



Unintended consequences of compliance: making fiduciary services unaffordable for the middle market



# A position of trust

- A critical, even noble purpose
  - To hold, protect and use assets for those who are unable to do so themselves

**1673** The Dutch system of trusteeship (Orphan Chamber) was introduced to the Cape, to administer estates belonging to orphans, widows and persons under tutelage. The government office was known as the 'Weskerkamer (Orphan Chamber)' and also dealt with deceased estates and the liquidation of agency.

**1833** The Orphan Chamber was abolished by the Governor of the Cape, Sir Lowry Cole, and its functions taken over by the Master of the Supreme Court. Deceased estates had to be administered by an executor under tutelage. The government office was known as the 'Weskerkamer (Orphan Chamber)' and also dealt with deceased estates and the liquidation of agency.

**1838** The Board of Executors and the Board of Trustees were established in Cape Town by its first secretary, John de la Motte, in the corner of Burg Street and Strand Street, in a double storey house on the corner of Burg Street and Adderley Street, opposite the old Slave Lodge. It was called the 'JEC' in 1847. On 1 July 1850, 117 members could provide the necessary security for the administration of other fiduciary services.

**1853** The Guardian and Investment Trust Company Ltd was established in Port Elizabeth by 1853 referred to as the Guardian Assurance Company and later years on the Guardian Assurance and Trust Company. Its first chairman was William Fleming and its secretary Thomas Wormald, a well-known lawyer. It erected its offices a building in Main Street in 1857, which was replaced in 1908, today known as the Southern Life Building.

**1856** Cape Town: The General Estate and Orphan Chamber was established by notable gentlemen, among others, Charles Bell, the Surveyor-General, David Tennant a Member of Parliament and attorney General Silberboeck with Bell elected as the first chairman of the new entity, and was enacted by Act 31 of 1861. One hundred shrobs to a value of twenty thousand pounds was issued. This operation was in later years situated at 136 Adderley Street. On 14 August 1861, Act 31 of 1861 was published, published by the Registrar of the Affairs of the General Estate and Orphan Chamber.

**1856** Cape Town: The Colonial Orphan Chamber and Trust Company was founded by Cape Town barrister, Advocate J J Dreyer, one day after the establishment of the General Estate and Orphan Chamber, after Adv Dreyer was appointed by the Registrar with the task to first support for the formation of the former.

**1859** The Cape Town Board of Executors was established by Act 17 of 1859.

**1861** Durban: Palmer's Trust Investments and Estate Administrators Ltd was formed.

**1862** Grahamstown: The Eastern Province and Marine Insurance and Investment Company was founded, and incorporated on 25 July 1863 by Act 20 of 1863.

**1864** Graaff-Reinet: The Midland Agency and Trust Company Ltd was founded.

**1865** Uitenhage: The Board of Executors and Trust Company Ltd was formed.

**1866** The Bloemfontein Board of Executors was established, with director T White, JJ Jollie, John Palmer, TW Vowe and ES Hanger, and James B Brown the first secretary, Thomas Vowe, formerly a magistrate in Smithfield, was elected as the first chairman. The shareholding was held by Bloemfontein Holdings Limited, which in turn was in later years jointly owned by Old Mutual and Syfrets Limited. It also operated under the name Midland Board of Executors Limited (Midboard), which originated from Graaff-Reinet Board of Executors Limited (1866) and Midland Agency Trust Company Limited (1864).

**1876** Kimberley: The Griqualand West Board of Executors Trust and Agency Company Ltd was formed.

**1881** The Griqualand West Board of Executors Trust and Agency Company Ltd was formed.

**1888** The Johannesburg Board of Executors and Trust Company Ltd was formed.

**1895** The Johannesburg Board of Executors and Trust Company Ltd was formed. It took over the assets and liabilities of Paarl Fire Assurance and Trust Company Limited (1874), which was liquidated in 1895.

**1890** The Midland Trust and Agency Company Ltd was formed by the Royal Insurance Company.

**1887** ER Syfret and Company opened its doors, and on 14 January 1919 it became known as Syfrets Trust Company Limited, with 1 000 shares, with a value of 100 000 pounds. Edward John Maynard Syfret acted as an administrator of deceased estates since 22 April 1833 at 12 Adderley Street, Cape Town, and by 1876 he held offices at 119 St George's Street, in 1884 his son, Edward Ridge Syfret, became involved in the business as executor, trustee and administrator of trusts. He was joined on 1 January 1904 by General Open as partner.

**1879** Kimberley: The Griqualand West Loan, Trust and Agency Company Ltd was formed.

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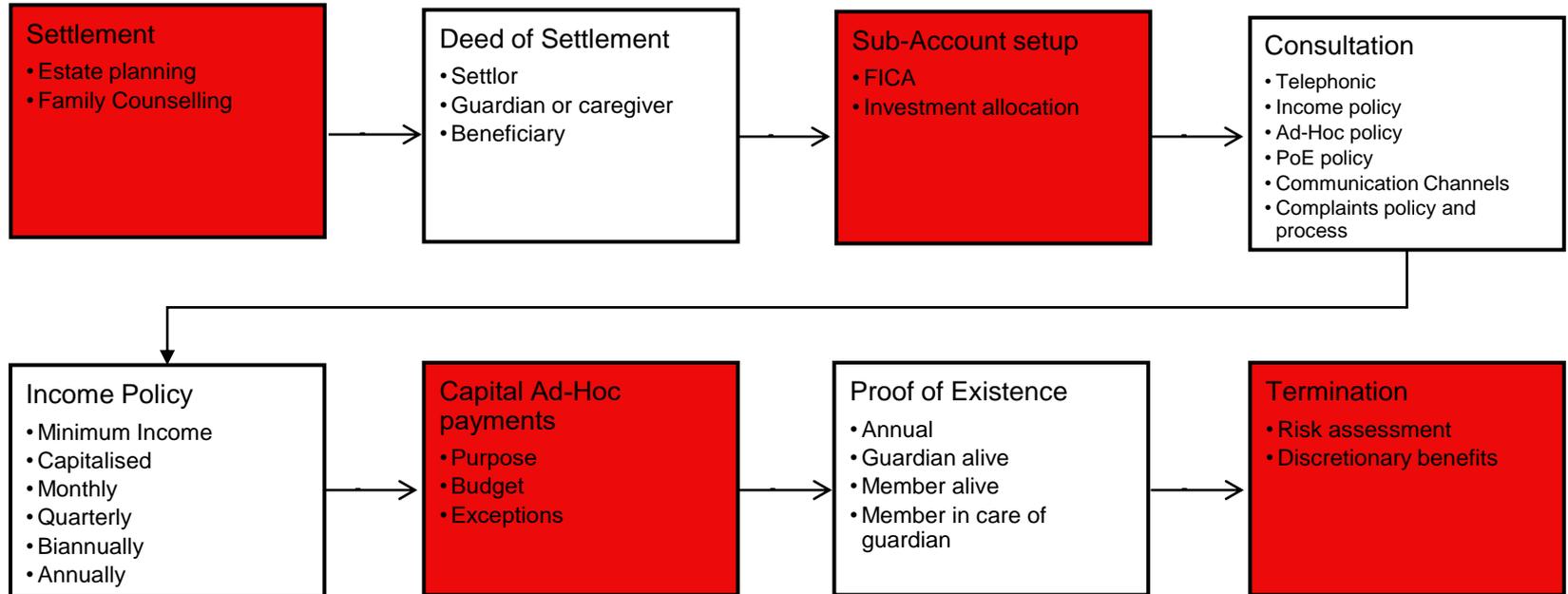


# Some real life examples

- Andre Jansen is in the process of finalizing his will but is concerned with leaving cash to his spouse who is suffering early signs of dementia and is in the care of a nursing home. He wants to hold some of the funds in a separate account or vehicle, which will pay monthly care home fees but also allow some flexibility to pay bigger expenses, for example medical expenses or the like. Estate of ~R1 million
- Mrs Ndlovu's husband passed away 2 years ago and the estate winding up process was long and messy. She has inherited all his assets and is worried about their only son (4yo) should she pass away. Mrs Ndlovu's sister and husband have agreed to be her son's caregivers. In the event of her death, all her assets will be liquid. Estate of ~R650 000
- Ms Lesufi is a single mother who has purchased life cover. She has nominated her minor children as the beneficiaries of the policy. Policy benefits ~R500 000



# The trust lifecycle



**Legal & Technical**

**Communication**

**Accessibility**



# A regulated industry

- Trust Property Control Act 57 of 1988
  - regulates the control of trust property and provides for matters connected therewith.
- Financial Intelligence Centre Act No 38 of 2001 (“FICA”)
  - provides for the establishment of the CENTRE and creates obligations for accountable institutions. The Act regulates the reporting of terrorist financing, terror activities and proliferation financing and makes non-compliance with this Act a criminal offence.
- Financial Advisory and Intermediary Services Act 37 of 2002 (“FAIS”)
  - regulates the rendering of certain financial advisory and intermediary services to clients
- Prevention of Organised Crime Act No 121 of 1998 (“POCA”)
  - deals with money laundering, racketeering and criminal and civil forfeiture. POCA sets out the offences for money-laundering. It also creates a general reporting obligation for businesses coming into possession of suspicious transactions.



# A regulated industry

- Protection of Constitutional Democracy against Terrorism and Related Activities No 33 of 2004 (“POCDATARA”)
  - provides for reporting obligations under FICA. Reporting of suspicious and unusual transactions are extended to the reporting of property connected to the offence of financing terror and related activities or the financing of terrorist related activities.
- Protection of Personal Information No 4 of 2013 (“POPIA”)
  - provides for the protection of personal information and requires the lawful collection, processing and storage of the information that is collected.
- The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act
  - Amendments to the Trust Property Control Act creating additional obligations and responsibilities



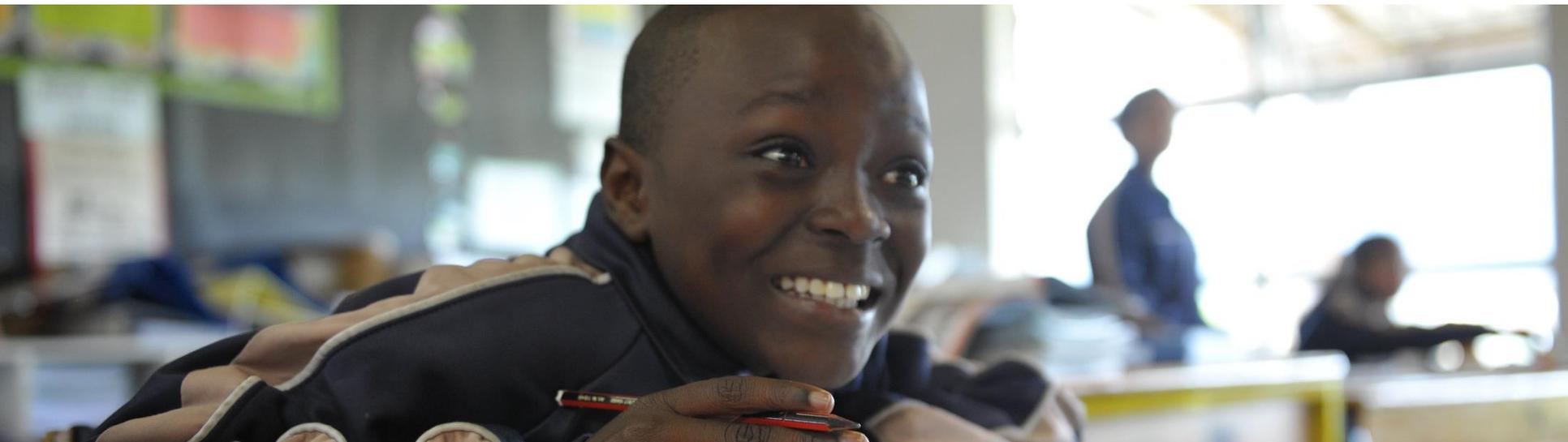
# Financial Intelligence Centre Act No 38 of 2001 ("FICA")

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- Register the AI with the CENTRE
- Establish a FICA rules policy
- Appoint a Section 43 Compliance Officer
- Establishment and verification of the identity of persons who transact with the AI
- Safekeeping of records
- Reporting of suspicious and unusual transactions to the Compliance Officer and the CENTRE
- Source of funds verification
- Compulsory training, awareness and testing/assessments

## **Accountable Institution ("AI")**

A board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act, 1988 (Act 57 of 1988).



# Financial Intelligence Centre Act No 38 of 2001 ("FICA")

- Rule 1. Accountable Institution Registration and Appointment of Compliance Officer
- Rule 2. Every AI must have a Risk Management and Compliance Plan (RMCP)
- Rule 3. Compulsory Training, Awareness and Assessments
- Rule 4. Establishment of a business relationship
- Rule 5. Establishment of and verification of identities
- Rule 6. Maintaining correctness of client particulars
- Rule 7. Anonymous clients and clients acting under false or fictitious names
- Rule 8. Doubts about the veracity of the previously obtained information
- Rule 9. Ongoing Due Diligence
- Rule 10. Inability to conduct client due diligence
- Rule 11. Domestic Politically exposed persons ("DPEPs"), Foreign Politically Exposed Persons ("FPEPs"), Prominent Influential Person (PIP)



# Financial Intelligence Centre Act No 38 of 2001 (“FICA”)

- Rule 12. Duty to keep records of business relationships and transactions
- Rule 13. Period for which records must be kept
- Rule 14. The Centre’s access to records
- Rule 15. Admissibility of records
- Rule 16. Reporting of suspicious and unusual transactions
- Rule 17. Indicators of Suspicious and Unusual Transactions
- Rule 18. Procedure for reporting Suspicious and Unusual transactions
- Rule 19. Suspicious and Unusual Transaction Report (Section 29)
- Rule 20. Period for reporting Section 28A and Section 29 Reports
- Rule 21. Protection of persons making reports
- Rule 21. Protection of confidential information
- Rule 22: The Centre’s request for additional information



# The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act

- The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act
  - Amends the Trust Property Control Act “...by specifying information that must be kept by trustees in relation to beneficial owners in relation to trusts; by requiring the Master to maintain a register containing information relating to beneficial ownership of trusts...”

(1) A trustee must keep a record of the following information relating to each identified beneficial owner of the trust:

- a) The full names;
- b) date of birth;
- c) nationality;
- d) an official identification document number, indicating the type of document and the country of issue;
- e) residential address;
- f) if different from residential address, the beneficial owner’s address for service of notices;
- g) other means of contact;
- h) the grounds on which the person is a beneficial owner of the trust;
- i) the date on which the person became a beneficial owner of the trust; and
- j) where applicable, the date on which the person ceased to be a beneficial owner of the trust.

(2) A trustee must keep a certified copy of an official identification document of each identified beneficial owner of the trust, and the information recorded in terms of subregulation (1) (a) to (e) must appear the same way as it appears on the certified copy of the identification document.



# Penalties

Financial Intelligence Centre Act No 38 of 2001 (“FICA”)

A person found guilty of any of the offences under the Act is

- liable to imprisonment for a period not exceeding 15 years;
- or to a fine not exceeding R100 Million; and
- a fine of R10 Million- or 5-years imprisonment

For failing to appoint a Compliance Officer, failing to have a FICA INTERNAL RULES Policy or failing to provide compulsory training, awareness and assessments



# Penalties

## Trust Property Control Act

Failure to maintain a register of beneficial ownership as prescribed

- a fine of up to R10 million
- imprisonment for a maximum of five years,
- or both.

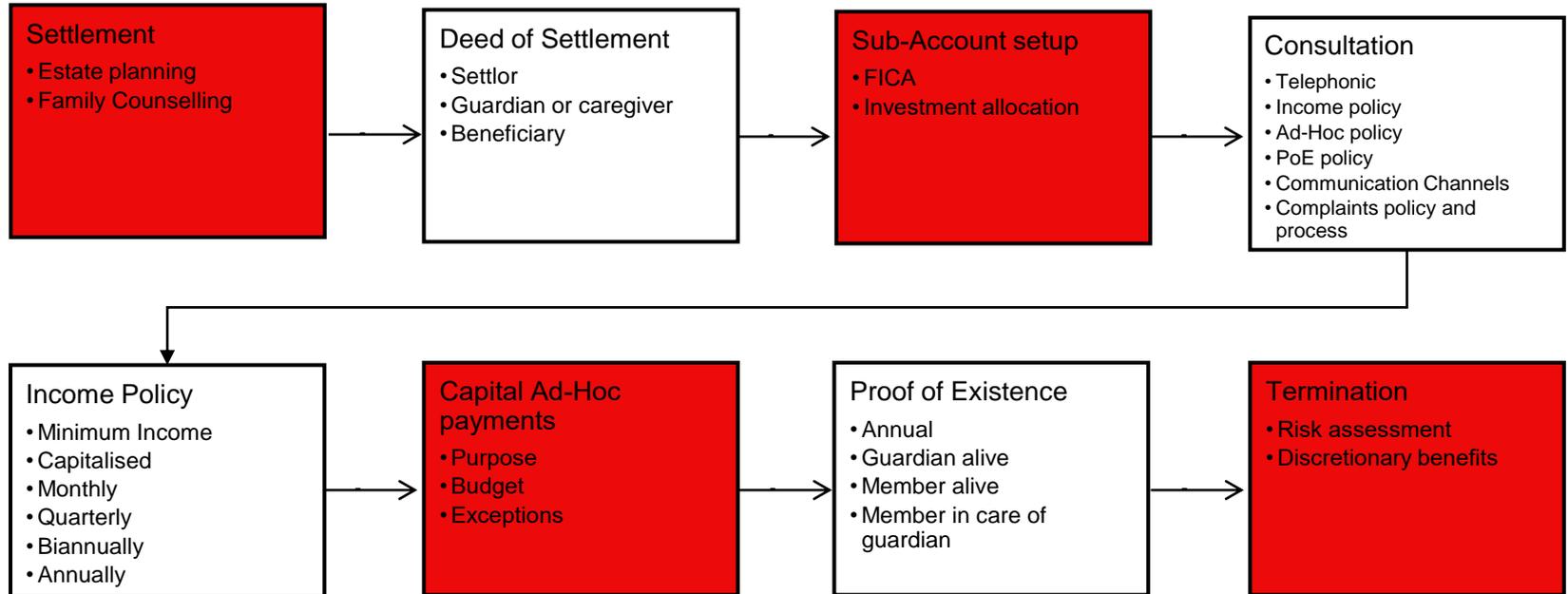


# Costs

- Based on an annual estimated charge of 1.5% of trust assets
- Scenario 1: ~R15 000 per annum
- Scenario 2: ~ R9 750 per annum
- Scenario 3: ~ R7 500 per annum



# The trust lifecycle



**Legal & Technical**

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I am learning



I am free



I am confident



My future is bright

# Thank you

## Regulatory Information

This presentation has been compiled to provide factual information on the product offered and does not constitute advice. A copy of this presentation is available from Fairheads upon request.

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