

MANAGE YOUR PRACTICE

2023 in review AND A 2024 PREVIEW FOR TRUSTS

Although many are of the view that South Africa has out of free will introduced more stringent measures for trusts and companies in 2023, the opposite is actually true.

Worldwide, countries started implementing beneficial ownership transparency (BOT) measures. According to a World Bank study, 70% of a selection of large corruption cases involved complex ownership structures designed to conceal the identity of individuals, of which 15% involved trusts. Internationally it was found that trusts' beneficial owners are often more challenging to identify compared to those of companies.

International bodies have therefore developed guiding principles for the BOT of trusts. The relevant ones for South Africa are the FATF (Financial Action Task Force) Recommendations (South Africa is a member of the FATF), and the Organisation for Economic Co-operation and Development's (OECD) Common Reporting Standard (CRS) (South Africa is a signatory to the CRS), and the G20 High-Level Principles (South Africa is committed to the G20 High-Level Principles).

NOW WHAT?

The reforms in South Africa (following international reforms) are here to stay! Even though government is perceived to be slow to enforce legislation – especially legislation that it is to implement itself, such as the Protection of Personal Information Act, POPIA – this is not the case. Even though POPIA was signed into law in 2013, with many of its key provisions only effective from July 2020, and after companies were given an additional twelve months to ensure that their data-processing operations aligned with POPIA, it has effectively been in place since July 2021.

In July 2023, after POPIA had been in operation for two years, the Information Regulator issued its first fine (R5 million) to the Department of Justice and Constitutional Development for failure to comply with POPIA after it openly disregarded an order to renew licences for antivirus software (this is apparently been taken on

review by the department). Even though the Information Regulator has received over 500 notifications of data violations to date, with little evidence of action, the Information Regulator indicated that more fines are to come.

What is different with the grey-listing measures is that an external body (the FATF) (not government itself) will review South Africa's compliance with the newly introduced grey-listing measures, and the timeframe for the effective implementation by government is short – South Africa undertook that it would make sufficient progress in two years (from February 2023 when the country was grey-listed) for it to be removed from the grey list by the FATF. Even though one of the eight strategic actions that government undertook to resolve by January 2025 was to 'ensure the effective implementation of targeted financial sanctions', there is no evidence of any actions taken. So, basically the country only has 2024 left to prove itself.

A QUICK RECAP OF 2023

Government promulgated onerous amendments to the Trust Property Control Act (TPCA) on 22 December 2022 (which were gazetted on 29 December 2022), issued Regulations for its implementation on 31 March 2023, effective from 1 April 2023, and made available a temporary capability to upload 'beneficial ownership' information onto the Master's portal. Government only managed to replace this temporary beneficial ownership register developed on a Google Docs platform with a permanent beneficial ownership register in October 2023.

Then Department of Justice and Constitutional Development issued a media statement with the heading 'Increased measures for trusts to combat money-laundering and terrorism financing crimes'