

CPPM 4.3.14 - Transfer Payments

Appendix 4 – Trusts

Policy

This policy relates to the creation and use of trusts. For context, the Background at the end of this Appendix outlines the legal and accounting aspects of trusts.

1. Prior to establishing a trust, ministries must seek legal advice from the Legal Services Branch, Ministry of Attorney General as to whether or not:
 - a valid trust will be created; and
 - legal authority exists to create the trust.
2. The design of and the accounting for the trust must be reviewed and approved by Financial Reporting and Advisory Services, Office of the Comptroller General.
3. The trust agreement and funding requires prior approval by Treasury Board.
4. The trust must be supported by a business case outlining specific monetary, administrative and public policy advantages that cannot be achieved through the existing expenditure management framework of appropriations, votes and special accounts.

For clarity, a trust must meet the following requirements to ensure that, in substance, the trust's financial operations and balances can be legitimately excluded from the government reporting entity.

Legal requirements:

- a. a legal trust has been created as determined by Legal Services Branch, Ministry of Attorney General.
- b. the trust recipient must be an existing legal person or organization. A trust must not be established for an organization that is yet to be created.
- c. there must be an appropriate legal relationship and trust terms created through legislation or agreement.

Accounting requirements:

- d. the trust must be independent from government and not be part of the government's reporting entity. The trustee must have sufficient discretion in the trust and any guidance from the government must only be of a general nature. There must be no ongoing government direction or control over the day to day use of funding.
- e. there must be a clear separation between payments into the trust and normal program funding.

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- f. balances left upon wind-up or closure of the trust are for the trust's beneficiaries. The province should not be a beneficiary.
- g. the trust must meet the criteria for a trust as established by the Canadian Institute of Chartered Accountants, including any further Public Sector Accounting Board guidance.

Other considerations:

- there should be sound business reasons for establishing the trust rather than utilizing a direct expenditure approach.
- trust funding must not replicate programs included in the Estimates. Ministry expenditures into trusts need to be viewed as one-time monies out of the current year's budget rather than ongoing costs.
- trusts must not be viewed as a mechanism to shelve or park future expenditures.
- trust funding must be limited to the specific dollars needed to meet the objectives of the trust.
- the creation of the trust should avoid agreeing to pay earmarked revenues or program type expenditures into the trust that may reduce or interfere with the ability to quickly adjust priorities as circumstances change.
- the legal parameters under which the trust is established ensure the trust funds will be protected and used to achieve the public policy objectives for which it was created.
- the spirit of the *Budget Transparency and Accountability Act* is complied with in establishing the criteria for reporting and accounting of the trust monies.
- where opportunity exists, trusts should seek contributions from other sources outside of government.

Background

Trusts are defined as a relationship formed by agreement (or legislation) regarding property that has been conveyed or assigned to a trustee to be held in trust and administered as directed by the agreement or statute. In a trust relationship, the trustee holds title to property for the benefit of, and stands in a fiduciary relationship to, the beneficiary(ies).

Trust funds held by the province are excluded from the government reporting entity and are reported only as a high level note in the financial statements of the province.

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They are, however, presented in more detail in a separate schedule as supplementary information to the Public Accounts. They fall into several major categories. Pension funds comprise the largest dollar value group. Investment trusts held for Crown corporations comprise a second group. The smallest are other trust funds (e.g.: Northern Development Fund Trust, University of Victoria Trust & the Nature Trust of BC).

The government does not report on trust funds held by banks, trust institutions, or managed by boards independent from the government that may receive grants or appropriation funding from the province. Government payments to trust funds are normally recorded as expenses when paid.

Legal Context:

There is currently no general legislative authority that provides for, prohibits or limits the establishment of trust funds. Trust funds have been established both by specific legislation and by agreement. A legislated example is the Muskwa Kechika Trust Fund, established by the *Muskwa-Kechika Management Area Act*. There are also non-legislated legal trust agreements such as the British Columbia Blueberry Industry Trust Fund.

Treasury Board has the authority to place conditions or limits on expenditures from the CRF, including payments into a trust fund. Unless the terms of the trust fund expressly provide a role for Treasury Board, the Board has no authority to limit or place conditions on payments from a trust, even if the trustee is a government official.

The conditions for use of trust funds are laid out under the terms of the trust. A minister, acting as a trustee, has quite a different role and responsibility than when otherwise acting as a minister. The minister is personally responsible for complying with the trust terms.

Accounting Context:

Most public sector accounting policy guidance to date has focused on traditional trusts, such as the trusts established for pension plans or individuals. These trusts have been excluded from the government reporting entity in accordance with Generally Accepted Accounting Principles and the Public Sector Accounting Board (PSAB), since the funds are not under direct government control. The basic requirement is that there be a legal trust outside of government's control, (i.e., outside the government reporting entity). The government may provide overall direction through a trust agreement; however, it should have no ongoing involvement in the trust's activities. Amounts paid into such trust funds by the government, are expensed as paid according to current PSAB guidelines.