



TSAWWASSEN FIRST NATION
s̓c̓awaθən məsteyəx^w

2016

TRUSTS ACT

Date Enacted: 24 November 2016

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Table of Legislative Changes

Name of Act	Bill Number	Date Enacted	Section(s) Amended	Comes Into Force Date

Tsawwassen First Nation

2016

TRUSTS ACT

Contents

- 1 Citation
- 2 Definitions
- 3 Membership
- 4 Directors
- 5 Society auditor
- 6 Deposit and publication of constitution and bylaws
- 7 Records of Society

SOCIETY OPERATIONS

- 8 Management of trusts
- 9 Policies and procedures
- 10 Consideration of members' interests
- 11 Communications by Society
- 12 Policy directives
- 13 Annual financial statements

LEGACY TRUST

- 14 Initial payment to Legacy Trust
- 15 Annual payments to Legacy Trust
- 16 Additional payments to Legacy Trust
- 17 Calculation of interest
- 18 Condition for payment
- 19 Reports to Tsawwassen Legislature

GENERAL

- 20 Paramountcy of Act
- 21 Paramountcy of *Societies Act*
- 22 Regulations

TRANSITIONAL PROVISION

- 23 Change of members
- 24 Change of directors

COMMENCEMENT

- 25 Commencement

WHEREAS

The Tsawwassen First Nation Trust Society was incorporated under the British Columbia *Society Act* and established as a Tsawwassen Public Institution under section 8 of the *Other Trust Funds and TFN Trust Society Regulation* and clause 43a of the Governance Chapter of the Tsawwassen Final Agreement;

The Society acts as trustee of trusts established by Tsawwassen First Nation, and the Tsawwassen Legislature wishes to legislate certain matters in relation to the governance of the Society;

The Tsawwassen Legislature wishes to ensure that, over time, all Tsawwassen lease income and all distributed business income is paid into the Legacy Trust, together with interest;

NOW THEREFORE Tsawwassen Legislature enacts as follows:

Citation

- 1 This Act may be cited as the *Trusts Act*.

Definitions

- 2 In this Act:

“distributed business income” means the aggregate of

- (a) all dividends received by Tsawwassen First Nation from Tsawwassen corporations,
- (b) all distributions received by Tsawwassen First Nation from Tsawwassen partnerships, and
- (c) all distributions received by Tsawwassen First Nation from the TEDC Group Entities,

less the aggregate of

- (d) the management and operating costs of any TEDC Group Entities that are paid by Tsawwassen First Nation, and
- (e) any applicable taxes and own-source revenue charges or deductions in respect of such dividends and distributions.

“Executive Council” means Executive Council of Tsawwassen First Nation established under the *Government Organization Act*;

“fiscal year” means the fiscal year of Tsawwassen First Nation, beginning on April 1 of a given year and ending on March 31 of the following year;

“Legacy Trust” means the Tsawwassen First Nation Member Legacy Trust to be established between Tsawwassen First Nation, as settlor, and the Society, as trustee;

“members of the Legislature” has the same meaning as in the *Tsawwassen Government Organization Act*;

“outside expert” means an individual who is not a Tsawwassen Member and who is an accountant, lawyer or other person who, in the opinion of Executive Council, as evidenced by an Executive Council order, has professional qualifications and experience relevant to the role of a trustee;

“Society” means the Tsawwassen First Nation Trust Society, incorporated on March 11, 2005 under the laws of British Columbia under number S-0048805;

“TEDC Group Entity” means an entity set out in Schedule A;

“Treaty Effective Date” means April 3, 2009;

“trusts” means the trusts for which the Society is trustee, and includes the Tsawwassen Treaty Settlement Trust, the Tsawwassen Minors’ Trust, the Fisheries Stewardship Trust and the Tsawwassen First Nation Member Legacy Trust;

“Tsawwassen Commercial Lands” means the lands owned in fee simple by Tsawwassen First Nation or a subsidiary of Tsawwassen First Nation and legally described as:

Lots A, B, C, E, F and G
Section 15 Township 5 and District Lot 833
New Westminster District
Plan EPP42761;

“Tsawwassen corporation” means a corporation set out in Schedule B;

“Tsawwassen Industrial Lands” means the lands owned in fee simple by Tsawwassen First Nation or a subsidiary of Tsawwassen First Nation and shown as “Industrial” on the Tsawwassen First Nation Land Use Plan, as amended from time to time;

“Tsawwassen Law Registry” means the registry of laws established by section 46 of the *Tsawwassen Government Organization Act*;

“Tsawwassen lease income” means the net income, determined in accordance with generally accepted accounting principles but calculated as and when received, from basic and participating rent paid to Tsawwassen First Nation or a subsidiary of Tsawwassen First Nation by tenants under head leases of the Tsawwassen Commercial Lands and the Tsawwassen Industrial Lands, less any applicable taxes and own-source revenue charges or deductions;

“Tsawwassen Member” has the same meaning as in the *Tsawwassen Membership Act*;

“Tsawwassen partnership” means a partnership or limited partnership set out in Schedule C.

ORGANIZATION OF SOCIETY

Membership

- 3 (1) The members of the Society are to be the members of the Legislature.
- (2) For greater certainty, a person ceases to be a member of the Society when he or she ceases to be a member of the Legislature.

Directors

- 4 (1) The directors of the Society are to be
 - (a) the members of the Finance and Audit Committee established under the Tsawwassen *Financial Administration Act*, who hold office as directors by virtue of their membership in that Committee; and
 - (b) four additional directors appointed by Executive Council, of whom at least one is to be an outside expert and at least two are to be Tsawwassen Members who are not members of the Legislature.
- (2) For greater certainty, a person who is appointed to be a member of the Finance and Audit Committee thereby becomes a director of the Society, and ceases to be a director when he or she ceases to be a member of the Finance and Audit Committee.

Society auditor

- 5 The Society shall appoint an auditor.

Deposit and publication of constitution and bylaws

- 6 Executive Council is to ensure that the constitution and bylaws of the Society are deposited in the Tsawwassen Laws Registry and published on the Tsawwassen First Nation website.

Records of Society

- 7 The Society shall make available to Executive Council and the Legislature, at the offices of the Society or the Tsawwassen Government at any time during their normal office hours, any records requested in writing by Executive Council or the Legislature.

SOCIETY OPERATIONS

Management of trusts

- 8 The Society shall manage each trust in accordance with the requirements of the trust agreement entered into by the Society in respect of that trust.

Policies and procedures

- 9 The Society shall develop investment policies and procedures for the management of each trust, taking into consideration the advice of one or more independent investment consultants, and shall manage each trust in accordance with those policies and procedures.

Consideration of members' interests

- 10 Subject to the terms of the trust agreements, in considering what is in the interests of Tsawwassen Members, the directors of the Society are to consider both the interests of current Tsawwassen Members and those of future Tsawwassen Members who will be the beneficiaries of the trusts.

Communications by Society

- 11 The Society will ensure a prompt response to any enquiries by Executive Council or the Tsawwassen Legislature.

Policy directives

- 12 (1) Executive Council may, from time to time, issue policy directives to the Society in relation to the public interest of Tsawwassen First Nation and Tsawwassen Members.
 - (2) Any policy directives issued by Executive Council to the Society shall be filed in the Tsawwassen Law Registry.
 - (3) The Society may refuse to comply with a policy directive if, in the opinion of the directors of the Society, it could adversely affect the value of the trusts or the interests of Tsawwassen Members or is inconsistent with the terms of the trusts.

Annual financial statements

- 13 (1) The annual financial statement of the Society is to be audited by the auditor of the Society.
 - (2) On receipt of the audited annual financial statement, the Society shall provide a copy of it to Executive Council.
 - (3) Executive Council shall present the audited financial statements to Tsawwassen Members at an open meeting of the General Assembly of Tsawwassen Members.

LEGACY TRUST

Initial payment to Legacy Trust

- 14 On or before January 31, 2017, Tsawwassen First Nation shall pay into the Legacy Trust an amount equal to not less than 20% of all Tsawwassen lease income during the period from and including the Treaty Effective Date up to and including March 31, 2016.

Annual payments to Legacy Trust

- 15 (1) Within 6 months after the end of each fiscal year, Tsawwassen First Nation shall pay into the Legacy Trust an amount equal to not less than the aggregate of
 - (a) 20% of the Tsawwassen lease income during that fiscal year; and
 - (b) 20% of distributed business income during that fiscal year.

Additional payments to Legacy Trust

- 16 (1) Additional payments are to be made by the Tsawwassen First Nation to the Legacy Trust in such amounts as the Tsawwassen Legislature from time to time determines by

resolution that, together with the payments made under sections 14 and 15, equal the aggregate of:

- (a) all Tsawwassen lease income after the Treaty Effective Date, less the aggregate of all distributions made by Tsawwassen First Nation to Tsawwassen Members from that Tsawwassen lease income;
- (b) interest on the unpaid portion of the amount referred to in paragraph (a), from the Treaty Effective Date;
- (c) all distributed business income by Tsawwassen First Nation after January 1, 2017; and
- (d) interest on the unpaid portion of the amount referred to in paragraph (c), from January 1, 2017.

Calculation of interest

17 For the purpose of section 16, the amount of interest payable is equal to

- (a) in respect of any period during which the Tsawwassen lease income or distributed business income was invested, the interest or return earned on the funds invested, less any applicable taxes and own-source revenue charges or deductions made in respect of that interest or return;
- (b) in respect of any period during which the Tsawwassen lease income or distributed business income was not invested, simple interest, calculated and compounded annually on March 31 of each year, at a rate equal to the prime rate of interest of the Bank of Montreal on April 1 of the preceding year plus 1%.

Condition for payment

18 The obligation of Tsawwassen First Nation to pay any amount into the Legacy Trust in accordance with this Act is subject to sufficient Tsawwassen First Nation funds being available to make the payment.

Reports to Tsawwassen Legislature

19 Each payment into the Legacy Trust must be reported to the first session of the Tsawwassen Legislature after the payment is made.

GENERAL

Paramountcy of Act

20 Where there is a conflict between this Act and the Society by-laws, this Act prevails.

Paramountcy of *Societies Act*

21 Where there is a conflict between this Act and the *Societies Act* of British Columbia, the *Societies Act* prevails.

Regulations

- 22 Executive Council may make any regulations it considers necessary or advisable for the purposes of this Act.

TRANSITIONAL PROVISIONS

Change of members

- 23 Notwithstanding section 3, persons who are members of the Society on the day on which this Act comes into effect continue to be members of the Society until the bylaws of the Society provide for the admission of new members in accordance with section 3.

Change of directors

- 24 Notwithstanding section 4, persons who are directors of the Society on the day on which this Act comes into effect (“existing directors”) continue to be directors of the Society until the bylaws of the Society provide for the appointment of new directors in accordance with section 4 and new directors referred to in paragraph 4(1)(b) are appointed), at which time the existing directors cease to hold office and the directors referred to in paragraphs 4(1)(a) and (b) commence their terms of office.

COMMENCEMENT

Commencement

- 25 This Act comes into effect on the day of its enactment by Tsawwassen Legislature.

Schedule A

TEDC Group Entities
(Section I)

1. TFN Economic Development Corporation
2. TFN Construction Ltd.
3. TFN Economic Development Limited Partnership
4. TFN Construction Limited Partnership

Schedule B
Tsawwassen Corporations
(Section I)

1. TFN Commercial Lands Corporation
2. TFN Industrial Lands Corporation
3. 600911 B.C. Ltd.

Schedule C
Tsawwassen Partnerships
(Section 1)

1. [nil]