

For discussion on
11 March 2019

Legislative Council Panel on Welfare Services

Special Needs Trust

Purpose

This paper briefs Members on the service scope and implementation arrangements of the Special Needs Trust (SNT).

Policy Objective

2. The Chief Executive stated in the 2016 Policy Address that some middle-income parents are concerned that after their passing, the care for their children with special needs would be upset and announced that the Labour and Welfare Bureau (LWB) would establish a working group to explore the feasibility of setting up a public trust with a view to providing affordable services. Considering that these parents may have difficulties in finding relatives or friends who are trustworthy and capable of managing their wealth and that most of these parents are unable to afford the high cost of setting up a private trust, the Chief Executive announced in the 2017 Policy Address that the Government decided to take the lead in setting up a “special needs trust”, with the Director of Social Welfare as the trustee, to provide reliable and affordable trust services for managing the assets of deceased parents. Regular disbursements will be made to the carers of their children, who may be individuals or organisations, in accordance with the parents’ wishes. This is to ensure that their assets will be used for meeting the long-term daily needs of their children.

3. As regards those families having children with special needs but do not have sufficient assets to open an SNT account for the purpose of meeting the long-term daily needs of their children, the Social Welfare Department (SWD) may open Director of Social Welfare Incorporated accounts for the persons with special needs concerned. The aim is to help these persons manage their money and use their money¹ for meeting their

¹ Such as payments received from the Comprehensive Social Security Assistance Scheme, Emergency Relief Fund and employee’s compensation, etc.

basic living expenses. The SWD may also render support in respect of guardianship orders involving mentally incapacitated persons. For those families that cannot support themselves financially, the SWD provides a safety net through the Comprehensive Social Security Assistance so as to help them meet their basic needs.

Consultation with Stakeholders

4. In June 2016, the LWB established a working group to examine the feasibility of setting up an SNT. The working group comprises parents of persons with special needs, representatives of non-governmental organisations in the rehabilitation sector, professionals from the legal, financial and academic fields, a person with special need and representatives of the relevant government departments.

5. The working group organised four consultation sessions to collect the views of parent groups, other stakeholders and relevant organisations on the preliminary proposal (including the proposed legal framework, financial management and mode of service of the SNT) in the first quarter of 2018. In May 2018, the LWB briefed the Legislative Council Panel on Welfare Services on the preliminary proposal of the SNT service. After taking into account the views of panel Members and the public, the working group has finalised the implementation details of the SNT service and organised a number of service briefings for stakeholders in January and February 2019.

Implementation Details of the SNT

Legal Framework

6. We will adopt the existing legal framework under which the Director of Social Welfare will act as the Trustee of the SNT in accordance with the Director of Social Welfare Incorporation Ordinance (the Ordinance) with the following considerations:

- (a) Under the Ordinance, the Director of Social Welfare shall constitute a corporation sole, and shall have perpetual succession in the name of the Director of Social Welfare Incorporated;
- (b) In accordance with the Ordinance, the Director of Social Welfare Incorporated may use the trust assets for investment purpose; and

- (c) The Director of Social Welfare Incorporated shall discharge the statutory duty of care in accordance with the Trustee Ordinance. In other words, it is the responsibility of the corporation to invest trust funds in prudent investment products.

7. The relationship between parents using the SNT service and the Director of Social Welfare Incorporated shall be established through the following trust documents which specify the content of the trust services:

- (a) Trust deed: Parents (as the Settlor) are required to sign a trust deed with the SWD while they are alive, specifying that the Director of Social Welfare Incorporated (as the Trustee) shall manage the Settlor's money which will be transferred to the trust account of their children with special needs (the Beneficiary) after their death in accordance with the terms and conditions of the trust deed and use the money for purposes relating to the care of the Beneficiary; the trust deed also specifies the rights and obligations of the Trustee, fees to be charged and arrangements for termination of the trust; and
- (b) Letter of intent and care plan: the Settlor, when signing the trust deed, is required to submit a letter of intent and a care plan for the Beneficiary specifying the future annual care services for the Beneficiary and the expenses involved, the individual or institution that will serve as the carer of his/ her child, and the role of the carer/institution in the implementation of the care plan.

8. The Settlor is also required to make a will specifying the arrangement for transferring his/ her assets to the SNT after death and the implementation of such an arrangement by the executor of the will.

Financial Management

9. In view of the wishes of parents that the SNT will charge fees at an affordable level for the trust services, the working group, taking reference from the trust services of similar nature in other places, has decided that the Trustee will pool together funds from different trust accounts for making investment to lower the management costs of individual accounts; and will allocate investment gains or losses to individual trust accounts on a pro rata basis. The SWD will invite relevant professionals to render advice on the investment and management of the trust fund.

10. The Trustee will charge an annual fee at a flat rate only after the trust account is activated (see paragraph 13(d) below) to cover the management and administrative expenses of the trust fund incurred by the SNT Office. Based on the current cost level, the annual fee for each trust account is HK\$21,000, subject to annual adjustment according to the change in relevant expenses.

Mode of Service

11. The Beneficiary under the SNT includes persons with intellectual disability (including Down's syndrome), mental disorder or autism. He/She must be eligible for rehabilitation services subsidised by the SWD or admission to special schools of the Education Bureau, and shall be a Hong Kong permanent resident who ordinarily resides in Hong Kong. The Settlor shall be a Hong Kong permanent resident aged 18 or above who is the parent or relative of the Beneficiary, and shall not be an undischarged bankrupt at the time of signing the trust deed. Each Beneficiary can only have one Settlor (e.g. either parent of the Beneficiary).

12. The SNT service consists of two stages, i.e. while the Settlor is alive and after the death of the Settlor, and involves four steps, namely setting up a trust account, activation of account, administration of account and termination of account. Details are set out in the ensuing paragraphs.

13. The Settlor shall open a trust account while he/ she is alive:

Step (1): Opening a trust account

- (a) The Trustee provides the Settlor with templates of trust documents including the trust deed, letter of intent, etc.
- (b) The Settlor is required to sign the trust deed in the presence of a lawyer and submit a letter of intent and a care plan for the Beneficiary. The Settlor is also required to make a will giving instructions on the transfer of his/her assets to the SNT account after his/her death.
- (c) The Settlor is required to transfer a specified amount of fund to the Trustee, i.e. the First Payment². The minimum amount

² If the current financial limit of monthly living expenses (i.e. HK\$17,000) set by the Guardianship Board is used as an example, the First Payment shall be no less than HK\$204,000 (HK\$17,000 x 12) + the prevailing trustee fee for the first year. If the estimated amount of monthly expenses is HK\$20,000, the First Payment shall be no less than HK\$240,000 (HK\$20,000 x 12) + the prevailing trustee fee for the first year, and so on.

of the First Payment shall be no less than the financial limit of the monthly living expenses for a mentally incapacitated person set by the Guardianship Board for 12 months + the prevailing trustee fee for the first year. This arrangement is to ensure that the living expenses of the Beneficiary can be catered for in cases the executor of the Settlor' will may need some lead time in liquidating the Settlor's assets after he/ she passes away.

- (d) Before the activation of the trust account, the Trustee will neither charge any management fee for the First Payment nor use the First Payment for investment purpose. The fund will be deposited into a savings account.
- (e) After the trust account is opened, the Trustee will, together with the Settlor, review the Beneficiary's care plan and financial needs on a regular basis.

14. After the death of the Settlor, the Trustee will activate the following procedures:

Step (2): Activation of trust account

- (a) Upon receipt of the notification of the Settlor's death, the Trustee will activate the trust account.
- (b) The executor of the Settlor's will is required to deposit the cash derived from the Settlor's estate (including the proceeds from the sale of assets, if any, and other cash as specified in the will) into the trust account (i.e. the Further Payment). If no Further Payment is received from the executor, the Trustee will use the First Payment to effect the implementation of the care plan by the carer.
- (c) After the death of the Settlor, the Trustee may receive other funds deposited by any person into the Beneficiary's trust account, and such funds shall be deemed as Donation. Each Donation shall be no less than HK\$100,000³. The donor is required to sign a letter to confirm at the time of making the Donation to the effect that the care plan for the Beneficiary as agreed between the Settlor and the Trustee shall not be amended.

³ Approximately equivalent to the total amount of expenses for six months (the monthly amount is set by the Guardianship Board based on the median monthly employment earning)

Step (3): Administration of trust account

- (a) The Trustee pools together money from different trust accounts for making investment, and allocates investment gains or losses to individual trust accounts on a pro rata basis.
- (b) The Trustee disburses funds to the carer specified by the Settlor in accordance with the instructions laid down in the trust deed and the letter of intent, and reviews the implementation of the care plan on a regular basis, including reviewing the Beneficiary's financial needs.
- (c) The carer implements the care plan for the Beneficiary, and receives funds disbursed by the Trustee on a regular basis. The funds so received shall be primarily used for meeting the Beneficiary's daily living expenses as well as his/her care and development needs.

Step (4): Termination of trust account

- (a) The Trustee shall terminate a trust account under the following circumstances:
 - (i) The Beneficiary passes away: If the Beneficiary passes away without a will, his/her estate will be handled according to prevailing legislation;
 - (ii) Funds in the trust account are exhausted: The Trustee will make referrals of the Beneficiary's case to appropriate welfare service units according to the latter's actual conditions and needs; and
 - (iii) Other reasons (e.g. the Beneficiary no longer ordinarily resides in Hong Kong).

Next Step

15. The SWD set up the SNT Office in December 2018. In addition to the work carried out as mentioned in paragraph 5 above, the SNT Office has been visiting parents' self-help groups and parents resource centres to enhance the awareness of the SNT service amongst parents/carers of persons with special needs and answer their enquiries. Talks and workshops will be organised for parents/carers who are interested in applying for the SNT service, so that they can have a better understanding of the service, its application details and points to note. The SNT Office will start accepting applications within March 2019.

Advice Sought

16. Members are invited to note the service scope and implementation arrangements of the SNT and give views on the way forward.

**Labour and Welfare Bureau
Social Welfare Department
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