FIRST NATIONS FINANCIAL MANAGEMENT BOARD
LE CONSEIL DE GESTION FINANCIÈRE DES PREMIÈRES NATIONS

Intervention of Local and Other Revenues

A Policy Summary

…First Nations Fiscal Management Act (FMA)

First Nations Financial Management Board
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Table of contents

The *First Nations Fiscal Management Act*

Introduction

The *First Nations Fiscal Management Act* ("FMA") is part of a coordinated and comprehensive strategy to help First Nations to:

- Develop their infrastructure, provision of local services and economies through improved access to capital;
- Support the development of First Nations' capacity in financial management matters;
- Improve inter-governmental relations; and
- Exercise taxation jurisdiction over their reserve lands.

The FMA established three institutions with the important objective of assisting First Nations to use their property tax and other revenues to obtain financing for capital infrastructure and capital assets such as roads, water, and waste water systems. A high-level overview of the FMA framework is shown in figure 1.

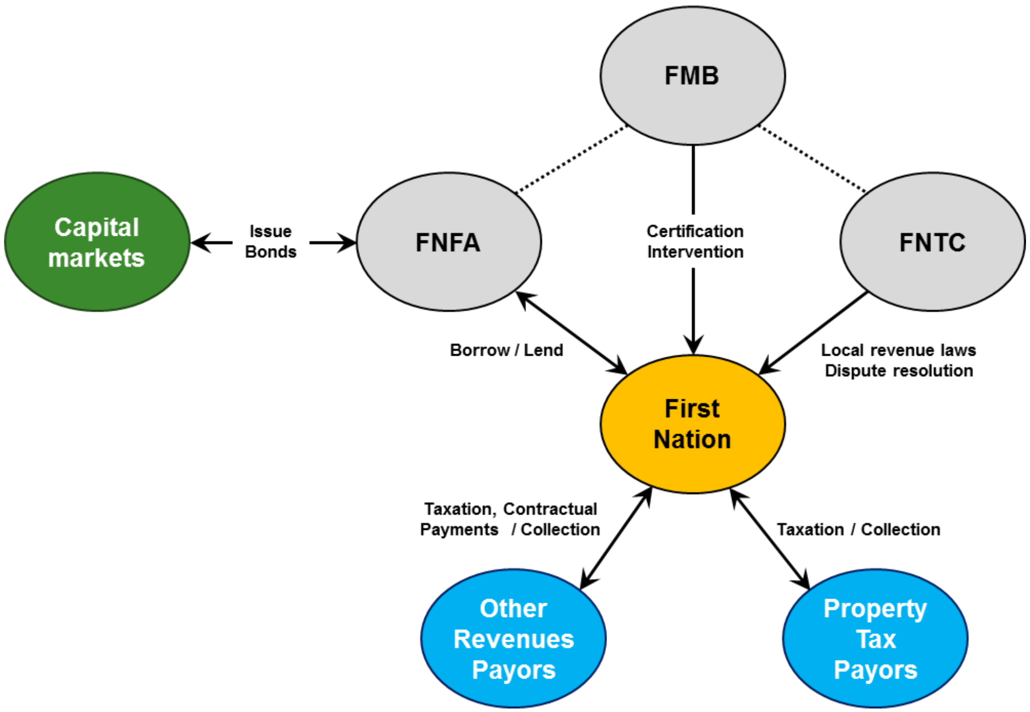

Figure 1 – FMA framework

The role and objectives of the FMA institutions

Within the FMA framework, the **First Nations Financial Management Board ("FMB")** aims to provide the tools and guidance that will encourage confidence in First Nations' financial management and reporting systems to support economic and community development. This includes approval of First Nations' financial administration laws, certification of First Nations' financial management systems and financial performance, providing organizational capacity development opportunities and conducting Interventions should they be required.

The **First Nations Finance Authority ("FNFA")** helps to improve access to capital by pooling borrowing through greater cooperation among First Nations, creating advantages of size and diversifying risk and revenue streams. The FNFA also advises on financial opportunities available to First Nations.

The **First Nations Tax Commission ("FNTC")** helps First Nation governments to build and maintain fair and efficient First Nation property tax regimes, and to ensure those First Nation communities, and their taxpayers, receive the maximum benefit from those systems. The FNTC aims to create a national regulatory framework for First Nation tax systems that meets or exceeds provincial standards while being responsive to the different approaches and requirements of each First Nation.

Intervention: An Introduction

Purpose of this document

This document provides an overview of Intervention specific to the FMA; what it is, why it is important, how it works and the implications for First Nations. It is not intended to cover every aspect of Intervention, for more information on Intervention resources please see page 13.

What is Intervention?

Intervention is a remedy which is available to the FMB, FNFA and FNTC to address events of default or non-compliance by a First Nation in activities regulated under the FMA and under an FNFA Borrowing Agreement, where applicable.

Intervention will involve the FMB taking an active role in the monitoring and, if necessary, management of a First Nation's Local and Other Revenues, Local Revenue Account and the related financial management systems. It may also involve the FMB recommending changes to or implementing new local revenue and taxation laws and providing for the delivery of programs and services that are paid out of local or other revenues.

Intervention is a support process whereby problems relating to non-compliance by the First Nation with the FMA and related regulations can be investigated, understood, managed and resolved for the benefit and protection of all parties involved in the FMA framework, including the First Nation.

To assist FMB in performing its intervention role, protocol agreements will be in place with the other institutions, the Minister of Aboriginal Affairs and Northern Development, and other appropriate parties. Also, the Minister of Aboriginal Affairs and Northern Development will receive notice of an Intervention as set out in the FMA.

Who is involved in an Intervention?
Figure 2 illustrates the relationship between the parties involved in an Intervention.

FMB will work with FNFA, FNTC and the First Nation to identify and address problem situations in a timely manner. The FMB may also appoint an Intervention Manager who will liaise with the Intervention Officer (an FMB staff member). An Intervention Manager may be an individual, partnership or corporation appointed as an agent of the FMB to exercise its powers under the FMA to conduct an Intervention.

For more information about how the Intervention process works please see page 8.

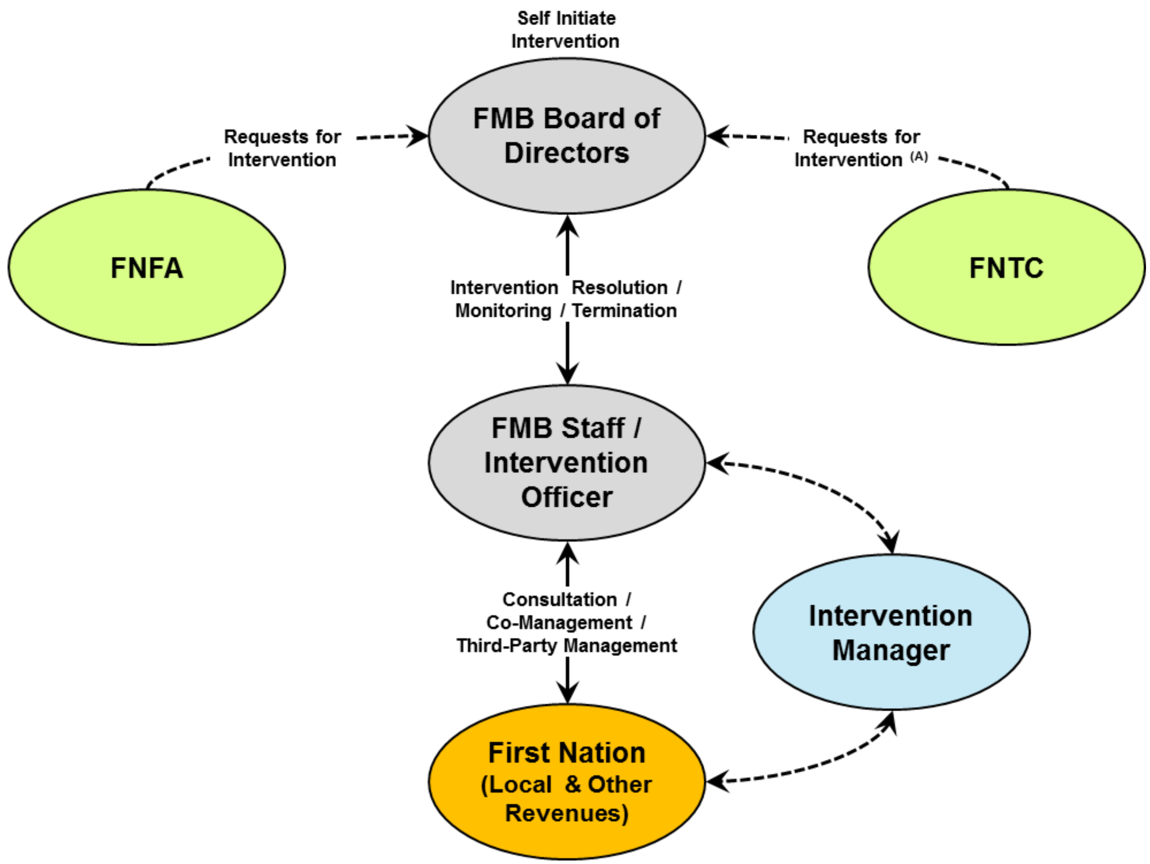

Figure 2 – Intervention Structure
Note (A): FNTC may only request an Intervention relating to Local Revenues and Local Revenue Laws

Why Intervention?

Why is Intervention required?

Under the FMA framework, First Nations may choose to enact financial administration laws and operate financial management systems in accordance with FMB standards, which will allow the First Nation to become certified. Meeting the standards will assist First Nations in building confidence in their accountability and transparency regime as they move forward to meet their expanding fiscal and financial management requirements. Not only will this enable First Nations to better respond to membership questions about their financial capacity and financial performance but it will help to maintain public and investor confidence in the system, and ensure the reliability of financial reporting. In the event of non-compliance, all parties in the FMA process need the comfort of knowing that a fair and comprehensive Intervention process is in place which can quickly and effectively identify and remedy problems which may arise.

Public and investor confidence in the FMA property taxation and financing process is very important to enable First Nations to borrow money to develop their capital infrastructure. All parties involved in the framework need to have confidence in the ability of borrowing First Nations to manage their financial management systems properly and to repay their capital infrastructure loans to the FNFA.

What is the value of Intervention?

If the public, investors and First Nations are confident in the integrity and quality of the standards, FMB certification process, and procedures in place under the FMA, the perceived risk involved in lending money to First Nations through the FNFA is reduced. This will mean that investors are more likely to invest, in greater amounts, and under better lending terms (for example, lower interest rates).

Intervention is intended to protect members of First Nations, people who hold an interest in or use reserve lands, members of the borrowing pool, and where applicable, lenders to the FNFA. The Intervention process is structured to address situations where local revenue laws have been determined to have been unfairly or improperly applied and to address the proper provision of local programs and services which are paid for using local and other revenues. Intervention will also safeguard First Nations that use local or other revenues to borrow money from the FNFA by addressing problem situations in a timely manner and will help to:

- Lessen the impact of a default, or possible default on the credit rating of a borrowing pool;
- Improve public confidence in the First Nation real property tax regime; and
- Increase the willingness of First Nations to participate in the borrowing pool.

The Intervention process is designed to assist First Nations to manage problems and resolve them. This will help the borrowing First Nation to build capacity in its financial and administrative systems, to develop new skills and knowledge during the process and to help ensure that Intervention is not necessary in the future.

When might an Intervention be required?

In certain circumstances, the FMB has the authority to intervene in the management of a First Nation's Local or Other Revenues, Local Revenue Account and the related financial management systems. The FMB may also recommend changes to or implement new local or other revenue laws and provide for the delivery of programs and services that are paid for using local or other revenues. This authority is provided under the FMA.

An Intervention may be required in the following circumstances:

- Where the FNTC requires the FMB to undertake an Intervention – for example, where a taxation or a financial administration law has been unfairly or improperly applied;
- Where the FNFA requires the FMB to undertake an Intervention – for example, where the Borrowing Member has breached a term of the Borrowing Member Agreement (please see page 13 for information on what is required to be a Borrowing Member); or
- Where the FMB is of the opinion that there is a serious risk that a Borrowing Member will default on an obligation to the FNFA – for example, where there is a considerable risk of a First Nation failing to make a loan repayment.

It is important to note that, where appropriate, dispute resolution processes for dealing with issues will be fully explored first so as to try and prevent an Intervention from becoming necessary. As an example, if a person who holds an interest in reserve lands considers that the First Nation has unfairly or improperly applied a taxation law, they may correspond to the council of the First Nation to express their concerns and to request that the situation be remedied. If the complainant believes the First Nation has not remedied the situation, the complaint can then be directed to the FNTC who are able to work with the parties involved to address the situation. The FNTC may conduct a formal review of the matter so as to make an assessment of the complaint and what if any orders may have to be made. In this particular circumstance, an Intervention will be considered only if the First Nation is ordered to remedy the situation by the FNTC and the First Nation fails to do so.

Similarly, in the event of a First Nation default on a FNFA loan payment, the objective is to remedy the default prior to the next loan payment period and recover the lapsed payment. If the First Nation chooses not to remedy the default, the FNFA would involve the FMB in default recovery discussions with the Borrowing Member in order for FMB to assess the situation that might lead to Intervention.

A decision to intervene will be considered very carefully by each of the institutions involved with the matter. Intervention is not taken lightly and a proper assessment of the circumstances and contributing factors and issues will occur before Intervention commences. The FMB is committed to providing capacity development resources and workshops aimed at helping First Nations to avoid an Intervention and to understand it, if it is required. For more information please see page 13.

How Does Intervention Work?

Types of Intervention
The FMA provides for two types of Intervention, co-management and third-party management. The type of Intervention used will determine who conducts the process and the practical implications for the First Nation.

Co-management

- This will be conducted by an Intervention Officer (FMB employee) or an Intervention Manager (appointed by FMB) who takes directions from and liaises with the Intervention Officer.
- The Intervention may require expenditures of Local Revenues of the First Nation to be approved by, or paid with cheques co-signed by the Intervention Manager or Intervention Officer.
- The Intervention may result in recommended amendments to a Local or Other Revenue Law or improvements to the financial management system. Recommendations may also be made in respect of changes to expenditures, budgets or delivery of services and programs.

Third-party management

- This will typically be conducted by an Intervention Manager (appointed by FMB) who takes directions from and liaises with the Intervention Officer.
- The Intervention may require the FMB to act in the place of the council of the First Nation to manage their Other Revenues or Local Revenue Account, including any necessary borrowing, and to approve expenditures of Local or Other Revenues paid for by cheques signed by the Intervention Manager or Intervention Officer.
- The Intervention may also require the FMB to act in place of the council of the First Nation to make changes to Local or Other Revenue Laws and provide for delivery of programs and services that are paid for using local or other revenues.

What factors might be considered?
In deciding on the type of Intervention the FMB will consider a number of factors, including:

1. Does the First Nation have the **ability** and **capacity** to address and remedy the default/issue?
2. Is the First Nation **willing** to address and remedy the issue?

For example, co-management may be appropriate where a First Nation is willing but does not have the ability and capacity to address or remedy the circumstances giving rise to the Intervention. If a First Nation is unwilling and/or lacks the ability and capacity to address or remedy the problem then the FMB may decide that third-party management is required.

The FMA allows the FMB to change the type of Intervention used. For example, the FMB may decide to initially require co-management and then move to third-party management if the circumstances require a higher degree of Intervention. Alternatively, the Intervention type may be moved from third-party management to co-management if the circumstances justify a lower degree of Intervention.

Which type of Intervention will be used?
It is the responsibility of the FMB to decide which type of Intervention is required. Each situation will be different, with a unique set of circumstances specific to the issues of the First Nation involved.

The FMB will quickly assess and consider the problem that caused the Intervention, the type and severity of the risks posed and the prospects for resolving the problem. This may involve a meeting with the First Nation. The FMB will then decide which Intervention type should be used and the Intervention management actions which must be taken.

Once the FMB makes a decision on the type of Intervention required it will advise the First Nation and either or both of FNFA and FNTC in writing. If the FMB decides third-party management is required it must also advise the Minister of Aboriginal Affairs and Northern Development.

Intervention: The Process

A high-level overview of the Intervention process, considerations and actions at each stage, is shown in Figure 3.

Before Intervention

Problem assessment

- FMB, FNFA and/or FNTC assess the nature of the problem and the risks it poses
- Explore dispute resolution and preventative measures where appropriate
- Complete all required actions pursuant to laws and FNFA and/or FNTC Regulations

Intervention

Intervention required

- FMB considers there is a serious risk of the First Nation defaulting on an obligation, or
- FNFA or FNTC request Intervention

Scenario assessment

- FMB meeting with First Nation where appropriate
- Review problem and circumstances, laws, standards, financial results, services, programs and management
- Assess First Nations willingness and ability to remedy

Intervention enacted

- Type of Intervention considered and decided upon by FMB
- Co-management - appointment of Intervention Officer or Intervention Manager
- Third party management - appointment of Intervention Manager

Implement RP

- Remedial Plan ("RP") developed and implemented to set-out how the problem will be addressed and under what timeline
- Objective is to enable First Nation to exit Intervention and build capacity to prevent Intervention in the future

Performance review

- Monitor and evaluate performance against the RP and revise/update where necessary
- Consider whether existing type of Intervention is appropriate and make recommendation to FMB
- Report to all parties within 30 days of appointment and then at periods set-out in the RP and FMB regulations

Termination

- FMB considers the report and recommendations of the Intervention Officer/Manager
- If appropriate, FMB gives notice of termination of the Intervention
- Intervention Officer/Manager hands over responsibilities back to the First Nation

Figure 3 – The Intervention Process (illustrative purposes only – does not represent all considerations, processes and authorities under the FSMA)

How are the Chief and Council involved?

The co-operation and engagement of the Chief and Council of the First Nation or their appointed representative(s) are essential in the Intervention process. Wherever possible the Intervention Officer/Manager and where appropriate the FNTC and FNFA will meet with the First Nation to:

- Discuss the circumstances giving rise to the Intervention and the need for an Intervention to protect the parties involved;
- Consider the Remedial Plan, the actions proposed to remedy the problem and progress being made;
- Agree on timelines for actions to be taken;
- Identify areas in which the FMB can assist in building capacity and improving financial management systems; and
- Discuss issues and areas of concern.

The Remedial Plan

A Remedial Plan ("RP") will be developed outlining the steps to be taken to address or remedy the circumstances giving rise to the Intervention. Wherever possible the FMB will work with the First Nation to create the plan.

The RP should include, but is not limited to:

- A start and projected end date;
- A description of the causes that resulted in the Intervention;
- Corrective actions to address the causes with set timeframes in which they should be achieved/undertaken;
- Results/targets to measure the effectiveness of each corrective action;
- Roles and responsibilities of the parties involved with the plan;
- A financial projection of estimated revenue and expenditures for the life of the plan;
- An assessment of the financial impact of each corrective action;
- A clear outline of confirmed/projected other sources of funds to address any financial difficulties identified; and
- A description of resources to be used for all capacity development initiatives.

When Will An Intervention End?

Monitoring and evaluation of the Intervention

A key role of the Intervention Officer/Manager is to assess if continued Intervention is required. This is achieved by regularly monitoring and evaluating the progress made by the First Nation in addressing the circumstances that caused the Intervention.

The Intervention Officer/Manager will prepare an initial progress report for the FMB within 30 days of the Intervention process starting. After the initial report, continued monitoring and subsequent reports to the FMB will be undertaken at timelines as set out in the RP (at least every 6 months in the case of a third-party managed Intervention). The FMB will give the First Nation a copy of each report with the results and recommendations of its reviews. The report may also be given to the FNFA and FNTC where appropriate. The First Nation will have an opportunity to discuss the report with the FMB if the First Nation requests a meeting within 45 days of receiving the report.

When and how is an Intervention ended?

As part of the report prepared by the Intervention Officer/Manager, a recommendation is made about whether it is appropriate for the Intervention to end. The FMB will then consider this report and the recommendations made.

The FMB may end the Intervention if it is of the opinion that:

- There is no longer a serious risk that the First Nation will default on its obligations to the FNFA; or
- The event which caused the Intervention to be required has been remedied.

Once the FMB has decided that the Intervention is no longer required, it will pass a resolution ending the Intervention and provide notice of the termination to the First Nation, the Minister of Aboriginal Affairs and Northern Development, and either or both of FNFA and FNTC.

The Intervention Officer/Manager will also work with the First Nation and its staff to ensure a smooth handover back to the First Nation of all responsibilities. A final report will be provided by the FMB to the First Nation summarizing the actions taken during the Intervention including a copy of the updated RP.

Further Information and Resources

Intervention prevention

In order to become a Borrowing Member of the FNFA using local or other revenues, a First Nation must have an FMB approved financial administration law and an FMB issued financial performance certificate or financial management system certificate.

To help First Nations to prepare for certification and develop an effective financial management system, the FMB has prepared a sample law, sample policies, procedures and templates. Key elements of this system include financial planning and reporting and the establishment of a Finance and Audit committee which will help support a First Nation to make sound financial decisions.

Before FMB issues a First Nation a financial management system certificate FMB will perform an operational review of the First Nation's financial management system to determine if it is in compliance with FMB standards. The First Nation must undergo an operational review at least once every three years to maintain and to renew its certificate. It will also be an important tool in helping the First Nation to identify any problems that could result in Intervention.

Before a First Nation may borrow any money from the FNFA it must have a financial performance certificate from the FMB. The financial performance certificate will help the First Nation as well as the FNFA to assess current and potentially foreseeable risks and trends, to offer insights into the longer term implications of past transactions, to illustrate the First Nation's ability to maintain the level of its services and to meet its financial obligations.

Capacity development and Intervention workshops

The FMB is committed to providing capacity development resources and workshops in partnership with organizations such as the Aboriginal Financial Officers Association and the TULO Centre for Indigenous Economies. These are aimed at supporting individuals working for First Nation governments, both decision makers and administrators, in developing the core competencies required to meet their responsibilities. The FMB is developing a set of Intervention workshops aimed at helping First Nations to avoid an Intervention and to understand it, if it is required.

Intervention and self-governing First Nations

It is important to note that the FMA does not affect self-government agreements or Treaties. First Nations that have Treaties or self-government agreements, and are operating outside of the Indian Act, may request access to the services offered in the FMA. This would be done through the development of a regulation which adapts the provisions of the FMA as required for this purpose, including FMB's powers on intervention.

How can I find out more?

More information regarding Intervention is provided in FMB's Intervention Policy, the FMA and its related Regulations. These resources, including a list of frequently asked questions, are available on the FMB website at www.FNFMB.com.

Notice to reader

If there is a conflict between this document and the FMA and its Regulations, the FMA and its Regulations will apply.

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