

- A trustee must obtain written authorisation from the Master to act as a trustee (Section 6(1)).
- A trustee must provide security for the due and faithful performance of his duties if required by the Master to do so (Section 6(2)).
- A trustee must always act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another (Section 9(1)).
- A separate banking account must be opened in the name of the trust (Section 10).
- Trust property must be defined and clearly identifiable as trust property (Section 11).
- Trust property should not form part of the personal estate of the trustee (Section 12).
- A trustee must account to the Master for the administration and disposal of trust property when requested to do so by the Master (Section 16).
- A trustee may not destroy any document which serves as proof of the investment, safe custody, control, administration, alienation or distribution of trust property before the expiry of a period of five years from the termination of the trust (Section 17).

Common Law duties

- A trustee must adhere to the provisions of the trust deed and must administer the trust property accordingly.
- A trustee must preserve the trust property for the benefit of the beneficiaries.
- A trustee must ensure that income-producing assets are productive and that reasonable returns are obtained.
- A trustee must consult with the other trustees and strive to reach agreement on disputed matters.
- A trustee must not let himself be influenced by any person.
- A trustee must refrain from putting a trust's assets at risk.
- A trustee must keep proper records and accounts of the affairs of the trust and should provide copies to the beneficiaries if requested to do so.
- The trustees must receive, hold and distribute all income and capital in accordance with the provisions of the trust deed.
- The trustees must attend annual trustee meetings and must prepare and keep accurate and detailed minutes and resolutions.

Separation of enjoyment and ownership

No one person should retain control and beneficial ownership over assets that have been transferred to a trust.

If you have any of the following powers, you have too much control over the trust assets:

- Power to dismiss and/or appoint trustees.
- Power to vary the provisions of the trust deed.
- Prior written approval or veto right for a decision to be valid.

Appointment of a third independent trustee

For practical purposes and to ensure that there is indeed a separation of enjoyment and ownership, it is advisable to have a minimum of three trustees in office. It is further advisable that one of the trustees be an independent trustee. "Independent trustee" is neither defined nor prescribed, but the definition of "connected person" in section 1 of the Income Tax Act might serve as a useful guide in determining independence. An independent trustee should be someone who understands the responsibilities of trusteeship and who would bring real expertise and impartiality to the board of trustees.

If these formalities and guidelines are considered and taken into account when setting up and managing a trust, you can be sure that you have a valid trust and that the interests of the beneficiaries will be protected. □