

**Cour
Pénale
Internationale**

**International
Criminal
Court**

**Presidential Directive
ICC/PRESG/2004/002**

Date: 5 March 2004

**GUIDELINES ON THE ESTABLISHMENT OF TRUST FUNDS OF THE
INTERNATIONAL CRIMINAL COURT**

Section 1

Framework

- 1.1. The purpose of these guidelines is to set out policies and procedures to be followed in establishing Trust Funds. The guidelines govern the receipt and expenditure of Voluntary Contributions and Extrabudgetary Resources by the Court. Defined terms are set out in the Annex hereto.
- 1.2. Prospective donors must be made fully aware of all policies, criteria and procedures of the Court regarding trust funds before the establishment of any trust fund. It is incumbent upon all Organs, Sections and Originating offices to ensure that the proposed trust fund is consistent with the policies, programmes, priorities and aims and purposes of the Court
- 1.3. All Organs, Sections and any other Originating office of the Court should coordinate their fund raising efforts in order to ensure that there are no multiple approaches to the same prospective donor. The Budget Section should be informed of all preliminary discussions being conducted with prospective donors.

Section 2

Authority

- 2.1. Article 116 of the Rome Statute provides for the adoption of criteria for the receipt of Voluntary Contributions by the Court. These criteria were adopted by Resolution ICC-ASP/1/Res.11. The establishment and management of Trust Funds are governed by the Court's Financial Regulations and Rules. The establishment and management of Trust Funds also require observance of the Court's Staff Regulations and Rules, and any other relevant policies or procedures promulgated by the President or the Registrar.
- 2.2. These Trust Fund Guidelines are adopted in light of the Registrar's responsibilities under the Financial Regulations and Rules with regard to the establishment and management of Trust Funds.
- 2.3. Under the provisions of Resolution ICC-ASP/1/Res.11 and these Trust Fund Guidelines, special care must be exercised to ensure that the operations financed from such funds are consistent with the objectives, policies and procedures of the Court.
- 2.4. Proposals for all Trust Funds are to be considered within the context of the over-all policy, programme and priority-setting decisions of the Assembly of States Parties as expressed in its resolutions and the budget.

Section 3

Functional Responsibilities within the Registry

- 3.1. A general description of the functional responsibilities within the Registry for the establishment and management of Trust Funds is contained below.
- 3.2. The establishment and management of Trust Funds include the following functions:
 - (a) Preliminary activities;
 - (b) Establishment of Trust Funds;
 - (i) Trust Funds established by the Assembly of States Parties;
 - (ii) Trust Funds established by the Registrar;
 - (c) Acceptance of Pledges;
 - (d) Conclusion of agreements;
 - (e) Administration of Trust Funds;
 - (i) Collection, custody and investment of Voluntary Contributions;

- (ii) Preparation of Cost Plan;
 - (iii) Spending authority;
 - (iv) Implementation Control;
 - (v) Financial Reporting.
- (f) Audit
- 3.3. Closure of Trust Funds.

Section 4

Description of the Functional Responsibilities within the Registry

- 4.1. Preliminary Activities
The Originating Office is encouraged to conduct discussions with prospective donors regarding the possibility of making voluntary funds available to the Court for the support of its activities. However, no commitments may be made regarding the approval of a Trust Fund in the course of such discussions.
- 4.2. Establishment of Trust Funds
Trust Funds may be established by the Assembly of States Parties or by the Registrar.
- (a) Trust Funds established by the Assembly of States Parties
- (i) When a Trust Fund is established by the Assembly of States Parties, the terms of reference of the fund are set out in the Assembly resolution or in documentation referred to in the resolution.
 - (ii) A proposal or draft resolution recommending that the Assembly of States Parties should establish a Trust Fund shall be accompanied by a report from the Registrar on the administrative and financial implications of the proposal. A statement regarding the direct or indirect financial implications, if any, for the regular budget is to be included in the report.
- (b) Trust Fund established by the Registrar
- (i) Financial regulations 7.2 and 7.3 provide that Trust Funds may be established by the Registrar. The Registrar shall ensure that the purpose of a Trust Fund is clearly defined and that it is administered in accordance with the Financial Regulations and Rules of the International Criminal Court, with their related procedures and with Resolution ICC-ASP/1/Res.11 before establishing the fund. As appropriate, the heads of sections of the Court, in particular Legal, Human Resources, General Services, Finance and Budget will be consulted in order to ensure that the aims, purposes, terms and conditions of such Trust

Funds are consistent with over-all policy directives and guidelines, regulations, rules and legal and administrative requirements.

- (ii) It is to be ascertained whether the establishment of a Trust Fund by the Registrar might directly or indirectly involve any financial liability for the Court. In the event that it is determined that such a liability may exist, the proposal is to be referred to the Committee on Budget and Finance for it to seek approval of the Assembly of States Parties before the proposal is approved by the Registrar.

4.3. Acceptance of Pledges

- (a) Pledges can be accepted only after the Trust Fund has been formally established. A Pledge may be accepted by the Registrar or by officials having the necessary authority to do so as delegated by the Registrar.
- (b) Discussions with prospective donors may be carried out by programme managers responsible for the related activities regarding the possibility of contributing to Trust Funds.
- (c) Contributions to Trust Funds may be accepted in euros or other fully convertible currencies. Contributions in currencies which are not convertible may be accepted only if the Registrar determines that the currency can be fully utilized in the implementation of the related activity.
- (d) The making of a Pledge and its acceptance are to be recorded in an exchange of letters, or, if deemed appropriate, in a more formal agreement.
- (e) A prospective donor should be made aware that all activities including engagement of personnel and procurement of supplies or equipment financed from Trust Funds are subject to the regulations, rules, policies and procedures of the Court. Exceptions to such regulations, rules, policies or procedures are not permissible, unless specifically authorized by the Registrar or on his behalf by officials having the necessary delegated authority under applicable regulations, rules and procedures.

4.4. Conclusion of agreements

- (a) When a Trust Fund is established by the Assembly of States Parties or when a general Trust Fund is established by the Registrar, the conclusion of an agreement between the Court and prospective donors may not be necessary. If the conclusion of an agreement is deemed necessary, the preparation of such an agreement will be the subject of consultation between the Registrar and other offices concerned, including the Legal Advisory Services Section.
- (b) Trust Fund agreements set out the purposes of the Trust Funds and the modalities for the payment, receipt and expenditure of funds. Matters relating to other aspects of the relationship between Governments and the Court (such as relations with a host Government in respect of the holding of a conference, the establishment of a centre or

other institution, the contributions of Governments towards the expenses of the International Criminal Court office or matters relating to privileges and immunities to be accorded by Governments) are to be the subject of a separate agreement on which the Legal Advisory Services Section should be consulted and established procedures followed.

4.5. Administration of Trust Funds

At the time of establishment of the fund, the Registrar shall designate an Implementing Office in respect of each general Trust Fund. That Office shall be responsible for coordinating all aspects of the work programme to be financed from the Trust Fund in question, including liaison with other offices which may be involved in executing a part of the programme.

4.6. Collection, custody and investment of Voluntary Contributions

(a) Voluntary Contributions may be recorded in the accounts only on the basis of written Pledges, duly accepted by the Court, or of receipted payments. The Registrar shall designate the banks in which the resources of a Trust Fund shall be kept.

(b) In accordance with Financial Regulation 9.1 and Financial Rules 109.1 and 109.4(c), financial investments of moneys standing to the credit of Trust Funds may be made by the Registrar. The resulting income shall be credited to each fund. Moneys from various Trust Funds may be consolidated for investment purposes and the interest accruing therefrom credited to the funds in proportion to the amounts invested.

4.7. Preparation of a Cost Plan

For all Trust Funds, the development of a Cost Plan is a prerequisite for the commencement of operations. The implementing office is responsible for the preparation of the Cost Plan. All Cost Plans for Trust Funds, including those for operational activities, must include provision for Programme Support Costs.

4.8. Spending authority

In accordance with Financial Rule 110.2, no commitments, obligations, or disbursements against any funds may be incurred without the written authorization of the Registrar or his duly authorized delegate. Such authorizations take the form of allotments which will be issued only after sufficient contributions have been received to meet the requirements for initial financial obligations and for any reserves which may be required by the Registrar. Spending authority will be exercised by Certifying Officers, designated by the Registrar, in accordance with Financial Rule 110.3.

4.9. Implementation Control

It is the responsibility of the Certifying Officer to ensure that expenditures are made in accordance with existing financial and staff regulations, rules and procedures, for the purposes intended and within the limits allotted, and to draw the attention of the Registrar to any proposed commitment or expenditure which, in his or her view, is inconsistent therewith.

4.10. Reporting and evaluation

Substantive reports will be made by the Implementing Offices to legislative bodies and Trust Fund donors as required, in the interest of effective management, evaluation and control. All Voluntary Contributions, whether accepted or otherwise, shall be duly recorded and reported to the Assembly of States Parties by the Registrar.

4.11. Audit

All International Criminal Court Trust Funds are subject to audit by the Court's external auditor and by the Office of Internal Audit Division, under Regulation 10 of the Financial Regulations, and Financial Rule 110.1. No other additional or special audit arrangements shall be made with donors.

4.12. Closure of Trust Funds

A Trust Fund may be closed only by the authority which established it or as required in its terms of reference. A Trust Fund established by the Assembly of States Parties or another legislative body may be terminated after a decision by the legislative body concerned.

- (a) Trust Funds established under the authority of the Registrar may be terminated under the terms of the Trust Fund agreement or for such reasons and at such times as the Registrar or his delegate may consider appropriate after consulting with the donor or donors.
- (b) In respect of a Trust Fund which by its terms of reference or by the terms of a special agreement provides for the disposition of any remaining balance, the Registrar or his authorized delegate shall ensure that such provisions are carried out at the time the fund is closed. Any other balance remaining at the time a Trust Fund is closed will be disposed of in a manner consistent with the purposes of the Trust Fund and with the Financial Regulations and Rules of the Court.

Section 5

Programme Support Costs and Reserves

- 5.1 Reimbursement for Programme Support Costs shall be provided for in respect of all activities financed from Trust Funds. The amount of the reimbursement shall be calculated at 13% of the expenditures recorded in any financial period or any other standard percentage rate set by the Court. To the extent that the activities of a Trust Fund do not warrant the levy of full support costs, the Registrar may make exceptions to this provision. No programme support expenditure may be incurred without approval of the Registrar or his authorized delegate through an allotment advice based on a cost plan.
- 5.2 The Registrar shall establish a reserve for possible claims under any Staff Rules adopted in respect of the Court by charging against the resources of each Trust Fund a percentage of net base salary of staff financed from the Trust Fund or an equivalent amount for those consultants who are financed thereby. Such a reserve, no part of which is refundable to donors, will be retained by the Court in a pooled account.

- 5.3 There shall be established an operational reserve under the general fund, the level of which shall be determined from time to time by the Court on the recommendation of the Registrar in consultation with The Prosecutor, where appropriate. The purposes of the operational reserve shall be to guarantee the financial liquidity and integrity of the Fund, to compensate for uneven cash flows and to meet such other similar requirements as may be decided upon by the Court. The Registrar shall keep the level and composition of the operational reserve under constant review, taking into account the estimated income and expenditure for the following calendar year.

Section 6

Final Provisions

The present Directive shall enter into force on this fifth day of March 2004

A handwritten signature in black ink, appearing to read 'P. Kirsch', with a large, sweeping flourish above the name.

Philippe Kirsch
President