

Where are we with the regulation of trusts?



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Beneficial Ownership Transparency (BOT) a wise idea of government?

- 70% of selection of large corruption cases involved complex ownership structures designed to conceal identity of individuals, 15% involved trusts (World Bank study)
- International bodies developed guiding principles for the BOT of trusts. The relevant ones for South Africa:
 - FATF (Financial Action Task Force) Recommendations (South Africa is a member of the FATF),
 - Organisation for Economic Co-operation and Development's (OECD) Common Reporting Standard (CRS) (South Africa is a signatory to the CRS), and
 - G20 High-Level Principles (South Africa is committed to the G20 High-Level Principles).
- It is here to stay!
- Our compliance or lack thereof is determined by FATF; NOT us!
- We promised FATF that we would do enough to get off the greylist by January 2025! We did not make it! First 4-month rolling cycle!
- Severe impact on country if we not removed from greylist asap

Progress on BO

- Coverage for both companies and trusts was assessed to be too low by the FATF Africa Joint Group in September 2024.
- The Financial Action Task Force (FATF) Plenary on 25 October 2024 - One of the action items relates to timely access to beneficial ownership information concerning companies and trusts.
- National Treasury called upon all companies and professional trustee service providers to ensure registration by companies and trusts they engage (or involved) with before 30 November 2024, to significantly increase the coverage in beneficial ownership registries.
- The Department of Justice and Constitutional Development issued a Media Statement on 17 September 2024 titled *“Trustees not complying with the provisions of the amended Trust Property Control Act to face harsher punishment”*. In a drive to improve the chance to exit the greylist in early 2025, the media statement set a deadline for filing the beneficial ownership registers with the Master by 15 November 2024.
- The Master conducted a webinar *“Unlocking Transparency: Paving the way for trust and accountability with our Trust Beneficial Ownership Register”* on 29 October 2024 to discuss challenges and solutions.
- FATF plenary meeting in Feb 2025 - not excited greylist - 2 remaining items



Who is who in the zoo? Know their requirements



“Beneficial owner” definitions

FIC Act	Acc.Inst.		TPCA	Trustee		SARS	Trustee
<p>(a) a natural person who directly or indirectly</p> <p>(i) ultimately owns or exercises effective control of</p> <p>(aa) a client of an accountable institution; or</p> <p>(bb) a legal person, partnership or trust that owns or exercises effective control of, as the case may be, a client of an accountable institution; or</p> <p>(ii) exercises control of a client of an accountable institution on whose behalf a transaction is being conducted; and</p> <p>(b) includes</p> <p>...</p> <p>(iii) in respect of a trust, each natural person contemplated in section 21B(4)(c), (d) and (e)</p>			<p>(a) a natural person who directly or indirectly ultimately owns the relevant trust property;</p> <p>(b) a natural person who exercises effective control of the administration of the trust arrangements that are established pursuant to a trust instrument</p>		<p>Only defined in relation to dividend tax (Section 64D); not in relation to trusts:</p> <p>The person entitled to the benefits of the dividend attaching to a share.</p> <p>But SARS added beneficial owner fields required for trust tax registration and new trust tax returns.</p> <p>SECONDARY COLLECTORS OF BO INFO</p>		

“Beneficial owner” definitions (cont.)

FIC Act - section 21B(4)(c), (d) and (e)	TPCA
<p>in respect of the founders of the trust, establish the identity of—</p> <ul style="list-style-type: none">(i) each founder; and(ii) if a founder of the trust is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person, partnership or trust <div data-bbox="494 993 726 1108" style="text-align: center;"><p>Acc.Inst</p></div>	<p>(c)(i) each founder of the trust; or</p> <p>(ii) if a founder of the trust is a legal person, a person acting on behalf of a partnership or in pursuance of the provisions of a trust instrument, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership or the relevant trust property or trust arrangements pursuant to that trust instrument</p> <div data-bbox="1238 998 1435 1108" style="text-align: center;"><p>Trustee</p></div>

“Beneficial owner” definitions (cont.)

FIC Act - section 21B(4)(c), (d) and (e)	TPCA
<p>(d) in respect of the trustees of the trust, establish the identity of—</p> <p>(i) each trustee;</p> <p>(iA) if a trustee is a legal person or a person acting on behalf of a partnership, the beneficial owner of that legal person or partnership; and</p> <p>(ii) each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the trust, whether such a person is appointed as a trustee of the trust or not</p>	<p>(d)(i) each trustee of the trust; or</p> <p>(ii) if a trustee of the trust is a legal person or a person acting on behalf of a partnership, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership</p>



“Beneficial owner” definitions (cont.)

FIC Act - section 21B(4)(c), (d) and (e)

(e) in respect of the beneficiaries of the trust, establish—

(i) the identity of each beneficiary referred to by name in the trust instrument or other founding instrument in terms of which the trust is created;

(iA) if a beneficiary referred to by name in the trust instrument is legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the **beneficial owner** of that legal person, partnership or trust; and



(ii) if beneficiaries are not referred to by name in the trust instrument or other founding instrument in terms of which the trust is created, the particulars of how the beneficiaries of the trust are determined

TPCA

(e)(i) each beneficiary referred to by name in the trust instrument or other founding instrument in terms of which the trust is created; or

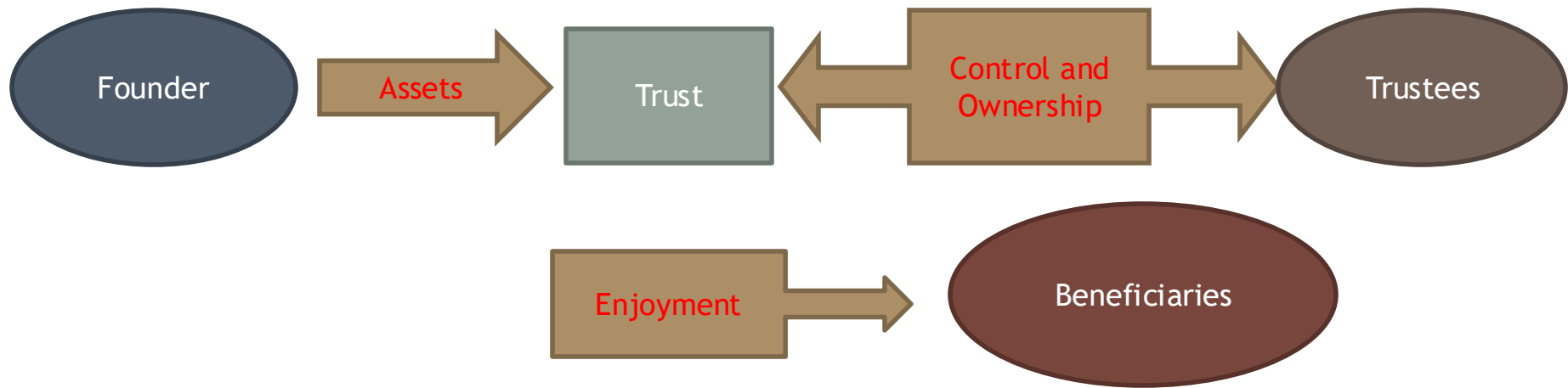
(ii) if a beneficiary referred to by name in the trust instrument is a legal person, a partnership or a person acting on behalf of a partnership or a person acting in pursuance of the provisions of a trust instrument, the **natural person who directly or indirectly ultimately owns or exercises effective control** of that legal person or partnership or the relevant trust property or trust arrangements pursuant to that trust instrument



THE MASTER – BENEFICIAL OWNERSHIP

I do not have the required
info to submit - ARE YOU
AN ACCOUNTABLE
INSTITUTION?????

Structure of a trust



Changes to TPCA - Effective 1 April 2023!

- New Section 1 definitions of ‘accountable institution’ and ‘beneficial owner’
- New Section 6(1A) (Section 6 - Authorisation of trustee and security) - to specify matters that would disqualify a person from acting as a trustee, for example failing the ‘fit and proper’ test; in line with existing Section 20 (removal criteria) plus more
- Amended Section 8 - Foreign trustee to act only if authorised by Master in writing
- **Section 10(2) (Section 10 - Trust account) - a trustee to disclose their position as trustee to any accountable institution with which the trustee engages in that capacity, and to make it known to that accountable institution**
- **Section 11(1)(e) (Section 11 - Registration and identification of trust property) - record details of accountable institutions which trustees use as agents to perform trustee functions and who provide any services to trustees**
- **New Section 11A (Section 11 - Registration and identification of trust property) - information in relation to beneficial ownership**
- Amended Section 19 (Failure by trustee to account or perform duties) - Just clarifying - Master/any person having an interest in the trust property may apply to Court to direct trustee to comply with Master’s request or to perform duty imposed upon trustee by TPCA, trust instrument or any other law
 - Note - Master can only remove a trustee to Section 20 if they do not comply with TPCA
- **New Section 19(2) - If trustee fails to comply with highlighted Sections, commits an offence and on conviction liable to fine not exceeding R 10 million/imprisonment not exceeding 5 years or both**
- Amended Section 20 (Section 20 - Removal of trustee) - added that Master MAY remove trustee if they become disqualified to act as trustee to new Section 6(1A); also expanded that trustee may be removed if they do not comply with the requirements of the TPCA (over and above the requirement to comply with any duty imposed upon them to the TPCA)

Beneficial owner - TPCA - what must trustees do?

11A.

(1) A trustee **must**—

(a) **establish and record** the beneficial ownership of the trust;

(b) **keep a record** of the prescribed information relating to the beneficial owners of the trust;

(c) **lodge** a register of the prescribed information on the beneficial owners of the trust with the Master's Office; and

(d) ensure that the prescribed information referred to in paragraphs (a) to (c) is **kept up to date**.

(2) The Master must keep a register in the prescribed form containing prescribed information about the beneficial ownership of trusts.

(3) A trustee must make the information contained in the register referred to in subsection (1)(c), and the Master must make the information in the register referred to in subsection (2), available to any person as prescribed.

Checklist

- Keep information into Regulations on beneficial owners (including those not on beneficial owner register) - 14 fields; real-time!
- Beneficial ownership register - only 10 fields; real-time!
- Beneficial ownership register - Have you “verified authenticity” of the information?
- Make sure you have the Power of Attorney and resolution to submit info on Master’s portal in place

Real-time record keeping!

Assist your
clients!

	BO	BO	UBO	UBO	REP/GUARDIAN	REP/GUARDIAN
Requirement	Regs	BO Register	Regs	BO Register	Regs	BO Register
Full names	x	x	x		x	x ¹⁴
Date of birth	x	x	x			
Nationality	x	x	x		x	x
ID/Passport	x	x	x		x	x
Citizenship	x		x			
Residential address	x	x	x			
Domicilium address	x	x	x			
Other means of contact	x		x			
If SA taxpayer, tax number	x		x			
Class/category of beneficial ownership	x	x	x			
Date on which became beneficial owner	x	x	x			
Where applicable, date on which ceased to be beneficial owner	x	x	x			
Email		x				x
Cell number		x				x
Postal address						x

Beneficial Ownership Register Upload

Declaration by Capturer

The Capturer confirms that the Trustees are keeping in their records, certified ID copies of all beneficial owners of the trust.

The Capturer confirms that he/she is authorised to attend to and deal with this matter and verifies the authenticity of the information and documentation being submitted.

The Capturer confirms that confirms that the information submitted is true and correct. In the event that the information is not true and correct, the Maters of the High Court will not be held liable in any way whatsoever as a result of the misrepresentation.

I Confirm the above *

Penalties for Non-Compliance

A trustee commits a criminal offence if they fail to -

- (a) disclose to an accountable institution that they engage with in the capacity of a trustee that the relevant transaction or business relationship relates to trust property;
- (b) record the details of accountable institution prescribed in regulation 3B;
- (c) establish and record the beneficial ownership information of a trust prescribed in regulation 3C;
- (d) keep an up to date record of the beneficial ownership information prescribed in regulation 3C; or
- (e) lodge a register of the beneficial ownership information prescribed in regulation 3C with the Master of the High Court.

A trustee who is convicted of any of the offences referred to above will be liable to a fine of up to **R10 million**, or imprisonment for a period of up to **five years**, or to both such fine and imprisonment.

Implementation of legislation

- Effective 16 Oct 2023 - The acting Chief Master issued Directive 8 of 2023, titled “*Beneficial Ownership Register*”
 - reminds trustees that requirements apply to all trusts, “*irrelevant of when and for what purpose it has been registered*”.
 - trustees legally obliged to submit Beneficial Ownership registers electronically on platform provided by Master.
 - Government introduced permanent Beneficial Ownership register, which replaced temporary Google Docs platform people complained about.
 - “*web-based system that will enable trustees and other authorized parties to submit Trust Beneficial Owners details in a safe and secure environment*”. The previously used Google form decommissioned.
 - No extension to submit beneficial ownership information to the Master
 - “*all South Africans are required to provide records and reports on all information about beneficial owners as from 1 April 2023*”.
 - Trustees should submit information “*within a reasonable time after the launching of the Master’s electronic BOR*”.
 - Trustees reminded of the penalty for non-compliance (up to R 10 million and/or five years imprisonment).

Progress - Master webinar

Creation of a Masters' Beneficial Ownership Register:

- Initially completed on 01 April 2023 however, concerns were raised of the chosen ICT platform
- Further developments were made and a new BO register was developed and rolled out on 10 October 2024. <https://trustonline.justice.gov.za/masters/>
- Information from the temporary system has been migrated from the google forms into the new system.

Access to the register by LEAs (by application):

- Several LEAs have made applications
- Only SARS has complete access as the rest have not yet met application requirements (security)
- Direct access to all the information loaded on the system

Statistics on compliance

As at 31 March 2024, **42 638** Trusts have updated the beneficial ownership requirements (10% compliance)

- Increased compliance - 7 000 up to October 2024
- Now much higher - in region of 150 000 - still much work!!!!

Inter-agency/-governmental collaboration

- Discussions with stakeholders (e.g. SARS)

Way forward - Master webinar

- Action against of non-compliant trustees
- Most countries seemingly did away with making non-compliance a criminal offence, due to the huge burden it places on the prosecuting authorities and state resources.
- Levying only administrative penalties is also not that successful, as paying a fine of R10 million whilst you make R10 billion is not deterring.
- Administrative fines combined with deregistration and disqualification of professional trustees and freezing of bank accounts, seems to be the most effective deterrents.

Reporting of terminated trusts

Trusts already confirmed by the Master as terminated previously, are exempted from providing BO information. If you were the trustee of a terminated trust, please send the following to the dedicated e-mail address, TerminatedTrust@justice.gov.za:

- A completed terminated trust declaration template
- Copy of the ID of the person making the declaration
- All relevant supporting documents to prove what you have declared

Reporting of “dormant” trusts

Trusts which are dormant, are exempted from providing BO information. If you are the trustee of a dormant trust, please send the following to the dedicated e-mail address, DormantTrust@justice.gov.za:

- A completed reporting a dormant trust declaration template
- Copy of the ID of the person making the declaration
- All relevant supporting documents to proof what you have declared

NOTE THAT, SHOULD THE TRUST NO LONGER BE DORMANT, THE TRUSTEE HAS A DUTY TO COMPLY WITH THE LODGEMENT OF BO INFORMATION WITH THE MASTER, AS PER THE TRUST PROPERTY CONTROL ACT 57 OF 1988 (as amended)

Getting stuck on the Masters Portal?

Should you experience any challenges with loading of the information and you are unable to get assistance by studying the FAQ's and the Step-by-step guide, please send an e-mail setting out your challenge to: GeneralBOTrust@justice.gov.za

Use this link - <https://trustonline.justice.gov.za/Masters/Account/Login>

THE MASTER – NEW TRUST ONLINE SYSTEM

The trust re-set in early 2023 – FATF and SARS

- Master rapidly had to transition from a “post box” to a digital record-keeper and register holder
- As part of its modernisation process, the Master implemented its Online Registration System for Deceased Estates in 2023
- Trust Online Registration System implemented in March 2025
- Liquidations, the guardians’ fund, curators, and tutors to follow

Trusts roll-out plan

- QR-coded Letters of Authority in trust section of all Master's Offices nationwide starting from 18 March 2025.
- Piloted new system from 18 to 19 March 2025 in Gauteng
 - Addressed identified bugs until the end of March 2025
- Late March presented system to government stakeholders and law enforcement agencies
- Chief Master issued Directive 2 of 2025, titled "*Trusts: Implementing QR Code on Master's Appointment Letters and Online Registration of Trusts*" 27 March 2025
- Activated online platform for all users needing to register new inter vivos trust under Pretoria and Johannesburg Master's Office jurisdictions starting 1 April 2025. No 'walk-ins' allowed to register new inter vivos trusts from this date.
- Webinar for system rollout for Johannesburg and Pretoria Master Offices 3 April 2025
- National webinar end of April 2025 - not yet taken place
- The Master intends to implement the system nationally in May 2025 - not yet

What can system do now?

- Profile registration - use link

<https://dojonline.justice.gov.za/login>

- First, to register as individual, then create an entity or service provider profile under profile
- Inter vivos trust registration. QR-coded Letters of Authority issued
- Retrieval of documents such as Letters of Authority for inter vivos trusts
- Electronic validation of Letters of Authority of inter vivos trusts
- Notifications
- The Master's Beneficial Owner register automatically updated with details of newly registered inter vivos trust
- Inter vivos trust status tracking

What will system be able to do soon?

- Inter vivos trust amendments, including trustee changes and trust detail changes. New QR-coded Letters of Authority issued, cancelling previous Letters of Authority.
- Inter vivos trust termination
- The Master's Beneficial Owner register automatically updated with details of amendments made to it after registration

What will system be able to do? - in future

- Amendment of auditors, beneficiaries, and bonds of security
- Amendment and termination of inter vivos trusts historically registered manually
- Capability to share trust data with Law Enforcement Agencies
- Online payments
- Chatbot/assistant bot
- Excluded (for now) - testamentary trusts, to continue manual process



What is turnaround time?

- 21 days
- Increased efficiency may result in faster turnaround times

Plan with Beneficial Ownership?

- Currently done under different log-in - <https://trustonline.justice.gov.za/Masters/Account/Login?ReturnUrl=%2fMasters>
- Now - Beneficial Ownership register will automatically be updated as new trust registered/updated
- In future - Beneficial Ownership register will automatically be updated for old trusts
- In future - SARS to automatically get info from Master

What about original documents?

- Master may accept electronic copies of all submitted documents
- Excluding bonds of security - submitted as originals until Master implements digital functionality to verify with third parties
- Master may also request original documents for verification purposes at their discretion
- Trustees expected to keep original documents of electronically lodged submissions in their records, as Master may request to view these or demand certified hard copies of any such documents at any stage
- Master's current standard operating procedures - trustees should upload and retain certified copies of ID documents until these procedures are revisited
- Currently, maximum size allowed for each uploaded document 5MB

Help

- The Master has made available videos demonstrating the functionalities of the online platform on the following link - https://www.youtube.com/playlist?list=PLPetB_5dGjdecoXGKH1tTmFROQcWwJ5Bc
- Support email - dojtrustonlinesupport@justice.gov.za
- No support currently on portal



FICA

Where was the FIC?

- Before the amendment of the FIC Act in 2022, boards of executors, trust companies, and individuals that invest, keep in safe custody, and control or administer trust properties were regarded as DNFBPs.
- Following South Africa's greylisting in early 2023, the FIC has collaborated with various stakeholders to remove the country from the grey list, aiming for early 2025.
- The General Laws Amendment Act and the POCDATARA Amendment Act, which came into effect on 29 December 2022 and 31 December 2022, respectively, have expanded and enhanced the FIC's legal mandate, powers, and functions.
- The amendments to Schedules 1, 2, and 3 of the FIC Act, effective 19 December 2022, have significantly broadened its scope.
- Before legislative changes, approximately 43,000 entities registered in FIC database, with only around 4,000 supervised. The remainder overseen by South African Reserve Bank (SARB) (670) and Financial Sector Conduct Authority (FSCA) (9,247). DNFBP supervisors were tasked with overseeing DNFBPs.
- The legislative changes removed DNFBP supervisors, with the FIC assuming supervisory function under the FIC Act. As a result, the number of entities under supervision of the FIC has risen to over 53,000 (84%) out of 63,000, of which TCSPs are 5,300.

Where was the FIC?

- In December 2022, the FIC was legally mandated as the sole supervisor of non-financial sectors, which include legal practitioners, TCSPs, estate agents, casinos, credit providers, the South African Post Bank, high-value goods dealers, and crypto asset service providers, as outlined in Schedule 1 of the FIC Act.
- A TCSP is defined as any individual or entity that, in the ordinary course of business, assists clients in the creation, operation, and management of an external company, a foreign company, a close corporation, or a trust.
- Directive 6 - requiring certain accountable institutions listed in Schedule 1 of the FIC Act (Legal practitioners (item 1), Trust and company service providers (item 2), Estate agents (item 3), and Gambling institutions (item 9)) to submit information regarding their understanding of money laundering, terrorist financing, and proliferation financing risks through a risk and compliance return (RCR). As of March 2024, only 1,110 TCSPs submitted RCRs.
- The number of registered TCSPs increased over the years as follows:
 - 247 (as at March 2022)
 - 318 (as at March 2023)
 - 1,680 (as at March 2024)
- Of the 286 companies penalised from November 2023 to November 2024, only 23 were TCSPs. However, it is reported in the industry that the FIC is reaching out to more TCSPs.

Promulgated and effective 19 December 2022, but nothing happened?

- No formal transitional provisions communicated, but the FIC stated in a media release that in the first 18 months (19 June 2024) from the date of commencement of the amendments - FIC and supervisory bodies will focus on entrenching the FIC Act risk and compliance provisions and implementation for new “accountable institutions”
- Supervisory bodies to conduct inspections and, where warranted, issue remedial administrative sanctions (risk-based approach) - correct identified areas of non-compliance
- New sectors, including TCSPs - no financial penalties for non-compliance with the FIC Act during the transitional 18-month period
- Audits and fines picking up now - be aware!!!

Why are TCSPs targeted?

- Given the unique nature of the services they offer, TCSPs are vulnerable to abuse by entities seeking to misuse corporate structures to facilitate the movement of illicit funds
- Accountants: Bringing in the ‘gatekeepers’ into the FIC fold, as accountants are often viewed as providing access into the financial system by acting as intermediaries in terms of financial transactions. Specialised tax services such as tax opinions could be seen as “creation, operation or management”.
- **Creation** includes the registration or administrative processes with relevant government organisations for the client to commence with trading using the type of institution
- **Operation** of the company entails the assisting with the daily operations of the client
- **Management** would entail managing the company, for example being on the board of management and making management decisions regarding the company
- NO BLANKET INCLUSION/EXCLUSION!

Why are TCSPs targeted? (cont.)

Guidance to Section 4(c) of the FIC Act:

PUBLIC COMPLIANCE COMMUNICATION No. 6A (PCC 6A) - guidance on trust and company service providers as item 2 in Schedule 1 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001)

Replaced old PCC 6

Objective: Provides clarity on item 2 of Schedule 1 + highlights vulnerabilities faced by TCSPs + provides risk indicators when determining ML (Money Laundering), TF (Terrorist Financing) and PF (Proliferation Financing) risks in clients

Authoritative in nature - Non-compliance where guidance have been provided - may result in enforcement action. If not followed guidance, then have to demonstrate that it complied with obligations under FIC Act in equivalent manner.

Who are “accountable institutions” for FIC? - from 19 December 2022

- Definition dealing with trust and company service providers (item 2 in Schedule 1) in the Financial Intelligence Centre Act
- Based on activity - therefore includes different professions - financial institutions/legal professionals and accountants - only in respect of clients that fall within the TCSPs activities
- FATF Recommendation 22 - Institutions regarded as designated non-financial businesses and professions (DNFBPs) - includes TCSPs; therefore to be regulated from an anti-money laundering, combating terrorist financing and proliferation financing perspective

PCC 6A - Schedule 1, item 2 (TCSP)

Public Compliance Communication 6A guidance on the definition regarding a trust and company service provider as Item 2 in Schedule 1 of the Financial Intelligence Centre Act - 18 August 2023

- “Person” refers to both natural persons and legal persons
- “Carries on the business of” is not defined in the FIC Act. The ordinary meaning of the term, within the context of the FIC Act is applied
- “Business” is that of a commercial activity or institution, as opposed to a charitable undertaking or government institution. Therefore, persons who are appointed as providing TCSP functions in a personal capacity, as opposed to doing so on a commercial basis as a feature of their business for clients are not required to be registered as a TCSP. A commercial basis includes where a person offers such TCSP activities to be conducted as part of their service offering, regardless of the number of clients that take up this service.
 - Trustee - when trust services activity performed is done as part of a business undertaking; not in personal capacity????? Qualifies if it is done on a commercial basis????
 - Client - entered into a business relationship/single transaction with accountable institution
 - Excluded if providing TCSP activities as employee for employer’s legal structure

Schedule 1, item 2 (TCSP) - Trusts

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)” replaced with:

“... ”

(c) A person who carries on the business of creating a trust (trusts created between parties (*inter vivos*); includes trusts both established locally (i.e. in South Africa) and foreign trusts (i.e. trusts established outside of South Africa)) *arrangement for a client.*

(d) A person who carries on the business of preparing for or carrying out transactions (including as a trustee) related to the investment, safe keeping, control or administering of trust property within the meaning of the Trust Property Control Act, 1988 (Act 57 of 1988).”

The following trusts are excluded from the TCSP definition, as read with Section 1 of the FIC Act:

- Trusts created by a testamentary disposition
- Trusts created by a court order
- Trusts created for person under curatorship
- Trusts created by the trustees of a retirement fund in respect of benefits payable to the beneficiaries of that retirement fund

PCCA 6A Schedule 1, item 2 (TCSP) - Registrations

- Register either as company service provider, trust service provider, or both
- Nothing to do with profession - activity based
- Obligations of registration and other FIC Act requirements applies to accountable institution, not individually to each professional employee - no separate registration
- Dual registration - if performing TCSP functions and registered under other items (Draft PCC 5D)

Risk in the ordinary course of business for a TCSP:

- The client is using multiple companies or trusts which add layers of complexity to the ownership where those layers seem unnecessary e.g. trusts where the beneficiary of a trust is another trust.
- Other professionals are assisting customers to use schemes that can disguise income, assets or ownership of such assets.
- The number of intermediaries or professionals used seems unnecessary, or at the outset, it is apparent that there is no need for a professional TCSP.
- Establishing a business primarily for the purpose of collecting funds from various sources, which are then transferred to local or foreign bank accounts that have no apparent ties to the legal entity.
- The transfer of funds in the form of “forgivable loans” to individuals from trusts and shell companies but the loans make little or no business sense. The loans repayments may be for comparatively small amounts to the amount loaned or for excessively long periods of time (e.g. repayment is over the course of 10 or 15 years.) A forgivable loan is a form of loan in which its entirety or a portion of it can be forgiven or deferred for a period of time by the lender when certain conditions are met.
- Appearance of the same parties in multiple transactions within a short period of each other. Specifically, where it would make no business sense or logically impossible to enter such transactions within a short time.
- The purchase of companies that have no obvious commercial purpose.
- Companies which continuously make substantial losses.

Client risk indicators:

- A company is registered by a non-resident with no links or activities in South Africa or the jurisdiction where the company is established.
- The parties are native to, resident in, or incorporated in a high-risk geographic area.
- The money flow generated by a company is not in line with its underlying business activities.
- The client is unwilling or refuses to provide information including documentary evidence of himself or beneficial owners of trusts or companies.
- The client is involved with transactions for themselves or on behalf of a company that does not match their background.
- The beneficial ownership is veiled in complexity, making it impossible to determine who is the ultimate beneficial owner.
- The client is secretive about the reasons for and the way a company structure is being set up.
- Searches on a client or close associates show adverse media attention, or they have been disqualified from professions due to convictions of dishonesty or association with bribery in relation to contract procurement or tenders.
- Where the client is or appears to be acting on behalf of another person but is unwilling to provide the names of the person they are acting on behalf of.
- The person acting as a director or representative does not appear to be a suitable representative or does not appear to have the expertise that the role requires.
- Clients whose owners or directors that have a lavish lifestyle that appears to exceed known sources of income.
- Frequent changes in ownership, officers, beneficiaries, or trustees.
- Irregularity or limited duration of the client relationship. Once-off engagements for the establishment of complex trust, company or other arrangements involving legal entities without ongoing involvement from the client.
- Where there is a suspicion that the client's directors or the ultimate beneficial owner are designated individuals on a targeted financial sanctions list or a resolution of the United Nations Security Council (UNSC.)
- Where the customer requests that a company or legal entity is registered with a designated person (in terms of a targeted financial sanctions list or UNSC resolution) as the director, trustee or any other beneficial owner of such entity.

You are an independent trustee - then you are in!

- Become a FIC “expert” to identify who are accountable institutions
- Keep a register of accountable institutions trustees deal with (New subsection 11(1)(e))
- Inform accountable institution that trustee is acting in their capacity as trustee (New subsection 10(2)):
- Paperwork!!!!
 - Discipline - Engagement Letter, indemnify!
 - Resolution of board of trustees
 - Confirmation to accountable institution - in writing

Careful FIC can cross-check between what trustees do (as required by law) and what accountable institutions do (as required by law)

Therefore REALTIME! Do not leave to catch up every now and again!
Get a system to collect evidence and track trustee discipline!

You qualify as “accountable institution”, now what?

- Registration with the FIC
- Submitting regulatory reports to the FIC, including cash threshold reports and suspicious and unusual transaction reports
- Implementing a risk-based approach to customer due diligence including customer identification and verification
- Develop, document, maintain and implement a risk management and compliance programme (RMCP)
- Submit Risk and Compliance Return (RCR)
- Obligation to keep certain records
- Evaluation of all clients information to identify designated persons or entities that are listed on the targeted financial sanctions (TFS) list in terms of Section 26A of the FIC Act or the TFS list as published in terms of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 2004
- Determine whether clients are foreign prominent public officials or domestic prominent influential persons
- Implement a compliance function and appoint a person responsible for compliance
- Train employees on how to comply with the FIC Act

FIC Reporting

Reports that can be submitted

Suspicious and unusual transaction report (STR)

- **Section 29**
 - Suspicious and unusual transaction report (STR)
 - Suspicious or unusual activity report (SAR)
 - Terrorist financing activity report (TFAR)
 - Terrorist financing transaction report (TFTR)

Cash threshold report (CTR)

- **Section 28**
 - Cash threshold report (CTR)

Terrorist property report (TPR)

- **Section 28A**
 - Terrorist property report (TPR)
 - Accountable institutions only

Remember to submit your RMCP to FIC
by 12 March 2025!!!



SARS – “SECONDARY” COLLECTOR OF BENEFICIAL OWNERSHIP INFORMATION

SARS Website – 14 February 2023

- In order to comply with the Financial Action Task Force (FATF) requirements, SARS aims to record all beneficial owners of newly registered Trusts. The Trust Registration query on SARS Online Query System has been enhanced to allow for the capturing of the beneficial owner's details.
- Definition of “Beneficial Owner” as extracted from the Tax Administration Act, 2011: (a) of a company, has the meaning assigned to it by section 1 of the Companies Act, 2008 (Act No. 71 of 2008). (c) of a trust, has the meaning assigned to it by section 1 of the Trust Property Control Act, 1988 (Act No.

“Trust Filing Season: Form and System Changes to be Introduced from 23 June 2023”

- Beneficial Ownership Declaration - beneficial owners and those who may gain financially from the proceeds of the trust need to be reported.
- Tax practitioners and trustees must take note that updated “beneficial ownership” information is also to be provided to the Master on an ongoing basis. SARS is one of the approved entities who have access to the Master’s portal, so an administration system that tracks real-time information on all beneficial owners should be employed to not fall foul of a mismatch of information provided.
- Feb vs real-time

15 September 2023 - SARS website - “Enhancements to Trust Beneficial Ownership Information”

- SARS’ aim is to record all beneficial owners of registered Trusts in order to comply with Financial Action Task Force (FATF) requirements.
- Information must be submitted via e-Filing, including:
 - Organogram, illustrative, or schematic diagram depicting effective control of Trust. Where Beneficial Ownership is in the form of other legal arrangements or legal entities, this should be provided in separate attachment.
 - An Excel spreadsheet containing above information; or
 - Such other document(s), which will elaborate on Beneficial Ownership in relation to Trust.
- When capturing the beneficial ownership information, it is mandatory for the current year’s return that at least one document be submitted that relates to beneficial ownership information.
- All minutes, excluding those dealing with internal trustee governance arrangements and/or administrative matters, must be submitted.


SARS requirements for Beneficial Ownership info

Master	SARS
Founders	Founders
Trustees	Trustees
Beneficiaries	Beneficiaries
	Donor
	Protector
	Trust/legal entity Representative - details

SARS requirements for Beneficial Ownership info

BO - Trust registration	BO - Trust tax return from 2023
<p>Indiv/Rep: Initials and surname ID/Passport nr</p> <p>Country of residence</p> <p>Tax type - reg or not Tax jurisdiction Income Tax number Cellphone number Email address Physical address Place of birth</p> <p>Co/trust/other: Registered name Registration number SA taxpayer? SA Tax Reference number</p>	<p>Indiv/Rep: Initials and surname ID/Passport nr Passport country Passport issue date</p> <p>SA taxpayer?</p> <p>Tax jurisdiction SA Tax Reference number Cellphone number Email address Physical address Place of birth</p> <p>Co/trust/other: Registered name Registration number</p> <p>Income Tax Number</p>

Registration of trust as taxpayer – from 14 Feb 2023


Trust Registration
South African Revenue Service

ADD INDIVIDUAL

INDIVIDUAL 1

Ownership Type* <div style="border: 1px solid #ccc; padding: 2px;"> Founder ▲ </div> <div style="border: 1px solid #ccc; padding: 2px; margin-top: 2px;"> Founder Trustee Beneficiary Donor Protector </div>	Name*	Surname*	Place of Birth* South Africa ▼	Country of Residence* South Africa ▼
ID Number*	Tax Type* Income Tax ▼	Income Tax Number*	Tax Jurisdiction* South Africa ▼	
Mobile Number*	Email*			
Unit Number	Complex Name	Street	Suburb/District*	City/Town*
Postal Code*				

Registration of trust as taxpayer – from 14 Feb 2023

ADD ENTITY

ENTITY 1

Beneficial Ownership Type *

Founder

Entity Type *

Company

Registered Name *

Company Registration Number *

Tax Type *

Income Tax

Income Tax Number *

ADD REPRESENTATIVE

REPRESENTATIVE REPRESENTATIVE 1

Name *

Surname *

Place of Birth *

South Africa

Country of Residence *

South Africa

ID Type *

South African ID Number

ID Number *

Tax Type *

Income Tax

Income Tax Number *

Tax Jurisdiction *

South Africa

Mobile Code *

Mobile Number *

Email *

Expanded tax reporting (ITR12T) from 2024 YOA

- Expanded Beneficial Ownership reporting - Reporting of unnamed beneficiaries
 - Comprehensive Guide to the Income Tax Return for Trusts (effective date 16 September 2024)
- d) To complete unnamed beneficiaries, select the "**Other**" option and provide the following information.
 - i) The description as per the Trust instrument of the unnamed beneficiaries
 - ii) A short description of what is meant with or detail of this category of beneficial owners
- Pre-populated Beneficial Ownership data - 2023 tax return - pre-populated in 2024 tax return
 - Capturer to verify the accuracy of pre-populated data

Representative Taxpayer

Does the Trust confirm that the person appointed as a trustee has not been disqualified i.t.o. s6 of the Trust Property Control Act? Y N



Please note that where the trustee has been disqualified in terms of s6 of the Trust Property Control Act, you are required to update the details of the trustee using the "Registration, Amendment and Verification (RAV01) form on eFiling."

Was this reported to
Master + BO Register
updated?

Section 246 of Tax Administration Act - Public Officer

2. Section 6 of the Trust Property Control Act, 1988, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) A person is disqualified from being authorized as a trustee if the person—

- (a) is an unrehabilitated insolvent;
- (b) has been prohibited by a court to be a director of a company, or declared by a court to be delinquent in terms of section 162 of the Companies Act, 2008 (Act No. 71 of 2008), or section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984);
- (c) is prohibited in terms of any law to be a director of a company;
- (d) has been removed from an office of trust, on the grounds of misconduct involving dishonesty;
- (e) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount in terms of section 69 of the Companies Act, 2008, for theft, fraud, forgery, perjury or an offence—
 - (i) involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
 - (ii) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69(2) or (5) of the Companies Act, 2008; or
 - (iii) under this Act, the Companies Act, 2008, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, 1998 (Act No. 89 of 1998), the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012 (Act No. 19 of 2012), Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011);
- (f) is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution; or
- (g) is an unemancipated minor, or is under a similar legal disability.

(1B) A disqualification in terms of subsection (1A)(d) or (e) ends at the later of

Section 246 of Tax Administration Act - Public Officer

- (a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or
- (b) one or more extensions, as determined by a court from time to time, on application by the Master in terms of subsection (1C).

(1C) A disqualification in terms of subsection (1A)(f) ends when the Security Council of the United Nations takes a decision to no longer apply that resolution to a person contemplated in that subsection.

(1D) At any time before the expiry of a person's disqualification in terms of subsection (1A)(d) or (e)—

- (a) the Master may apply to a court for an extension contemplated in subsection (1B)(b); and
- (b) the court may extend the disqualification for no more than five years at a time, if the court is satisfied that an extension is necessary to protect the public, having regard to the conduct of the disqualified person up to the time of the application.

(1E) A court may exempt a person from the application of any provision of subsection (1A)(a), (c), (d) or (e).

(1F) The Registrar of the Court must, upon—

- (a) the issue of a sequestration order;
 - (b) the issue of an order for the removal of a person from any office of trust on the grounds of misconduct involving dishonesty; or
 - (c) a conviction for an offence referred to in subsection (1A)(e),
- send a copy of the relevant order or particulars of the conviction, as the case may be, to the Master.

(1G) The Master must notify each trust which has as a trustee to whom the order or conviction relates, of the order or conviction.

(1H) (a) The Master must establish and maintain in the prescribed manner a public register of persons who are disqualified from serving as a trustee, in terms of an order of a court pursuant to this Act or any other law.

(b) The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).”.

Expanded tax reporting (ITR12T) from 2023 YOA - 20 June 2023

Beneficial Ownership

Trust Type

Trust Type Inter-vivos Trust Testamentary Trust Foreign Trust (Non-Residential Trust) Special Trust Type A – Inter-vivos Special Trust Type A – Testamentary Special Trust Type B – Testamentary

Beneficial Owner Details

Specify the number of Beneficial Owners

Entity Type

Entity Type Individual Company Trust Other

Particulars - Individual

Beneficial Owner Category Founder Trustee Beneficiary Donor Protector

Initials Surname Date of Birth ID No.

Is the individual registered for tax in South Africa? Y N

Taxpayer Ref No.*

Passport No.

Passport Country

Passport Issue Date

CCYY/MM/DD

Place of Birth

Email

Cell No.

Physical Address

Unit No. Complex (if applicable)

Street No. Street / Farm Name

Suburb / District

City / Town

Country Code (e.g. South Africa = ZA)

Tax Jurisdiction

Postal Code

Expanded tax reporting (ITR12T) from 2023 YOA - 20 June 2023

Particulars – Company (CIPC registered) / Trust / Other ^ + -

Beneficial Owner Category Founder Trustee Beneficiary Donor Protector

Registered Name

Trading Name

Company / CC / Trust Reg No. Taxpayer Ref No.*

Physical Address ^

Unit No. Complex (if applicable)

Street No. Street / Farm Name

Suburb / District

City / Town

Country Code (e.g. South Africa = ZA) Tax Jurisdiction Postal Code

Trust / Legal Entity Representative details ^ + -

Initials Surname Date of Birth ID No.

Is the individual registered for tax in South Africa? Y N Taxpayer Ref No.*

Passport No. Passport Issue Date

Email Cell No.

Physical Address ^

Unit No. Complex (if applicable)

Street No. Street / Farm Name

Suburb / District

City / Town

Country Code (e.g. South Africa = ZA) Tax Jurisdiction Postal Code Place of Birth

SARS_2022_LookFeel_ITR12T_v2023-06-15 - Prototype

ITR12T – DECLARATION

- ✧ The representative taxpayer obliged to ensure that complete and accurate disclosure is made of all relevant information required on the Income Tax Return for Trusts.
- ✧ **Misrepresentation, neglect, or omission to furnish such information or furnishing false information may result in penalties and/or additional tax assessments (together with interest) and/or prosecution.**

After completion of the return, read the declaration on the front page of the return. I declare that:

- ✧ I am the duly appointed Representative of the Trust
- ✧ **The information furnished in this return is to the best of my knowledge both true and correct**
- ✧ I have disclosed the gross amounts of all income received and / or accrued to this Trust during the period covered by this return
- ✧ I have the necessary financial records and supporting schedules to support all declarations on this return which I will retain for audit purposes

Thank you!

For a free demo of our platform -
<https://lnkd.in/e4jvz2F3>

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DEMISTIFYING
TRUSTS
IN SOUTH AFRICA



TRUSTS IN PRACTICE
A REFERENCE GUIDE

- ARE TRUSTS STILL RELEVANT?
- MYTHS ABOUT TRUSTS
- TRUSTS AS PART OF YOUR ESTATE PLAN
- STRUCTURING A TRUST
- REQUIREMENTS FOR A VALID TRUST
- HOW TO GET ASSETS INTO A TRUST
- ROLE OF THE FOUNDER
- TRUSTEES' DUTIES
- BENEFICIARIES' RIGHTS
- TRUST ADMINISTRATION
- DIVORCE AND TRUSTS
- TAXATION

SECOND EDITION

PHIA VAN DER SPUY