Act* (British Columbia);
- “mortgage”** includes charge, pledge or hypothecate;
- “Non-Member”** means Non-Member as defined in Chapter 29 [Definitions] of the Treaty;
- “Other Huu-ay-aht Lands”** means lands owned by the Huu-ay-aht, whether Registered Lands or Unregistered Lands, but does not include
- (a) Treaty Lands,
  - (b) lands owned by a company or Huu-ay-aht business enterprise in which the Huu-ay-aht is a shareholder, or
  - (c) lands beneficially owned by the Huu-ay-aht pursuant to a trust;
- “peace officer”** means a peace officer appointed under the *Offence and Law Enforcement Act*;
- “person”** includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;
- “qualified land appraiser”** means
- (a) a person designated ‘Accredited Appraiser Canadian Institute’ by the Appraisal Institute of Canada, or
  - (b) a person qualified as an appraiser by the Real Estate Institute of British Columbia;
- “Registered Lands”** means Huu-ay-aht Lands for which indefeasible title has been registered under the *Land Title Act* (British Columbia);
- “registrar”** means the registrar of the land title office appointed in that capacity under the *Land Title Act* (British Columbia);
- “report”** means report as defined in the *Government Act*;
- “road”** means lands designated or indicated as a road or lane in an instrument of disposition, map or plan made under this Act, whether or not a road or lane is constructed;
- “statutory right of way”** means statutory right of way as set out in section 218 of the *Land Title Act* (British Columbia);



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# WRITTEN MOTION of the PEOPLE'S ASSEMBLY

(Government Act, s. 86)

For ease of reference, this motion may be referred to as:

## Motion Regarding Approval of the *Financial Administration Act Amendment Act, 2020*

### Whereas:

- a) Legal counsel has recommended that amendments be made to Huu-ay-aht legislation to facilitate Huu-ay-aht's ability to make major investments and undertake major capital infrastructure projects in collaboration with other commercial entities and First Nations;
- b) The Law Clerk drafted the attached *Financial Administration Act Amendment Act, 2020* (the "proposed act"), which excludes Huu-ay-aht special investment bodies from the definition of "Huu-ay-aht bodies" in Huu-ay-aht law;
- c) The H̱aw̱ii̱ẖ Council and Finance Committee have indicated their support for the proposed act;
- d) The Legislature enacted the *Financial Administration Act Amendment Act, 2020*;
- e) People's Assembly approval is required for the proposed amendments to the *Financial Administration Act, Land Act, Code of Conduct and Conflict of Interest Act* and *Freedom of Information and Protection of Privacy Act*.

**Be it resolved that the People's Assembly hereby** approves the amendments to Huu-ay-aht legislation set out in the *Financial Administration Act Amendment Act, 2020*.

### Appendices attached to Motion:

Written report prepared by Ratcliff and Co. LLP

The following documents:

- *Financial Administration Act Amendment Act, 2020*.
- Blackline showing proposed amendments to the *Financial Administration Act, Land Act, Code of Conduct and Conflict of Interest Act* and *Freedom of Information and Protection of Privacy Act*.

Introduced by: \_\_\_\_\_

Date: July 25, 2020 \_\_\_\_\_

DATE OF PEOPLE'S ASSEMBLY

### Administrative Requirements

If the proposed motion is passed by the People's Assembly, the Law Clerk will put "Coming into Force of the *Financial Administration Act Amendment Act, 2020*" on the agenda for an upcoming meeting of Executive Council.