

No Mr Settlor, you are **NOT** a Trustee!

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What does the Law say

Trust legislation in most foreign Financial Services Centres:

- Allows for co-trustees, however
- In most instances there will be sole professional trustee who is a corporate, and
- Where such a trustee charge professional fees for it's services, that trustee must be licenced by the relevant regulator to provide such trustee services.
- A SA person or corporate is therefore not precluded by legislation to be a sole or co-trustee, BUT
- This is generally against the policy of the professional trustee, and
- Can have extremely negative tax and complex legal consequences.

Factors fuelling the confusion

- Declaration Trust Deeds,
- Ever indulgent or over co-operative Trustees,
- Protectors
- Letters of Wishes,
- “Blind” beneficiaries
- SA position on Trusts – founder/donor/settlor almost always also trustee,
- “My” offshore Trust, and
- Absence of discretionary managers on trust investments

Huge risk of “Sham” or “Alter Ego” principles being applied

