

Special Needs Trust Application Guidebook



社會福利署
Social Welfare Department

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Background and Service Objective

Some parents have expressed the concern that although they have the financial means to meet the long-term daily needs of their children with special needs, they are still worried about the care for their children after their passing, as their children lack the ability to take care of themselves. These parents have pointed out that even if they can find relatives or friends to take care of their children with special needs, they do not wish to give all their assets directly to their relatives, friends or carers. These parents wish to manage their assets under a trust to better ensure, after their passing, the long-term sustainability of the care plan they have prepared for their children while they are alive.



The Chief Executive announced in the 2017 Policy Address that the Government decided to take the lead in setting up a “special needs trust”, to provide reliable and affordable trust services.

The Special Needs Trust Office (SNTTO) was established in December 2018, with the Director of Social Welfare Incorporated as the trustee, 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.



Service Features



The Director of Social Welfare Incorporated will act as the **Trustee** of the Special Needs Trust (SNT) to manage the trust accounts and review the implementation of care plans on a regular basis.



While the parent/relative (**the Settlor**) is alive, he/she is required to make a Will, sign a Trust Deed with the Trustee as well as prepare a Letter of Intent and a Care Plan for their child or relative with special needs (**the Beneficiary**). The Settlor is also required to inject funds in order to set up the trust account (the First Payment).

After the death of the Settlor, the Trustee activates the trust account and disburses funds to the **carer** specified by the Settlor in accordance with the instructions laid down in the Trust Deed and Letter of Intent. The carer implements the care plan formulated for the Beneficiary. The executor of the Settlor's Will deposits the cash derived from the Settlor's estate to the SNT account (the Further Payment).

The trust account will accept cash injections in Hong Kong dollars only.

The Trustee pools together funds from different trust accounts for making investment, and allocates investment gains or losses to individual trust accounts on a pro rata basis.

An annual fee will be charged for the trust service.



Eligibility



Who is eligible to act as the Settlor under the SNT?

The Settlor must meet the following eligibility criteria:

1. A parent or relative of a person with special needs;
2. Aged 18 or above;
3. Not an undischarged bankrupt at the time of signing the Trust Deed; and
4. A Hong Kong permanent resident.

Who is the Beneficiary under the SNT?

The Beneficiary must meet the following eligibility criteria:

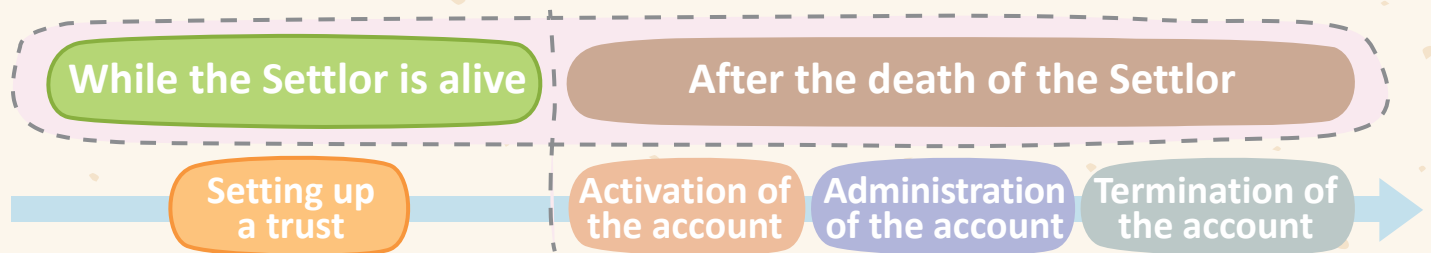
1. A person with intellectual disability (including Down's syndrome), mental disorder or autism; and
2. A Hong Kong permanent resident who ordinarily resides in Hong Kong.

Who can become carers under the SNT?

1. An individual or institution specified by the Settlor in a Letter of Intent to be responsible for implementing the care plan; and
2. When appointing a carer, the Settlor should ensure that carer is willing and able to perform the carer role and will promote the best interest of the Beneficiary.



Service Workflow and Operation



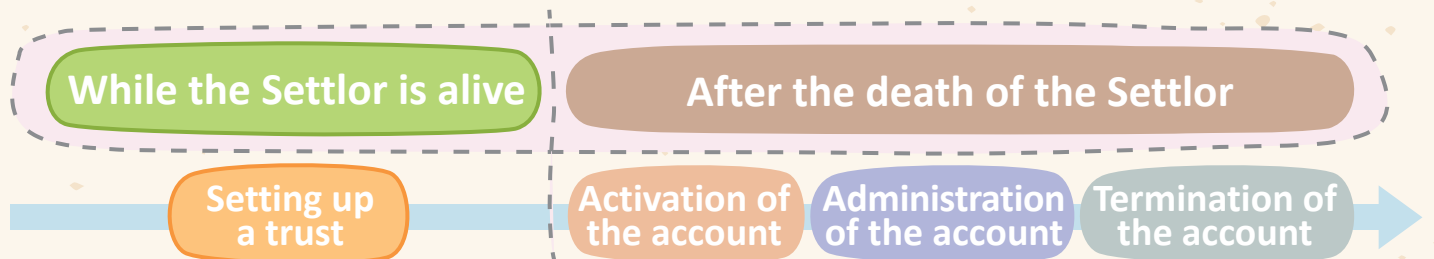
1. The Settlor shall discuss with the Trustee issues such as the long-term care plan, the estimates of relevant expenses and the specification of an individual or institutional carer for the Beneficiary.
2. The Settlor signs a Trust Deed with the Trustee: the Settlor is required to sign a Trust Deed in the presence of a lawyer and submit a Letter of Intent and a Care Plan for the Beneficiary specifying the future annual care services and the expenses involved for the Beneficiary, and the individual or institution that will serve as the carer of the Beneficiary.
3. Through his/her lawyer, the Settlor is required to make a Will specifying the arrangement for transferring his/her assets to the SNT after his/her death and the implementation of such an arrangement by the executor of the Will. The Settlor is required to submit the copy of Will (clauses related to the SNT) to the Trustee for record.
4. Upon opening a trust account, the Settlor is required to transfer a specified amount of fund to the Trustee (i.e. the First Payment). The minimum amount (whichever is higher) of the First Payment shall be no less than:
 - (a) The estimated expenses for the continuous implementation of the care plan for 12 months + the prevailing trustee fee for the first year; or
 - (b) 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.
5. Before the activation of the trust account, the Trustee will not charge any annual fee for the First Payment. The fund will be placed into a deposit account.

Friendly Reminder

- * Each Beneficiary can only have one Settlor.
- * Once a Trust Deed enters into force, the trust cannot be revoked. The exceptions are when the Beneficiary has passed away or the emigration of the Beneficiary out of Hong Kong and the Trustee is of the opinion that the Beneficiary no longer ordinarily resides in Hong Kong before the activation of the trust account (i.e. when the Settlor is still alive). In either case, the amount of the First Payment will be refunded by the Trustee to the Settlor.



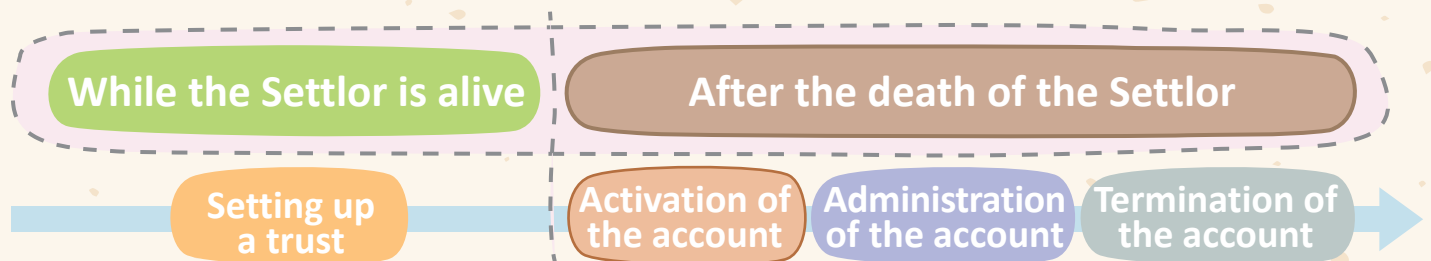
Service Workflow and Operation (Cont'd)



6. After setting up the trust account, the Trustee will regularly review the care plan and financial needs of the Beneficiary with the Settlor.
7. During the review, apart from taking the Settlor's Letter of Intent and Care Plan into consideration, the Trustee shall also consider factors relating to the Beneficiary's long-term benefits, including changes in the health or daily needs of the Beneficiary and inflation, etc. The Trustee may adjust the care plan and the monthly expenses, though such adjustment may shorten the duration of the care plan.
8. In terms of inflation, the Trustee may request the Settlor to increase injection after setting up of the trust account (before the activation of the trust account) with reference to the Composite Consumer Prices Index or such other index as the Trustee considers appropriate.
9. In view of changes of the Beneficiary's conditions, the Settlor can also revise or update the Letter of Intent, the Care Plan and the estimate of expenses, but the subsequent replacements and amendments to the Letter of Intent/Care Plan should be made in the form of a letter of agreement.
10. If the Settlor revises the Will, he/she must notify the Trustee in time and submit a copy of the latest Will (clauses related to the SNT) to the Trustee for record.



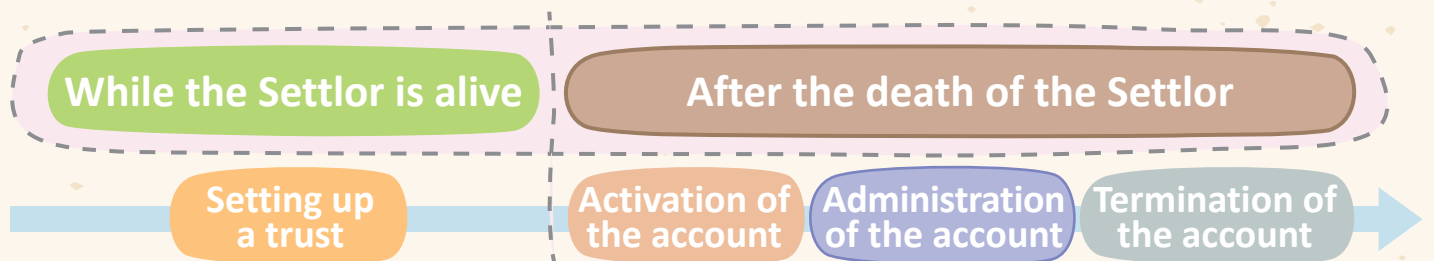
Service Workflow and Operation (Cont'd)



1. Upon receipt of the notification of the Settlor's death, the Trustee will activate the trust account.
2. 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. The trust account will be terminated when funds are exhausted.
3. 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 "donations".
4. 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.
5. Each payment shall be no less than the amount equivalent to financial limit of the monthly living expenses set by the Guardianship Board for 6 months.



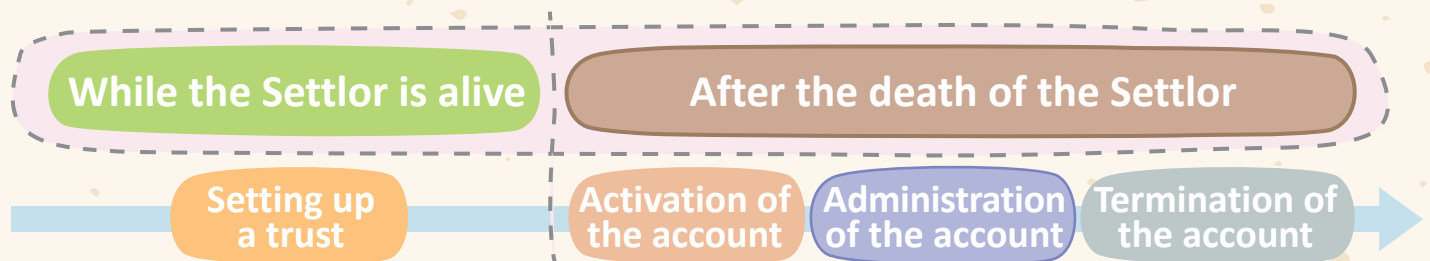
Service Workflow and Operation (Cont'd)



1. 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 regularly.
2. The carer implements the care plan formulated for the Beneficiary and receives funds disbursed by the Trustee on a regular basis. The funds so received shall be primarily used for the daily living expenses, care and development needs of the Beneficiary.
3. The Trustee will regularly review the financial needs of the Beneficiary. Apart from the Letter of Intent and the Care Plan, the Trustee shall also consider factors relating to the Beneficiary's long-term benefits, including changes in the health condition, daily needs of the Beneficiary and inflation, etc., to adjust the care plan and the monthly expenses, though such adjustment may shorten the duration of the care plan. The Trustee is not bound by the Letter of Intent/Care Plan and may deviate from the preferences of the Settlor if it is in the best interest of the Beneficiary to do so.
4. In terms of inflation, the Trustee may adjust the monthly expenses of the care plan from time to time after the activation of the trust account, with reference to the Composite Consumer Prices Index or such other index as the Trustee considers appropriate.



Service Workflow and Operation (Cont'd)



5. The Trustee has the right to relieve the duty of the carer and appoint another carer as replacement upon the occurrence of the following events:

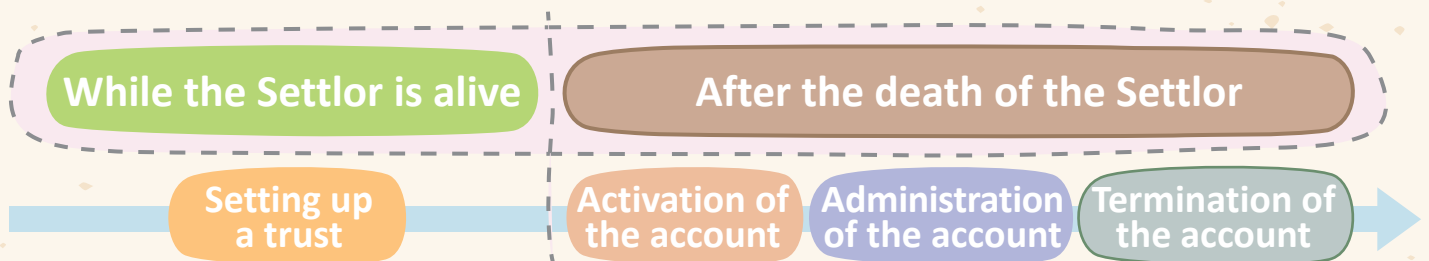
- (a) the carer's death, bankruptcy or imprisonment;
- (b) the carer's resignation or refusal to perform duties;
- (c) the carer's emigration or habitual loss of contact;
- (d) the carer is unfit for the role due to changes of the carer's health/capability;
- (e) the carer's negligence or abuse of the Beneficiary, including physical, financial or psychological abuse;
- (f) court's instructions; or
- (g) other circumstances: it is the Trustee's belief that relieving the carer of his/her duty is in the best interest of the Beneficiary under the circumstances.

Friendly Reminder

If the carer specified by the Settlor in the Letter of Intent is considered unfit for taking up such a role, the Trustee may make discretionary decision to appoint another carer who is not specified in the Letter of Intent in the best interest of the Beneficiary.



Service Workflow and Operation (Cont'd)



The account will be terminated under the following circumstances and the handling of remaining funds (if any):

1. The Trustee is notified by the carer or other individuals of the death of the Beneficiary: After the activation of trust account, if the Beneficiary passes away without a Will, his/her estate will be handled according to prevailing legislation;
2. The funds in the trust account are exhausted: The Trustee will make referral of the Beneficiary's case to appropriate welfare service units according to the latter's actual conditions and needs;
3. The court orders the termination of the trust account concerned: The Trustee will handle the remaining funds in the trust account pursuant to the court's instructions;
4. The Beneficiary no longer ordinarily resides in Hong Kong: The Trustee will handle the remaining funds in the trust account in accordance with an order of the Court; or
5. The Trustee cannot fulfil the duties to use the funds from the trust for the welfare or interest of the Beneficiary: The Trustee will handle the remaining funds in the trust account in accordance with an order of the Court.

Friendly Reminder

The sum in the trust account is part of the Beneficiary's estate. According to SWD current practice in handling other trust accounts, if the Beneficiary passes away without a Will (e.g. due to mental incapacitation to set up a Will), his/her relative can apply for a grant of Letters of Administration from the Probate Registry. If that relative is authorised to administer the deceased's estate, the remaining sum in the Beneficiary's trust account will be handed over to the administrator. If the Beneficiary has no next of kin, the court will authorise an Official Administrator to manage the estate. Any balance of the estate leaving unclaimed for five years thereafter will be transferred to the general revenue of the government.



Application Procedures

1. Service Enquiry and Application

Service enquiry	<ul style="list-style-type: none">✿ The parent/relative (the Settlor) calls or visits the SNTO for service enquiry.✿ The Settlor has a preliminary understanding of the SNT service.
Discussion with family members	<ul style="list-style-type: none">✿ The Settlor discusses with the family and the child/relative with special needs (the Beneficiary) whether to apply for the SNT service.
Service application	<ul style="list-style-type: none">✿ The Settlor fills out the service application form and returns it to the SNTO.
Preparation for participating in the SNT service	<ul style="list-style-type: none">✿ The Settlor submits relevant documents to ascertain his/her eligibility (Please refer to the Friendly Reminder on this page for a list of supporting documents).✿ The Settlor discusses with the Trust Account Manager issues such as the Beneficiary's long-term care plan, the estimates of relevant expenses, and the specification of an individual or institutional carer for the Beneficiary.✿ The Trust Account Manager contacts the Beneficiary and related family members (if applicable) to understand their wishes/opinions to participate in the SNT service.

2. Setting Up a Trust Account

Submit trust documents and transfer the First Payment	<ul style="list-style-type: none">✿ The Settlor appoints a lawyer to provide legal advice relating to the Trust Deed and Will. The Settlor is also required to sign the Trust Deed in the presence of a lawyer.✿ The Settlor submits a Care Plan for the Beneficiary and a proposed Letter of Intent.✿ The Settlor transfers the First Payment to the trust account.✿ After the Director of Social Welfare signed the Trust Deed, the Settlor makes the Will, and submits the signed Letter of Intent together with a copy of Will (clauses related to the SNT) to the SNTO for record.
Setting up of the trust account	<ul style="list-style-type: none">✿ The SNT account is set up.

Friendly Reminder

Supporting documents include:

Settlor

1. Hong Kong Permanent Identity Card
2. Marriage proof (e.g. marriage certificate) (if applicable)
3. Assets proof (e.g. bank statement)
4. Address proof

Beneficiary

1. Birth Certificate/Proof of relationship
2. Hong Kong Permanent Identity Card
3. Marriage proof (e.g. marriage certificate) (if applicable)
4. Documentary proof of disability (e.g. assessment report by Psychiatrist/Clinical Psychologist, etc)
5. Employment proof (if applicable)
6. Documentary proof of attendance in special school (if applicable)
7. Confirmation of Registration for Central Referral System for Rehabilitation Services or other related proof (if applicable)

2. Setting Up a Trust Account (Cont'd)

The three trust documents to set up the SNT:

Trust Deed

Parents/relatives (the Settlor) are required to sign a Trust Deed in the presence of a lawyer, specifying that the Director of Social Welfare Incorporated (the Trustee) shall manage the Settlor's money which will be transferred to the trust account of their children or relatives 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.

Will

Parents/relatives (the Settlor) are 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. Parents/relatives are required to submit a copy of the Will (clauses related to the SNT) to the SNT for record.

Letter of Intent and Care Plan

Parents/relatives (the Settlor), when signing the Trust Deed, are 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 the Beneficiary. They have to provide the name(s) of the individual or institutional carer(s) and obtain their written consent. If there is more than one carer, the Settlor should specify the priority of carers in the Letter of Intent. The carer who is accorded the first priority by the Settlor and is willing and capable will take up the carer's role.

Main expenses	Estimated monthly amount
Basic needs	
Daily living needs	
Medical/dental Needs	
Rehabilitation/professional support needs	
Accommodation and related expenses	
Care-giving needs	
Education needs	
Social and recreation needs	
Others needs	

Friendly Reminder

The Trust Account Manager discusses and formulates the Letter of Intent and Care Plan with the Settlor and Beneficiary (if applicable). The Settlor shall appoint a lawyer to provide legal advice on the Trust Deed and related clauses in the Will.



Financial Management and Trustee Fee

An “Investment Working Group to Advise the Director of Social Welfare on Investment Matters Relating to the Special Needs Trust” has been established by the Trustee to advise on the investment of the Trust Fund. The Trustee may invest the Trust Fund in accordance with provisions of the Trustee Ordinance (Cap. 29), having regard to the advice of the Investment Working Group.

Before the activation of trust account

- ✿ The Trustee will not charge any annual fee for the First Payment. The fund will be placed into a deposit account.



After the activation of trust account

- ✿ The Trustee disburses funds to the carer specified by the Settlor on a regular basis for the welfare and benefit of the Beneficiary. The funds so received shall be primarily used for meeting his/her daily living expenses as well as care and development needs.
- ✿ The Trustee will pool funds from different Settlers and/or other trust funds held by the Trustee for investment or management, and/or entrust the fund to any agency for the purpose of investment in any manner as it thinks fit.
- ✿ The Trustee will allocate investment gains or losses to individual trust accounts on a pro rata basis.
- ✿ The Trustee will charge an annual fee.
- ✿ The Trustee will be entitled to be paid or reimbursed out of the Trust Fund in respect of all reasonable and proper costs, charges, etc, which it may incur directly or indirectly in respect of the exercise of its duties and powers under the Deed, including any fees charged by any legal or other professional advisors to the Trustee.
- ✿ The Trustee may pay service fee/other fees, deductible from the trust account concerned, to its appointed carer.



Friendly Reminder

The Trustee may adjust the terms and conditions of charging which will be publicised on SWD Homepage.




The Settlor's Checklist

Each Beneficiary can only have one Settlor (e.g. either side of the parents) in Special Needs Trust. Do you understand?	<input type="checkbox"/> Yes	<input type="checkbox"/> No → Please refer to P.4
The trust account will only accept cash injections in Hong Kong dollars but not other types of assets. Do you understand?	<input type="checkbox"/> Yes	<input type="checkbox"/> No → Please refer to P.2
Before the activation of the trust account (when you are alive), no annual fee will be charged for the First Payment you have deposited. The fund will be placed into a deposit account. Do you understand?	<input type="checkbox"/> Yes	<input type="checkbox"/> No → Please refer to P.4 & 12
An annual fee will be charged for the trust service after the trust account is activated. Do you understand?	<input type="checkbox"/> Yes	<input type="checkbox"/> No → Please refer to P.2 & 12
Once the Trust Deed enters into force, the trust cannot be revoked. The exceptions are when the Beneficiary has passed away or the emigration of the Beneficiary out of Hong Kong and the Trustee is of the opinion that the Beneficiary no longer ordinarily resides in Hong Kong before the activation of the trust account (i.e. when you are still alive). In either case, the amount of the First Payment will be refunded by the Trustee to the Settlor. Do you understand?	<input type="checkbox"/> Yes	<input type="checkbox"/> No → Please refer to P.4
You are required to make a Will specifying the arrangement for transferring your assets to the SNT after your death and the implementation of such an arrangement by the executor of the Will. You are required to submit a copy of the Will (clauses related to the SNT) to the Trustee for record. Do you understand?	<input type="checkbox"/> Yes	<input type="checkbox"/> No → Please refer to P.4 & 11
If you revise the Will, you must notify the Trustee in time and submit a copy of the latest Will (clauses related to the SNT) to the Trustee for record. Do you understand?	<input type="checkbox"/> Yes	<input type="checkbox"/> No → Please refer to P.5
The Trustee will regularly review the care plan and financial needs of the Beneficiary with you, and if there are changes in the Beneficiary's conditions, you can revise or update the Letter of Intent, the Care Plan and the estimated expenses. Do you understand?	<input type="checkbox"/> Yes	<input type="checkbox"/> No → Please refer to P.5
You are required to provide the name(s) of the carer(s) and obtain their written consent, so that the carer(s) can implement the care plan for the Beneficiary after the activation of the trust account (after you have passed away). Do you understand?	<input type="checkbox"/> Yes	<input type="checkbox"/> No → Please refer to P.2 & 11
After the trust account is activated, the specified carer shall receive funds disbursed by the Trustee on a regular basis for the welfare and benefit of the Beneficiary. The funds so received shall be primarily used for meeting his/her daily living expenses as well as care and development needs. Do you understand?	<input type="checkbox"/> Yes	<input type="checkbox"/> No → Please refer to P.7 & 12
Your appointed carer (an individual or institution) may demand for extra fees, such fees will be deductible from the trust account concerned. Do you understand?	<input type="checkbox"/> Yes	<input type="checkbox"/> No → Please refer to P.12
If no Further Payment is received from the executor of your Will, the Trustee will use the First Payment to effect the implementation of the care plan by the carer until the funds in the trust account are exhausted. The trust account will then be terminated. Do you understand?	<input type="checkbox"/> Yes	<input type="checkbox"/> No → Please refer to P.6


Enquiries and Application


Interested parties are welcomed to contact the SNTO of the SWD, the contact information as follows:


 Address: Unit 201, 2/F, THE HUB, 23 Yip Kan Street, Wong Chuk Hang, Hong Kong

 Telephone: 2116 5308

 Fax: 2117 1451

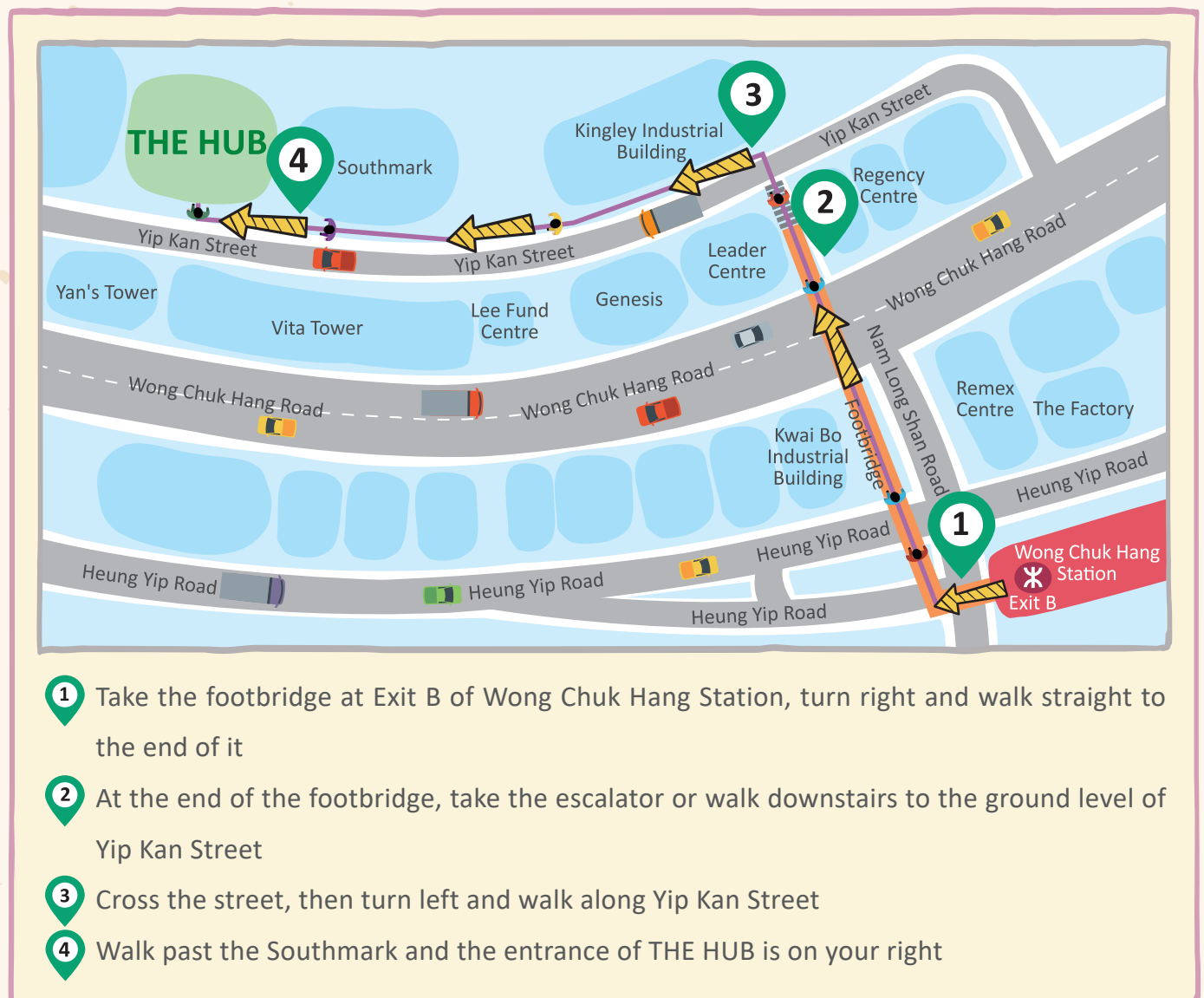
 Email: sntoenq@swd.gov.hk

 Website: https://www.swd.gov.hk/en/pubsvc/rehab/cat_fundtrustfinaid/snto/

 Opening hours: Monday to Friday:
8:45 am to 1:00 pm; 2:00 pm to 6:00 pm
Closed on Saturdays, Sundays and public holidays



SWD Homepage



- 1 Take the footbridge at Exit B of Wong Chuk Hang Station, turn right and walk straight to the end of it
- 2 At the end of the footbridge, take the escalator or walk downstairs to the ground level of Yip Kan Street
- 3 Cross the street, then turn left and walk along Yip Kan Street
- 4 Walk past the Southmark and the entrance of THE HUB is on your right