BACKGROUNDER
CONFLICT OF INTEREST ACT

Blind trusts

Reporting public office holders (RPOHs) are prohibited under the *Conflict of Interest Act* from holding controlled assets. Within 120 days after their appointment, they must divest any controlled assets that they hold, either by selling them in an arm's length transaction, or by placing them in a blind trust for as long as they remain in public office or until the trust assets have been depleted.

A *blind trust* is a type of trust (a property interest held by one person for the benefit of another) in which the trustee, or blind trust agent, is empowered to administer the assets of the trust without any input from the trust's beneficiary, and may not provide the beneficiary with any information about the day-to-day operations of the trust.

The terms of RPOHs' blind trusts are set out in *blind trust agreements*. These are legal instruments by which RPOHs transfer legal title and all authority over their controlled assets, including the power to sell and acquire controlled assets, to third-party trustees who are at arm's length from them. RPOHs' spouses, dependants, relatives and friends cannot act as trustees. The blind trust agreements must meet the requirements set out in section 27 of the Act. RPOHs can obtain a sample blind trust agreement that meets those requirements by contacting their advisor in the Office of the Conflict of Interest and Ethics Commissioner.

Restrictions on information-sharing. Trustees are prohibited from sharing information with RPOHs, with some exceptions. They cannot:

- Disclose to RPOHs (or to anyone else on the RPOHs' behalf) the composition, nature or particular details of the trust assets.
- Seek instruction, direction or advice from RPOHs with respect to the trust assets, including the investment, disposition and management of those assets.
- Act upon any direction, instruction or advice offered by RPOHs or by someone acting on their behalf.

Trustees are not permitted to provide statements to RPOHs regarding the trust assets, other than:

- Periodic statements regarding the trusts' overall net worth and any decrease or increase in their value. This must be done without disclosing the specific investments in the trust, or the nature of transactions which trustees have made or are contemplating. Trustees may, however, prepare pie charts showing the distribution of investments by category of risk, without identifying individual investments.

- Information regarding the capital gains or losses and income of trust assets, as may be required by RPOHs in order to prepare applicable tax returns, along with other similar returns required by law. Trustees may also sell trust assets as required for payment by RPOHs of any capital gains or income taxes levied in relation to the trust assets.

RPOHs are also restricted in terms of the instructions they can provide to the trustees:

- General investment instructions may be included in a blind trust agreement, but only with the prior approval of the Commissioner. The instructions may provide for proportions to be invested in various categories of risk but may not be industry-specific, except in cases where there are legislative restrictions on the types of assets that the RPOH may own.
- If an RPOH switches trustees (this may only be done with the prior approval of the Commissioner), the trust assets must be transferred from trustee to trustee, and not through the RPOH, in order to preserve the confidentiality of the trust assets.

Reporting. No later than April 30 of each year, the trustee must file a written report with the Office of the Conflict of Interest and Ethics Commissioner covering the preceding calendar year. The report must confirm the nature and market value of the trust, a reconciliation of the trust property, the net income of the trust for the preceding year and the trustee's fees, if any.

Administrative costs. RPOHs are personally responsible for paying invoiced costs directly to trustees and may be reimbursed for reasonable legal, accounting and administrative costs associated with creating, maintaining and terminating blind trusts. For information on what costs are eligible for reimbursement, please see the Guideline on the Reimbursement of Costs Associated with Divestment of Assets and Withdrawal from Activities.

Dismantling blind trusts. When her Office is informed of an RPOH's last day in public office, the Commissioner will send the individual a letter outlining his or her post-employment obligations under the Act and authorizing the RPOH to begin dismantling the blind trust.

The RPOH can dismantle the blind trust by giving the trustee written instructions to wind up the trust and transfer title/control of the assets back to the RPOH. These written instructions may be provided to the trustee on the day after the RPOH's last day in public office. In order to satisfy the trustee that the RPOH is no longer required to maintain a blind trust for the purposes of the Act, the RPOH may provide the trustee with a copy of the Commissioner's letter confirming his or her last day in public office.

Exception. The Commissioner has the discretion to allow RPOHs who are not ministers or parliamentary secretaries to retain controlled assets if they are of minimal value and there is no conflict with their duties and functions. For more information, please see Minimal Value Exemption information notice.

Ce document est également disponible en français.
http://ciec-ccie.parl.gc.ca/