

REPORT OF THE SPECIAL ADVISOR ON AGENCIES
APPENDIX B



Agency Establishment & Accountability Directive

Management Board of Cabinet

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Corporate Policy Branch
Human Resource Management and Corporate Policy Division
Ministry of Government Services

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PURPOSE

Agencies classified under this directive are part of the Government of Ontario and represent a key method for the Ontario government to deliver its services to the public.

This directive indicates how new agencies are to be established and classified. It also details the accountability framework in which ministries and agencies operate, supporting transparency between ministries and agencies. In addition, this directive aligns oversight with risk, reducing exposure to risk while requiring ministries to have strategies to manage it.

APPLICATION AND SCOPE

This directive applies to all ministries and all agencies classified under this directive, to which the government makes the majority of the appointments.

The directive:

- sets out the requirements for establishing classified agencies of the government of Ontario;
- lays out the accountability framework governing agencies and ministries in the operation of agencies; and
- uses a risk-based approach in managing agency accountability.

Definition of Agency

For the purposes of this directive, “Agency” means a provincial government entity that is not organizationally part of a ministry, and:

- is established by government through a constituting instrument (under or by statute, regulation, or order in council);
- is accountable to a minister for fulfilling its legislative obligations, the management of the resources it uses, and its standards for any services it provides;
- where government makes the majority of appointments; and
- with the authority and responsibility granted by the government to perform an ongoing public function or service.

Classified agencies that administer transfer payment programs must also comply with those requirements of the *Transfer Payment Accountability Directive* that govern the operations of transfer payment programs and the relationship between the funding classified agency and the transfer payment recipient organization.

Classification

Based on primary function, all agencies are classified under this directive as:

- Advisory;
- Crown Foundation;
- Adjudicative;
- Regulatory, with or without a governing board;
- Operational service;
- Operational enterprise; or
- Trust.

For further details on agency classification, please see Schedule A.

PRINCIPLES

Government is accountable for protecting the public interest. The higher the potential risk posed by a classified agency, the greater the need for oversight to mitigate such risk and also recognize the level of public interest and obligation of financial management.

Ministries and agencies respect their differing roles and responsibilities in the delivery of public services through agencies.

Ministries balance the need for the agency's operational flexibility from the ministry with the Minister's accountability for the agency to Cabinet and the Legislative Assembly.

A risk-based approach is to be used to manage agencies. Agencies employ a risk framework when making operational decisions. They are responsible for ensuring that funds are spent effectively, efficiently, and are used towards the provided purpose. Value for money is expected in the expenditure of government funds.

Transparency guides good governance and accountability practices for ministries and agencies.

ACCOUNTABILITY FRAMEWORK

A Minister is responsible to Cabinet and the Legislative Assembly for each agency.

Central agencies, such as the Ministry of Finance and the Ministry of Government Services, are accountable to their ministers and to Cabinet for oversight of ministries' responsibilities regarding classified agencies.

The Chair of an agency reports to the Minister for the agency and its activities.

Agency Boards are accountable, through the Chair, to the Minister; Executive directors and Chief Executive Officers are accountable to the Agency's Board and report to the board through the Chair.

Deputy Ministers support Ministers in discharging their responsibilities. They are responsible for ensuring the organizational capacity to monitor agencies and in ensuring that agencies manage any risks appropriately.

RISK-BASED MANAGEMENT AND ACCOUNTABILITY APPROACH

Key to the management of classified agencies is the overlay of a risk-based approach. Risk management practices provide the opportunity to establish the optimum level of oversight, control and discipline enabling ministries and classified agencies to manage risk in changing environments and help provide the proper level of assessment.

Risk management helps ministries and agencies identify risks, assess exposures and develop appropriate action plans to help ensure classified agencies meet business objectives.

Accountability of the Minister for each agency cannot be delegated. However, agency oversight activities can be delegated to appropriate ministry officials. Consistent with this principle, risk-based reviews of any agency can be requested by TB/MBC or the Minister.

The accountability cycle, as noted in the *Accountability Directive*, 1997, consists of:

- defining expectations and managing consistent action;
- reporting on and monitoring performance; and
- taking actions based on results.

Please see Schedule B for further details.

AGENCY ESTABLISHMENT

MANDATORY REQUIREMENTS:

TB/MBC APPROVAL

Treasury Board/Management Board of Cabinet must approve the establishment and classification of any agency. TB/MBC must also approve the merger or termination of agencies as well as any change in the mandate of an agency.

TB/MBC may require a hold back of allocated agency funding for non-compliance with the mandatory requirements of this directive.

TB/MBC BUSINESS CASE

A submission to TB/MBC to establish a new agency must have a business case containing the following criteria:

- public interest
- provincial responsibility
- operational flexibility
- risk assessment
- accountability mechanisms
- cost of establishing and operating the agency
- cost of increased ministry oversight
- source of funding, assets and liabilities, a fiscal evaluation and controllership mechanisms
- public reporting requirements (consolidation/presentation in Public Accounts)
- designation under statutes of particular application to government
- ministry's capacity for controllership.

(See Schedule C for a full list of criteria for agency establishment)

CONSTITUTING INSTRUMENT

In order to provide an appropriate legal framework, all agencies require a constituting instrument (under or by statute, regulation, or Order in Council). The constituting instrument setting out the agency's mandate and authority must accompany the submission. (See Schedule D for further information about constituting instruments.)

STATUTES OF PARTICULAR APPLICATION TO GOVERNMENT

In order to establish the applicability of statutes of particular application to government, a TB/MBC submission to establish a new agency must identify whether an agency is to be designated specifically under such statutes. See schedule E for a list of statutes of particular application.

CORPORATE STATUS

Corporate status must be addressed in the submission to be reviewed by TB/MBC when establishing a new agency.

CROWN AGENCY STATUS

Ministries must identify in a submission to TB/MBC whether or not a proposed new agency will be a Crown agency or otherwise identify its proposed legal relationship to the Crown.

FINANCIAL MANAGEMENT

Ministries must identify the source of funding, fiscal impact and the agency's Consolidation/Presentation in Public Accounts in TB/MBC submissions proposing the establishment of new agencies. The business case must also identify the government accounting and financial policies that apply to the agency. Deviations from government accounting and financial policies must be explicitly stated and a rationale provided.

Ministries must identify the cost of establishing and operating the agency, including the incremental overhead costs and the costs of increased ministry oversight

MEMORANDUM OF UNDERSTANDING (MOU)

An MOU identifying the applicable directives and policies must accompany the TB/MBC submission seeking approval for the establishment of a new agency in order to ensure a full understanding of the relationship between the Minister and the agency. (See Schedule F on information on the required content of an MOU.)

REMUNERATION

Remuneration for government appointees must be authorised by an order in council. Orders in council identifying remuneration for all government appointees to a classified agency must accompany the TB/MBC submission.

SHORT-TERM BODIES

Bodies established by government within a mandate of less than three years are not considered to be classified agencies. However, short-term bodies require:

- a constituting instrument with a termination date;
- terms of reference;
- a remuneration Order in Council, if necessary; and
- the approval of Treasury Board/Management Board of Cabinet.

AGENCY ACCOUNTABILITY

MANDATORY REQUIREMENTS:

All agencies classified under this directive are accountable for using government funds with efficiency, effectiveness, and economy for the purpose of fulfilling the agency's mandate. Ministries may institute additional accountability requirements on a classified agency, based on the agency's risk assessment.

Ministries must respect the independence of the decisions made by adjudicative and regulatory agencies.

In order to ensure effective oversight and accountability, ministries must have in place accountability tools for every classified agency. These tools allow ministries the opportunity to determine that what is being delivered to the public meets government standards of timeliness, effectiveness, economy, and quality.

RISK ASSESSMENT EVALUATION

Ministries and agencies must assess risks in each of the risk categories identified in the *Guide to the Risk-based Approach in the Agency Establishment and Accountability Directive* which supports this Directive. Ministries must also develop risk management plans to manage each applicable risk.

Ministries will report to TB/MBC on each agency's high risk categories, including a description of each high risk, the reason it is considered to be a high risk, and what management plan is in place to manage the risk. The *Guide to the Risk-based Approach in the Agency Establishment and Accountability Directive* will identify the process through which the agency risks will be reported to TB/MBC.

See Schedule B for further details.

MEMORANDUM OF UNDERSTANDING (MOU)

All agencies require a memorandum of understanding that reflects the accountability framework in addition to the parties' mutual understanding of the responsibilities of the ministry and the agency. A memorandum of understanding is between the responsible minister and the agency and expires after five years from the date of the minister's signature. The MOU will remain in force for no more than six additional months until a signed MOU is provided to the Secretary, MBC. (See Schedule F for further details.)

Regulatory agencies, operational services, and operational enterprises must submit new MOUs to TB/MBC for review and approval.

For MOUs that have received TB/MBC approval, the MOUs must be signed within three months of TB/MBC approval or, for a new agency, within three months of its operational functioning.

Upon a change in the minister or the chair of the agency, the MOU must be affirmed by the new party to the MOU. A letter of affirmation must be provided to the Secretary, Management Board of Cabinet, within six months of the new party's commencement.

GOVERNMENT DIRECTIVES AND POLICIES

Agency MOUs must indicate the government directives and policies, including accounting and financial policies that apply to the agency. Deviations from stated directives and policies must be explicitly stated and rationale provided. In order to define the obligations and authority of ministries and agencies, directives and policies are issued by the Ministry of Finance, the Public Service Commission, and Treasury Board/Management Board of Cabinet. Directives and policies are key tools for ministry controllership of classified agencies. Ministries must ensure compliance with legislation, directives, accounting and financial policies. Guidance on the application and scope of directives is provided in Schedule G.

ANNUAL BUSINESS PLAN

In order to ensure understanding of agency objectives and operations, all agencies other than advisory agencies must annually develop a business plan, which includes a financial budget covering a minimum of three years from the current fiscal year. The business plan must be approved by the Minister. The business plan must include a risk management plan per the requirements of this Directive and the Guide to the Risk-Based Approach. The responsible minister or TB/MBC may also request an agency business plan to be brought forward for review, as required.

For the required elements of an annual business plan, see Schedule H.

ANNUAL REPORTS

All agencies, except advisory agencies, must submit an annual report to the responsible minister within 120 days of its fiscal year end in order to inform the Legislative Assembly and the public of the agency's activities. When the agency does not have a governing board, it must submit its report to the minister within 90 days. The ministry must table an agency's annual report in the Legislative Assembly within 60 days of receiving the annual report. (When the Legislative Assembly is not sitting, the Minister will file the report with the Clerk's Office within 60 days of receipt.)

A financial statement that has been audited or subject to another appropriate level of external assurance must be tabled in the Assembly as part of the agency's annual report. The financial statements must contain actual results, variances and explanations of the variance against estimates.

After review by the ministry, the following must be submitted to Office of the Provincial Controller for the preparation of the Province's Public Accounts, within the timelines established each year to meet Public Accounts deadlines:

- draft or audited financial statements; and
- all relevant consolidation adjustments

See Schedule I for the required elements of an agency annual report.

FINANCIAL MANAGEMENT AND REPORTING

Agencies must report financial information in accordance with the Province's stated accounting policies issued by the Office of the Provincial Controller.

Agencies are required to submit to the Ministry of Finance their salary information according to the Public Sector Salary Disclosure Act. This information must be submitted according to the Ministry of Finance's specified filing directions and schedule.

With the exception of Advisory, Adjudicative, and Regulatory agencies (without a governing board), agencies are required to submit quarterly expenditure budget – variance reports to the responsible Minister.

TB/MBC can request additional and more regular financial and non-financial reporting from the agency to protect the public interest.

AUDITS

In order to further financial accountability, all agencies, except advisory agencies, are subject to an external financial statement audit when the agency has any of the following attributes:

- holds capital assets;
- incurs financial liabilities or other commitments, such as borrowing or lending;
- enters into commitments with third parties; or
- the agency's revenues and/ or expenditures are material to government operations.

At any time, an agency classified under this directive is subject to periodic review and Value-for-Money audit by the Auditor-General of Ontario, under the *Auditor General Act*. (In some cases, the Auditor General is the auditor of record.)

At any time, an agency classified under this directive is subject to a periodic review and internal audit by the Ontario Internal Audit Division.

For further details about auditing requirements, see Schedule J.

ATTESTATION

Ministers and deputy ministers are required to sign and submit to the Secretary, Management Board of Cabinet, an annual attestation indicating that the agencies

that are a responsibility of their ministry are in compliance with the mandatory requirements of this directive.

With this attestation, ministers and deputy ministers are also to provide documentation demonstrating compliance with this directive by indicating each agency's compliance with each mandatory requirement in a report to the Secretary, Management Board of Cabinet.

ROLES AND RESPONSIBILITIES

CABINET

Cabinet is accountable to the Legislative Assembly, to the Crown, and the public for:

- approving the establishment, merger, termination, and acquisition of all agencies, including subsidiaries, and all related funding.

TREASURY BOARD / MANAGEMENT BOARD OF CABINET

Treasury Board and Management Board of Cabinet are accountable to the Cabinet for:

- establishing a framework, policies and procedures to classify and govern agencies;
- approving the establishment, merger, or termination of agencies;
- approving changes to an existing agency;
- recommending approval of funding for agencies;
- directing that appropriate actions be taken for the improvement of agency management; and
- directing the review and evaluation of agencies and their management through periodic reviews of agencies including risk-based reviews and audits.

SECRETARY OF TREASURY BOARD / SECRETARY OF MANAGEMENT BOARD OF CABINET

The Secretary of Treasury Board and the Secretary of Management Board of Cabinet are accountable to the Chair of Treasury Board / Management Board of Cabinet for:

- providing advice to the Chair of Treasury Board / Management Board of Cabinet;
- identifying a central unit to review agency risk assessments and documentation demonstrating compliance with the requirements of this

- directive as submitted by ministries and to make necessary recommendations;
- recommending to the Treasury Board / Management Board of Cabinet a framework for the sound management and administration of classified agencies.

WITHIN MINISTRIES

MINISTER

The Minister is accountable to Cabinet and to the Legislative Assembly for:

Controllership:

- reporting and responding to the Legislative Assembly on the affairs of classified agencies for which the minister is responsible;
- recommending the establishment, merger, or termination of a classified agency in the Minister's portfolio;
- recommending approval to Treasury Board/Management Board of Cabinet of ministry submissions establishing, merging, or eliminating a classified agency as well as those affecting the mandate, funding, and management of an agency;
- receiving and making the agency's annual report available to the public after tabling it in the Legislative Assembly;
- attesting, reporting and responding to Treasury Board/Management Board of Cabinet on the agency's performance and compliance with government's applicable directives and operational policies
- recommending ministerial prerogative appointments and re-appointments for the agency; and
- directing that an agency undertake a risk-based review or be audited.

Agency affairs:

- proposing the annual allocation for the agency to TB/MBC;
- directing the Chair of an agency to undertake reviews on a periodic basis and making recommendations to TB/MBC after the conclusion of such reviews;
- evaluating the chair's performance with the participation of board members, where applicable;
- approving MOUs and business plans; and
- approving agency bylaws and strategic directions, where applicable.

A Minister may delegate authority to a Deputy Minister or to any other appropriate person, for matters that fall under the purview of the Minister under this directive, subject to the limitations, conditions, and requirements that the Minister sets out in a delegation.

MINISTER OF FINANCE

The Minister of Finance is accountable to Cabinet and to the Legislative Assembly for:

- approving financing from third-party sources;
- recommending to the Lieutenant Governor in Council the issuing of shares by an agency that is a corporation with share capital;
- recommending to the Cabinet finance, economic, accounting and taxation policy;
- supervising, directing, and controlling all finance, economic, statistical and accounting functions, including financial and accounting functions of classified agencies, and all public money;
- approving any activity of an agency that would have financial implications for the government, such as investments, or that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario, such as loans or guarantees; and,
- controlling all finance, economic and accounting functions of the Government of Ontario, including establishing directives and guidelines for the proper conduct of the financial business of each classified agency that are binding on the agency's chief executive officer or equivalent.

DEPUTY MINISTER OF FINANCE

With regard to all agencies, the Deputy Minister of Finance is accountable to the Secretary of the Cabinet and to the Minister of Finance for:

- advising Ministers and Deputy Ministers on financial requirements (including reporting) and financial arrangements of agencies.

DEPUTY MINISTER

The Deputy Minister is accountable to the Secretary of the Cabinet and the Minister for:

Support for the Minister:

- advising, supporting and assisting the Minister regarding the minister's responsibilities for the agency;
- advising the Minister on the requirements of this Directive;
- recommending to the Minister the establishment, merger, or termination of a classified agency;
- recommending to the Minister the evaluation or review, including a risk-based review, of an agency program or the agency, or changes to the agency's management or operations;

- facilitating regular briefings and consultations between the Chair and Minister as well as between Ministry staff and agency management and staff;

Controllership:

- attesting to Treasury Board/ Management Board of Cabinet as required, on the agencies that are a ministry responsibility as to their compliance with all the mandatory requirements of this directive;
- ensuring that the ministry and the agencies that are a ministry responsibility have the capacity and systems in place for ongoing risk-based management of agencies, including appropriate oversight;
- supporting the Minister in reviewing the performance measures and results of the agency;
- submitting to the Minister as part of the annual planning process, a risk management plan including risk assessment and management plans for each risk category in relation to each objective for each agency reporting to the Minister;
- providing a process and framework for reviewing and assessing whether an agency's mandate, business planning, and reports comply with government and ministry directives, guidelines, policies, and procedures as well as with its constituting instrument.
- analysing reports and other sources to identify performance issues of concern to the ministry;
- undertaking timely risk-based reviews of agencies, their management or operations, as directed by the minister or TB/MBC;
- co-operating with any periodic review of the agency directed by the minister or TB/MBC;
- consulting with the Executive Director, Chief Executive Officer, or Chair as needed on matters of mutual importance, including application and requirements of TB/MBC Directives and ministry policies;
- facilitating regular briefings and consultations between the Chair and Minister as well as between Ministry staff and agency management and staff;
- informing the Chair, in writing, of new government directives and any exceptions to or exemptions from TB/MBC Directives or Ministry administrative policies.

In addition, when an agency is prescribed as a Commission public body with employees hired under Part III of the *Public Service of Ontario Act, 2006*, the Deputy Minister has some responsibilities for agency staff.

The Deputy Minister may delegate authority to an Assistant Deputy Minister, Chief Administrative Officer or any other appropriate person, for matters that fall under the purview of the Deputy Minister under this directive, subject to the

limitations, conditions and requirements that the Deputy Minister sets out in a delegation. Such delegations are guided by the *Delegation of Authority Key Directive*.

WITHIN CLASSIFIED AGENCIES

CHAIR

The Chair is accountable to the responsible Minister for:

- advising the other appointees on the requirements of this Directive;
- seeking strategic policy direction from the Minister, where appropriate;
- ensuring the implementation of actions that support the goals, objectives, and strategic directions of the agency;
- reporting to the Minister, as requested, on the agency's activities;
- ensuring timely communications with the Minister regarding any issue that affects the Minister's responsibilities for the agency;
- consulting with the Minister in advance and receiving the Minister's approval regarding any activity which may have an impact on the government and ministry's directives, policies, guidelines, and procedures, or the agency's constituting instrument;
- co-operating on and sharing any relevant information for any risk-based or other periodic review directed by the minister or TB/MBC;
- ensuring that all agency board members and staff are informed of and comply with relevant conflict of interest rules, Ministry of Finance, TB/MBC, and Public Service Commission directives;
- undertaking to ensure that public funds are used for the purpose intended and according to applicable legislation, regulations, directives and the principles of integrity and honesty, and ensuring value for money;
- reviewing the agency's business plan, budget, and financial reports required by this directive;
- ensuring that the Deputy Minister is given notice of Board meetings and upon request, receives all board meeting materials; and
- recommending to the Minister proposals affecting the agency's mandate, management, operations, and funding.

AGENCY BOARD (where applicable)

Note: Not all agencies have governing boards. Advisory and Adjudicative agencies typically do not have boards; some regulatory bodies do not have boards.

An Agency Board is accountable for oversight and governance of the agency, through the Chair, to the Minister for:

- establishing the goals, objectives, and strategic direction for the agency consistent with the agency mandate and government policies, including Minister's directions where appropriate;

- setting overall priorities for the agency;
- managing and controlling the affairs of the agency;
- approving the agency's business plan and annual reports for recommendation to the Minister within the time lines established by the agency's constituting instrument or by this directive;
- ensuring compliance with Directives, policies (including financial and accounting policies)
- establishing such board committees as are required for effective management, governance and accountability, such as audit or governance committees, to advise the board on agency affairs;
- establishing the goals, objectives, and strategic direction for the agency consistent with the agency mandate and government policies, including Minister's directions where appropriate;
- setting overall priorities for the agency;
- directing the affairs of the agency so as to fulfill the agency mandate and responsibilities as set out in its constituting instrument, agency by-laws, minister-approved business plans, risk assessment and management plans, as well as relevant government and ministry directives, guidelines, policies, and procedures;
- passing by-laws or resolutions regulating agency procedures;
- establishing guidelines, policies, and practices under which the agency operates;
- monitoring the use of funds and assets and setting policies to ensure that funds and assets are used for their intended purposes with integrity and honesty and according to applicable legislation, regulations, directives, and the principles of value for money, fairness, transparency, and effective controllership;
- ensuring that the agency operates within its TB/MBC-approved allocations and minister-approved business plan;
- developing effective performance measures, targets, and management systems for assessing the agency's performance;
- preparing and submitting to the Minister an annual report within the time lines established by the agency's constituting instrument or by this directive;
- arranging for risk-based reviews and audits of the agency as needed;
- directing corrective action be taken, when needed, and undertaking any corrective action as required by the Minister;
- co-operating on and sharing relevant information for any risk-based or periodic review directed by the minister or TB/MBC;
managing the staff and advisors of the agency, including the Executive Director/CEO, when allowed for by the constituting instrument;
setting performance objectives for the Executive Director/CEO;
- approving conflict of interest rules for appointees and employees where the board wants agency-specific conflict of interest rules, which must be approved by the Conflict of Interest Commissioner;
- appointing advisory committees of the Board as required;
- selecting and appointing non-Board members to committees of the Board;

- proposing changes to the mandate of the agency to the Minister as required; and
- providing policy advice to the government, through the Minister, concerning issues within or affecting the agency's mandate;

EXECUTIVE DIRECTOR / CHIEF EXECUTIVE OFFICER OF A CLASSIFIED AGENCY

The Executive Director / Chief Executive Officer of an agency is accountable to the Chair for:

- advising the Chair on the requirements of this Directive as well as other government and ministry directives, guidelines, policies, and procedures as well as agency by-laws and policies;
- ensuring that the agency meets the requirements of this Directive;
- providing leadership, guidance, and management to the agency staff, including human and financial resources management;
- translating the goals, objectives, and strategic directions of the Board into operation plans and activities in accordance with the minister-approved business plan;
- keeping the Chair and Board informed of the implementation of policy and operations of the agency;
- ensuring that the agency has the oversight capacity for monitoring its management and operations;
- ensuring proper conduct of the financial business of the agency in accordance with applicable Minister of Finance controllership directives, policies, and guidelines;
- implementing a system of performance measures for the agency and reporting on them to the Chair and Board;
- maintaining effective communications with the Deputy Minister, pertinent ministry staff, and key stakeholders;
- keeping the Ministry and Chair advised of issues or events, including contentious matters, that may concern the Minister, the Deputy Minister, and the Chair in the exercise of their responsibilities;
- establishing a system for the retention of agency documents, for making such documents publicly available when appropriate, for complying with the *Freedom of Information and Protection of Privacy Act* and the *Archives and Recordkeeping Act*;
- providing advice for setting the goals, objectives, and strategic directions of the agency, within its mandate as defined by its constituting instrument and accountability agreement with the ministry and
- undertaking timely risk-based reviews of the agency

When the ED/CEO is appointed by the Lieutenant Governor in Council, the position is also accountable, through the responsible minister, to Cabinet.

When the ED/CEO is employed under Part III of the *Public Service of Ontario Act, 2006*, the position is also accountable to the Deputy Minister of the responsible Minister.

SCHEDULE A: AGENCY CLASSIFICATION

Agencies are classified according to their primary function.

Advisory Agency

Provides ongoing information and advice to assist in the development of policy and / or in the delivery of programs.

Crown Foundation

Solicits, manages, and distributes donations of money or other assets donated for a named organization in whose interests the Foundation has been established. In this Directive, "Crown Foundation" includes only a foundation established under the *Crown Foundations Act* or under the *University Foundations Act*.

Before establishing a Crown Foundation, ministries must obtain further direction from the Office of the Provincial Controller.

Adjudicative Agency

Makes independent quasi-judicial decisions and resolves disputes on the obligations, rights, and responsibilities of an individual, business, or corporate body against existing policies, regulations, and statutes. It may also hear appeals against previous decisions.

Regulatory Agency

Makes independent decisions (including inspections, investigations, prosecutions, certifications, licensing, rate-setting) that may limit or promote the conduct, practice, obligations, rights, responsibilities of an individual, business, or corporate body.

Operational Service

Delivers goods or services to the public usually with no, or only minimal, fees.

Operational Enterprise

Sells goods or services to the public in a commercial manner (including, but not necessarily, in competition with the private sector).

Trust Agency

Administers funds or other assets for beneficiaries named under statute.

Before establishing a Trust agency, ministries must obtain further direction from the Office of the Provincial Controller.

SCHEDULE B: RISK-BASED MANAGEMENT AND ACCOUNTABILITY APPROACH

The Directive requires a risk-based approach to be used to focus ministry and central agency resources on higher risk agencies and to ensure compliance with Directive requirements.

Ministers and ministries are accountable for working with their agencies to ensure effective management of agency risks.

The requirements for risk assessments under the risk-based approach are:

- assessing risks for each agency in each of the specified corporate risk categories;
- keeping a record of the risk assessments for each agency by risk category; and
- reporting to TB/MBC on each agency's high risk categories including a description of each high risk, the reasons it is a high risk and what management plan is in place to manage the risk.

The risk-based approach should include an assessment and analysis of financial and fiscal implications and appropriate mitigation strategies.

While the Directive requires the adoption of a risk-based approach to managing the ministry-agency relationship, the directive does not prescribe a methodology to be used for risk assessment.

The purpose of Ministries' risk assessment reporting to TB/MBC is to identify any high risks for agencies and the management plans in place to address those risks. On the basis of these risk assessments, TB/MBC may require further information from the Ministry or direct that corrective action be taken. TB/MBC may also, on the basis of agency compliance data provided by the Ministry, direct the Ministry to take action including providing a timetable for achieving compliance or to report back within a specified period of time confirming that compliance has been achieved.

(See Guide To The Risk-Based Approach In The Agency Establishment And Accountability Directive for further details.)

SCHEDULE C: REQUIREMENTS FOR ESTABLISHING, MERGING, OR TERMINATING AN AGENCY

1. Establishing a classified agency

TB/MBC submission

The establishment, merger, and termination of all agencies must be approved by Treasury Board/Management Board of Cabinet through a submission signed by the responsible Minister and Deputy Minister. A TB/MBC submission is also required to establish subsidiaries of existing agencies or to acquire controlling interest in an existing entity.

Submissions to TB/MBC for establishing a new classified agency must provide a sound business case, including an extensive financial assessment, the delivery options for providing the service or product and explaining why the recommended method of delivery is an agency.

Characteristics of a classified agency include:

Government control

- public interest (There is an overriding public interest in the delivery of the function or service and the role that the government needs to have.)
- provincial responsibility (The provincial government is constitutionally accountable for the subject matter area of the agency's mandate.)

Operational flexibility

- source of advice and need for expertise from outside of the Ontario Public Service;
- autonomous decision-making to ensure public confidence in the impartiality or objectivity of decisions or actions;
- distinct arrangement for involving others in a public function or service;
- separate authority for collecting and managing donations to the Crown;
- authority to establish an independent trust account (i.e., administer trusts (not public funds) on behalf of beneficiaries);
- delivery of goods and services where, to achieve program objectives or specific service standards, there is a demonstrated need to provide financial, human resource and / or administrative authority outside ministry structures, as follows:

Financial flexibility

- a need for specific financial authority, such as revenue retention, fee setting, borrowing in order to carry out a function or service that is commercial or has a commercial element or to become financially self-sustaining

Human resource flexibility (not for Commission public bodies)

- professional skills or expertise not normally found in government, such as expertise in commodity markets or fund management)
- staff compensation arrangements that are not typical to government;
- more flexible hiring practices (seasonal work, flexible contracts to respond to changes in the market);
- a need for an agency to be directly responsible for terms and conditions of employment.

Administrative flexibility

- a need for administrative flexibility and possible exemption with rationale from some MBC directives to promote entrepreneurial opportunities or other operational requirements.

In addition, the business case for establishing a classified agency must show how the proposed agency meets the following criteria:

- public interest;
- provincial responsibility;
- provides value for money;
- operational flexibility;
- agency's capacity for effective stewardship of public resources; and,
- ministry's capacity for controllership.

In addition to the business case, the submission proposing the establishment of a new agency must identify:

- name and classification;
- mandate and powers of the new agency;
- board composition, if any, including number of members, method of appointment, and remuneration;
- ministry's risk assessment;
- source and amount of funding, assets and liabilities, fiscal evaluation and controllership mechanisms, and the agency's consolidation/presentation in Public Accounts.
- staffing arrangements, including whether staff are hired under the *Public Service of Ontario Act, 2006*, Part III, and their pension treatment;
- statutes of particular application to government;
- Crown status; and
- corporate status, if applicable.

Supporting Documentation

Ministries seeking TB/MBC permission to establish a new agency must provide with the submission the following documentation:

- constituting instrument (by or under a statute, regulation, or OIC);
- MOU that meets this directive's requirements, including a list of applicable TB/MBC directives. TB/MBC may require an MOU of any agency to be approved by TB/MBC based on the characteristics of the agency and the agency's risk;
- initial business plan, performance measures, and if possible a risk management plan;
- OIC for proposed remuneration, if necessary.

2. Merger or termination of agencies

TB/MBC submission

Proposals to merge agencies, to change the mandate of an existing agency, or to terminate an agency must be in the form of a submission to TB/MBC and be supported by a business case. Approval from a Cabinet policy committee may be required before proceeding to TB/MBC.

The submission must outline the financial and human resource impacts of the proposed merger or termination and also detail the ministry's plans for the disposition of any assets of the agency, the completion by the agency of any outstanding responsibilities, and the end of any government appointments.

In addition, TB/MBC or Cabinet may approve or direct the termination of an agency and may require a report-back to TB/MBC.

Where a report-back to TB/MBC is not required, the Deputy Minister will submit a report to the Secretary of Management Board on the wind-down of an agency immediately following the disposition of any assets of the agency, the completion by the agency of any outstanding responsibilities, and the end of any government appointments.

Supporting documentation

In order to terminate, merge, or change the mandate of any agency, the appropriate legal instrument (statute, regulation, order in council) necessary to rescind or amend the constituting instrument must accompany the submission.

3. Liaison with staff from central agencies

Ministries are encouraged to consult early in the planning process with Treasury Board Office and MGS staff for advice on TB/MBC requirements.

SCHEDULE D: CONSTITUTING INSTRUMENTS

The constituting instrument (by or under a statute, regulation, or Order-in-Council) for a proposed new agency must accompany the TB/MBC submission to establish a new agency.

The constituting instrument includes the powers, accountability mechanisms, and responsibilities that are appropriate for the class of agency to which the agency is assigned and that have been justified in the submission to MBC.

Existing statutes and regulations apply to a new agency unless a statute specifically provides for an exemption.

SCHEDULE E: STATUTES OF PARTICULAR APPLICATION

Since classified agencies are part of the government of Ontario, they may be subject to some or all of such statutes as:

- *Financial Administration Act*;
- *French Language Services Act*;
- *Ministry of Treasury and Economics Act*, and
- *Pay Equity Act*.

In addition, there are acts that require designation by regulation or Order in Council:

- *Accessibility for Ontarians with Disability Act, 2005*;
- *Archives and Recordkeeping Act, 2006*;
- *Emergency Management and Civil Protection Act*;
- *Freedom of Information and Protection of Privacy Act*. and
- *Public Service of Ontario Act, 2006*.

When establishing an agency, ministries should indicate the statutes under which the agency should be designated.

In addition, the Memorandum of Understanding between the ministry and the agency must indicate which of these statutes apply to the agency.

SCHEDULE F: MEMORANDUM OF UNDERSTANDING (MOU)

A memorandum of understanding is an important controllership tool since it reflects the accountability framework that exists between the responsible minister and the agency. It clarifies the roles, relationships, and mutual expectations within the framework. The MOU also notifies readers of the accountability mechanisms in place to ensure good governance and accountability. While it is generally not intended to serve as a legal contract that is enforceable by the courts, it is an administrative agreement that serves as an important tool that promotes mutual understanding of the roles and responsibilities of each party.

MOUs must be signed within three months of TB/MBC approval or, for a new agency, within three months of its operational functioning. The original copy of the MOU is to be held by the ministry's legal branch. A copy of the signed MOU is to be shared with the Secretary, Management Board of Cabinet.

It is good practice to ensure that all of the information necessary to understand the MOU is within the MOU. It is not helpful when readers must reference other documents in order to understand the meaning and impact of the MOU.

An MOU for an advisory agency must contain:

- mandate
- expected outcomes with time lines
- financial, staffing, and administrative support provided by the ministry to the agency.

An MOU for an advisory agency must indicate that all TB/MBC and Ministry of Finance directives and policies apply. All MBC and Public Service Commission directives under the *Public Service of Ontario Act, 2006*, apply when the agency has been designated as a Commission public body under the *Public Services of Ontario Act, 2006*.

An MOU for all other classifications of agencies must contain the following sections:

- Purpose
- Definitions
- Agency Classification, Corporate status, and Crown agent status
- Mandate
- Applicable government directives and policies
- Conflict of Interest
- Duration of MOU and Process for Review and Amendment
- Accountability Framework, noting key roles of the:
 - Minister
 - Deputy Minister
 - Board

- Chair
- Chief Executive Officer
- Consultation and Communications, including media relations, reports and publications
- Reporting Requirements, including performance measurements, annual business plan, annual reports, financial reports
- Audit arrangements
- Financial Arrangements, including agency funding, recovery of unspent funds, assets, and HST liability
- Agreements with Third Parties
- Procurement Arrangements
- Administrative Arrangements
- Staffing, Remuneration, and Appointments
- Intellectual Property
- Service standards
- Creation, Collection, Maintenance and Disposition of Records
- Insurance liability

A schedule of the applicable statutes of particular application must be attached to the MOU. Please see Schedule E for information on statutes of particular application.

A schedule of the specifically applicable directives, policies, and guidelines (including accounting and financial policies) must be attached to the MOU. Please see Schedule G on information regarding the applicability of directives.

Please note that only the responsible minister and the agency chair sign the MOU in order to avoid confusion as to the ultimate responsibility for execution of the MOU's provisions.

(See Guide To Developing a Memorandum of Understanding for Agencies for further details.)

SCHEDULE G: APPLICABLE GOVERNMENT DIRECTIVES

Most TB/MBC directives differentiate among the types of agencies in their Application and Scope section, noting those to which the directive automatically applies and those to which it applies only when noted in the Memorandum of Understanding between the agency and the minister.

Ministry of Finance Directives

The following Ministry of Finance (FIN) directive applies to all classified agencies:

- *Delegation of Authority Key Directive.*

Any Classified agency that is funded by the Consolidated Revenue Fund is bound by all Ministry of Finance policies, directives, and guidelines.

TB/MBC Directives

There are five TB/MBC directives that apply in their entirety to all classified agencies:

- *Accountability Directive;*
- *Advertising Content Directive;*
- *Agency Establishment and Accountability Directive;*
- *Government Appointees Directive;*
- *Travel, Meal and Hospitality Expenses Directive.*

In addition, all classified agencies must be in compliance with the *Procurement Directive*, which applies to an agency in whole or in part, depending on criteria set out in that directive.

Agencies that use the Government of Ontario Information Technology Network are subject to all IT directives.

Agencies that are Commission public bodies must follow all MBC and PSC Human Resources directives.

Advisory and Adjudicative agencies are subject to all TB/MBC Directives.

Where TB/MBC Directives do not apply to an agency, the agency must adhere to the principles of those Directives.

SCHEDULE H: ANNUAL BUSINESS PLAN

All agencies classified under this directive, except advisory agencies, must submit an annual business plan to the responsible minister for approval. All agency business plans are to be submitted for the responsible minister's signature and are only to be considered valid after the minister has approved the plan by affixing a signature. An agency business plan is for a three-year period or longer and is prepared every year.

All agency business plans must report on the following elements:

- mandate;
- strategic directions;
- overview of current and future programs and activities;
- resources required to meet objectives of mandate and strategic directions;
- risk identification, assessment, and mitigation strategies;
- environmental scan;
- summary of staff numbers; impact of business plan on human resources; and compensation strategy including employee benefits and benchmarking against other public sector bodies;
- performance measures and targets over three-year life of business plan;
- financial budget over three-year life of business plan (including proposed operating expenditures and projected revenues);
- initiatives involving third parties, such as other levels of government or not-for-profit foundations;
- implementation plan; and
- communication plan.

To support ministers in fulfilling their responsibility for agencies, ministry staff are to exercise due diligence upon receipt of an agency business plan before ministry staff recommend that the minister sign it. Moreover, the agency annual budget is to be submitted to the ministry's CAO within three months from fiscal year-end.

(See Guide To Developing Agency Business Plans for further details.)

SCHEDULE I: ANNUAL REPORTS

All agencies classified under this directive, except advisory agencies, must prepare an annual report for submission to the Minister. The agency must submit its annual report to the minister within 120 days of the agency's fiscal year-end. Agencies that do not have a governing board must submit the annual report to the minister within 90 days.

The Minister is to table the agency's annual report in the Legislative Assembly within 60 days of receiving the annual report. When the Legislative Assembly is not in session, the Minister will file the report with the Clerk's Office within 60 days, at which time the annual report becomes a public document. When the Legislative Assembly is next sitting, the receipt of the annual report will be recorded.

The annual report must contain the following elements:

- description of activities over the year;
- analysis of operational performance;
- analysis of financial performance;
- discussion of performance targets achieved and of action to be taken when not achieved;
- names of appointees, including date when first appointed and when the current term of appointment expires; and
- audited financial statements or, where an audit is not practical, financial statements subject to another appropriate level of external assurance with actual results, variances and explanations of the variances against estimates

The following must be submitted to Office of the Provincial Controller for the preparation of Province's Public Accounts, within the timelines established each year:

- draft or audited financial statements; and,
- all relevant consolidation adjustments.

When an agency has subsidiaries, the annual report must also contain the same information regarding each subsidiary.

(See Guide To Tabling Agency Annual Reports for further details.)

SCHEDULE J: AUDITING

External financial statement audits are to be performed by:

- The Auditor General of Ontario (when auditor-of-record);
- An accredited external auditing firm chosen through tender by the agency's governing board.

When agencies are subject to an annual financial statement audit, the agency's annual report will include its audited financial statements.

In addition to external financial statement audits, the Ontario Internal Audit Division may undertake an internal audit engagement, as defined by their service delivery framework, if approved by the Ministry's Audit Committee, by the Corporate Audit Committee, or at the Minister's request. Under the *Financial Administration Act*, the Minister of Finance may also request an audit. Furthermore, the agency may be subject to an audit by the Auditor General of Ontario under the *Auditor General Act*.

An agency will promptly provide a copy of every report, including its response to the audit report and any recommendations, to the Minister, the Deputy Minister, and the Minister of Finance. The agency will advise the Minister annually, at minimum, on any outstanding recommendations.

The Ontario Internal Audit Division, Ministry of Finance, may also undertake an internal audit engagement at the request of the agency board and with the approval of the Ministry's Audit Committee. Reports and outstanding issues may be shared with the respective ministry's Minister and Deputy Minister upon their request.

The agency's chair, other appointees to the agency, and staff of the agency and ministry are to co-operate in any audit of the agency.