

TAB 6



INDIGENOUS LAW ISSUES

First Nations Financial Management Board at a Glance

Shayla Point, Senior Manager, Legal and
Corporate Services, *First Nations Financial
Management Board*

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FIRST NATIONS FINANCIAL MANAGEMENT BOARD AT A GLANCE

The First Nations Financial Management Board (“the FMB”) is Canada’s only legislated body that develops and publishes standards for First Nations’ financial management systems and financial performance. Upon request, the FMB certifies First Nations’ compliance to those standards.

The FMB provides a suite of financial management tools and services to First Nations governments seeking to strengthen their fiscal stewardship, accountability framework and develop necessary capacity to meet their expanding financial management requirements. Since it became operational in 2007, the FMB has provided the tools to facilitate investment on First Nations’ lands through the certification process and the borrowing program established by the *First Nations Fiscal Management Act* (“the FMA”). Through its body of standards and sample policies and procedures, the FMB upholds the principles of transparency and accountability within First Nation governments. FMB Certification will not only strengthen the financial management and reporting of First Nations, but will also provide access to more affordable and sustainable financing for investment in their communities.

THE FMA AND SCHEDULING

The FMA establishes several First Nation institutions – the First Nations Financial Management Board (“the FMB”), the First Nations Tax Commission (“the FNTC”), and the First Nations Finance Authority (“the FNFA”) - with mandates designed to permit First Nations access to financial markets on a similar basis as municipalities and other levels of government in Canada.

Working in a collaborative framework these three institutions facilitate the voluntary development of First Nation capacity to access the capital markets by assisting them to use their available revenue streams to secure funding, by assisting them to implement a sound financial management system in which investors and other stakeholders would have confidence and by negotiating on their collective behalf the borrowing of funds from these financial markets.

To support the FMA’s primary objective, the FMB has established the following standards and corresponding service:

- Financial Administration Law Standards and Approval
- Financial Performance Standards and Certification
- Financial Management System Standards and Certification
- Government to Government Relations

Pursuing Certification through the FMB is optional for First Nations. However, before a First Nation can become FMB Certified, they will first need to be formally scheduled to the FMA. Participation in the FMA is also optional but a First Nation must request to be Scheduled to the FMA by forwarding a Band Council Resolution (“BCR”) to the Minister of Aboriginal Affairs and Northern Development Canada. The FMB has a template BCR, including instructions where to send the BCR, which is available at www.fnfmb.com/core-documents. First Nations who wish to pursue Certification through the FMB are encouraged to forward their BCR to the Minister’s office as one of the first steps as it typically takes five or more months to have their official name added to the Schedule of the FMA. Although a First Nation cannot be certified until formally scheduled, First Nations can begin to work with the FMB right away to commence the certification process.

FINANCIAL ADMINISTRATION LAW (“FAL”)

The FMB supports participating First Nations in the development of Financial Administration Laws and has developed a suite of core documents to assist in this process including a Sample Financial Administration Law (“FAL”), FAL Standards, FAL Explanatory Notes and FAL Assessment. The FMB annually updates these core documents related to FAL Standards (A1 to A5), which are available for download at www.fnfmb.com/core-documents.

To assist First Nations in the development of a FAL, the FMB has prepared and made available to First Nations a Sample FAL that satisfies the requirements of the FAL Standards. The Sample Law has been developed in an effort to assist a First Nation to focus its discussions on the issues to be addressed in their FAL and hopefully, as a result, to reduce the human and financial resources required to be expended by a First Nation in the development of their FAL.

The Sample Law, with a few modifications tailored to suit a First Nation, provides a good model for adoption by a First Nation that wishes to carry out its financial administration in a manner that is consistent with sound financial administration practices of governments in Canada and with the evolving requirements for financial reporting by First Nations.

The Sample Law is only an example of a law that meets the requirements of the FAL Standards and there are expected to be many variations of financial administration laws that meet the requirements. Selection of the best option in the range of variations is a matter for debate and decision by the First Nation and its Chief and Council; however, any variation of a financial administration law must be compliant with the FMB’s FAL Standards.

Every FAL that is given compliance approval by the FMB under section 9 of the FMA must be published in the First Nations Gazette (section 55(4) of the FMA requires this publication). The First Nations Gazette has a Style Guide that sets out the requirements for style and formatting of any law it publishes in the Gazette. The style and formatting of the FMB Sample Law is presented in a manner consistent with the requirements of the Gazette.

The key sections of the FMB Sample FAL are generally described in the following table.

SECTION	DESCRIPTION
Administration	Council, finance and audit committee; officers and employees; conduct expectations; organizational structure
Financial Management	Financial plans and budgets (content; multi-year; involvement of membership); financial institution accounts; expenditures; general (advances, holdbacks, interest, refunds, debts); borrowing; risk management (business activity, guarantees, investments, insurance); financial reporting (statements, audit, annual report); information and technology
Capital Projects	Definitions; council duties; reserve funds; life cycle management; capital projects budgeting; contracting and tendering; involvement of membership

Each First Nation undergoing the development of a FAL is encouraged to seek independent legal advice in the drafting of their FAL. Furthermore, First Nations are encouraged to connect their legal counsel with FMB's in-house legal counsel, Ms. Shayla Point, early in the development stages so that Ms. Point can advise on the FAL Standards of the FMB.

FINANCIAL PERFORMANCE CERTIFICATE ("FP")

A mandate of the FMB is to assess the financial performance of First Nations pursuing FMB Certification and to compare the performance against performance standards set by the FMB. The FMB has developed a suite of core documents, including Financial Performance Standards and Financial Performance Certification Procedures, to assist in the financial performance review process. The FMB annually updates these core

documents related to Financial Performance Standards (C1, C2), which are available for download at www.fnfmb.com/core-documents.

In order for a First Nation to access the capital markets through the FMA legislative program, the First Nation must become a borrowing member of the FNFA. One avenue to becoming a borrowing member contemplates the First Nation receiving a Certification from the FMB with respect to the Financial Performance Standards.

To assist First Nations through the certification process, the FMB has developed the Financial Performance Certification Procedures (C1) document available on the website. The Board is required to issue a Financial Performance Certificate when they are of the opinion that the First Nation is in compliance with the Financial Performance Standards.

To assist in determining whether a First Nation is in compliance with the Financial Performance Standards, a First Nation must meet certain minimum financial ratio thresholds. These thresholds are assessed through a comparative approach using the following 7 financial ratios set by the FMB.

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|---------------------------|---|
| ❖ Fiscal growth ratio | ❖ Net debt ratio |
| ❖ Liquidity test ratio | ❖ Budget performance ratio |
| ❖ Core surplus ratio | ❖ Property Taxation collection ratio
(if applicable) |
| ❖ Asset maintenance ratio | |

The formulas for the above ratios can be found in the Financial Performance Standards (C2) document available on the website. The FMB Standards and Certification staff will perform the financial performance review and calculate the ratios on behalf of the First Nation.

FINANCIAL MANAGEMENT SYSTEM CERTIFICATION (“FMS”)

In addition to issuing a First Nation a Financial Performance Certificate, the FMB can issue a First Nation a Financial Management System (“FMS”) Certificate. Either of these certificates may be used by a First Nation to support its application to become a borrowing member of the FNFA. The FMB has developed a suite of core documents, including FMS Standards, FMS Certification Procedures, and Sample Policies and Procedures to assist in the development of a First Nations financial management system. The FMB annually

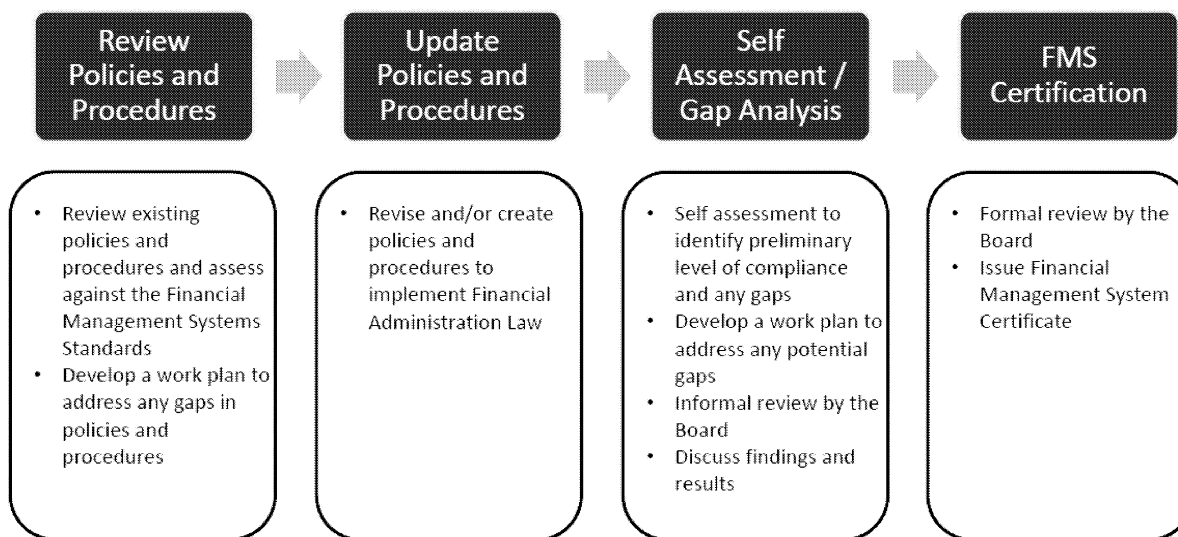
updates these core documents related to Financial Management System Standards (B1,B2), which are available for download at www.fnfmb.com.

The FMS Certification essentially is an evaluation of a First Nation's compliance with its Financial Administration Law and it answers the question "Are we doing what we say we are?" when it comes to financial administration practices and processes. An FMS review by the FMB evaluates a First Nations design and implementation of policies and procedures.

It takes time to develop and implement policies and procedures for an organization and FMS Certification can occur at whatever pace desired by a First Nation. However, once a First Nation becomes a borrowing member of the FNFA, to remain in good standing with the FNFA an FMS Certificate must be obtained within 36 months from when the First Nation receives proceeds for the first time from a debenture or equivalent financial instrument issued by the FNFA.

The following diagram identifies the pathway to obtaining Financial Management System Certification.

PATHWAY TO FINANCIAL MANAGEMENT SYSTEM CERTIFICATION



To assist First Nations with the development of policies and procedures, the FMB has created and made available to First Nations various sample policies and procedures which satisfy the requirements of the FMS Standards set by the FMB. A First Nation is not expected to develop 30 individual policies; the sample

policies are simply available for a First Nation to draw upon if desired to assist in developing their policies and procedures.

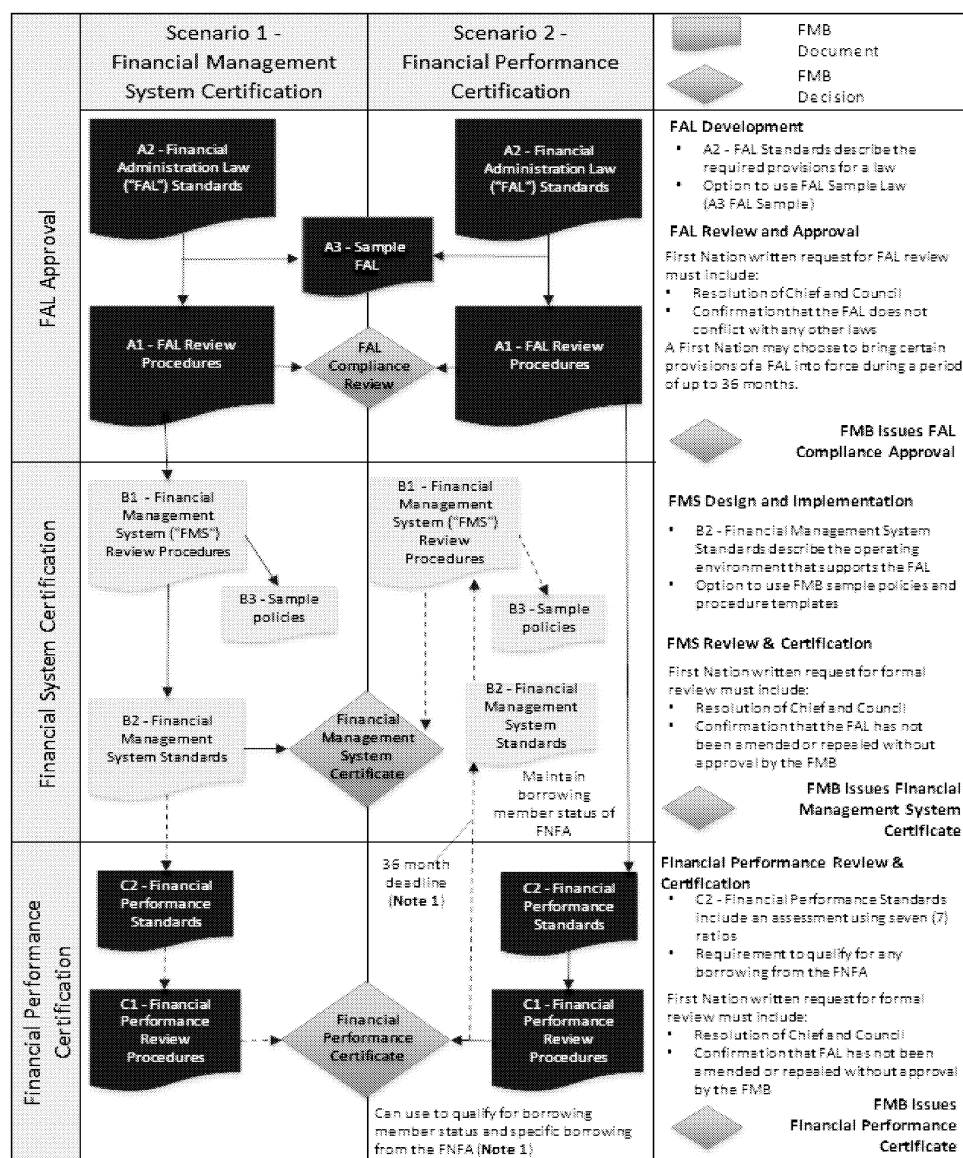
The following table lists the sample policies available for download from www.fnfmb.com.

SPP 01 – Delegated & Assigned Responsibilities	SPP 11 – Employee Evaluation & Planning Policy	SPP 21 – Investment Policy
SPP 02 – Policies Procedures and Directions	SPP 12 – Code of Conduct Policy	SPP 22 – Insurance Policy
SPP 03 – Reporting of Compensation, Benefits & Contracts	SPP 13 – Annual Planning and Budgeting Policy	SPP 23 – Emergencies Policy
SPP 04 – Committee Establishment Policy	SPP 14 – Cash Management and Banking Policy	SPP 24 – Financial and Operational Reporting Policy
SPP 05 – Finance and Audit Committee	SPP 15 – Financial Institution Account Policy	SPP 25 – Information Technology Policy
SPP 06 – Appointment of First Nations Officer Policy	SPP 16 – Expenditure Policy	SPP 26 – External Audit Policy
SPP 07 – Organizational Chart Policy	SPP 17 – Debt Policy	SPP 27 – Records Information Management Policy
SPP 08 – HR Records Management Policy	SPP 18 – Procurement Policy	SPP 28 – Tangible Capital Assets Policy
SPP 09 – Hiring Policy	SPP 19 – Risk Management Policy	SPP 29 – Financial Management System Improvement Policy
SPP 10 – Disciplinary and Dismissal Policy	SPP 20 – Loans, Guarantees and Indemnities Policy	SPP 30 – Whistleblower Policy

FINANCIAL ADMINISTRATION LAW AND FMB CERTIFICATION PROCESS

To recap, the FMB sets Standards in the areas of financial administration, financial performance and financial management systems. In order to obtain FMB Certification, a First Nation must develop a Financial Administration Law that is in compliance with the Financial Administration Law Standards, meet minimum financial performance thresholds as set out in the Financial Performance Standards or have developed and implemented a financial management system in accordance with the Financial Management System Standards.

The following diagram depicts key steps in the process of obtaining compliance approval of a Financial Administration Law and receiving FMB certification in the areas of Financial Management Systems and Financial Performance.



Note 1: A Financial Performance Certificate is required to enter into a new borrowing agreement with the FNFA. To remain in good standing with the FNFA a Financial Management System Certificate must be obtained within 36 months from when the first nation receives proceeds for the first time from a debenture or equivalent financial instrument issued by the First Nations Finance Authority under the terms of a Borrowing Law and a Security Issuing Council Resolution.

Contact Us

Shayla Point, Senior Manager, Legal
and Corporate Services

Shayla_Point@fnfmb.com

First Nations Financial Management Board

Suite 905 – 100 Park Royal | West Vancouver, British
Columbia | V7T 1A2

Phone: **604.925.6665** | Toll Free: **1.877.925.6665** |

Fax: **604.925.6662** | E-mail: mail@fnfmb.com

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