

INCREASED FOCUS ON COMPLIANCE – FRIEND OR FOE?

FISA ANNUAL CONFERENCE
10 SEPTEMBER 2025

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CONTENTS

Technological advances last 20 years

Increased regulation & compliance: challenge or opportunity?

Risk and opportunities

Depletion of wealth over generations

Trusts and challenges

South Africa: AML/CFT

TPCA: Beneficial ownership register

TPCA: Definition of beneficial owner

Comparison with other jurisdictions

How does this tie in with the topic today?

Real life examples

Other challenges & opportunities

Sometimes no opportunities

Conclusion

Technological advances last 20 years

- Smartphones
- Flash drives
- Skype
- Google maps
- YouTube
- Social media
- Amazon Kindle
- Chat GPT
- Streaming services
- Wearable technology
- Driverless cars
- 3D printing
- Multi-use rockets



Increased regulation & compliance: challenge or opportunity?

CHALLENGES

- Learning
- Training
- Additional staff
- Changes to systems
- Increased cost

OPPORTUNITIES

- More data and data keeping = information
- Building trust
- Potential for new business

Risk and opportunities

Philipp Schlumpp:

- risk and opportunity go hand in hand
- aim is to identify risks and mitigate as far as possible

Why do we find it easier to identify risks than opportunities?

Practical example: hike

Goal: to reach end point safely

Threats and mitigation:

- weather changes (high likelihood) - monitor weather forecasts, prepare for sudden changes
- running out of food (medium likelihood) – plan properly and research potential points for re-supply
- getting lost (low likelihood) - keep phones fully charged and/or carry GPS device

Direct opportunity:

- find shorter route = reduced time

Indirect opportunities:

- improved fitness, mental well-being
- increased environmental awareness
- building resilience
- improved social interactions

Depletion of wealth over generations

WEALTH DOES
NOT LAST
BEYOND THREE
GENERATIONS

SHIRTSLEEVES
TO SHIRTSLEEVES
IN THREE
GENERATIONS

The Williams Group - 20-year study involved over 3,200 families:

- 70% of affluent families unable to maintain wealth past the second generation
- 90% unable to maintain wealth by the third generation

Why is wealth depleted?

- Lack of financial literacy
- Poor/no estate planning
- Lack of communication and purpose
- Control

Strategies to preserve wealth across generations

- Prioritise financial education
- Leverage estate planning
- Protect against family dilution



Trusts and challenges

“Trusts are often used to disguise true identities of the parties behind it”

World Bank study:

- 70% of selection of large corruption cases involved complex ownership structures designed to conceal identity of individuals
- 15% involved trusts

International trend – structure involving trust is high risk due to potential risk for money laundering and finance of terrorism

Mauritius – Financial Intelligence Unit: Common structures that are used to conceal beneficial owners:

- Trusts
- Shell companies
- Shelf companies
- Bearer shares
- Nominees



South Africa: AML/CFT

2021: FATF identified strategic deficiencies in AML/CFT regime

One deficiency = timely access to beneficial ownership info for companies and trusts

22 item action plan – including amendments to Trust Property Control Act 57/1988 (“TPCA”) to address shortcomings in beneficial ownership transparency for trusts

Changes effective 1 April 2023



TPCA: Beneficial ownership register

Sec 11A(1): trustee must establish, maintain and lodge **beneficial ownership register** of each trust on the ICMS portal maintained by the Master.

11A Beneficial ownership

- (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.*
- (4) The prescribed requirements referred to in this section 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 38 of 2001).*

TPCA: Definition of beneficial owner

Section 1: beneficial owner', *in respect of the provisions of a trust instrument, means-*

- (a) *a natural person who directly or indirectly ultimately owns the relevant trust property;*
- (b) *a natural person who exercises effective control of the administration of the trust arrangements that are established pursuant to a trust instrument;*
- (c) *(i) each founder of the trust; or*
(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;
- (d) *(i) each trustee of the trust; or*
(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;

and

- (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;

Comparison with other jurisdictions

Mauritius

Beneficial ownership legislation introduced 2017

Companies Act: share register of a company must include name and address of beneficial owner where shares are held by nominee.

2020 definition amended further.

Where a trust is part of the structure, and holds $\geq 20\%$ shares, identify:

- (a) Settlers
- (b) Trustees
- (c) Beneficiaries
- (d) Protectors
- (e) Anyone who controls by other means



Comparison with other jurisdictions (continued)

BVI

BO legislation in 2017

FATF recommendations Feb 2024 - significant changes in 2025.

Where trust is part of structure, beneficial owners are:

- (a) Settlers
 - (b) Trustees
 - (c) Person, characteristic or class of persons with vested interest in trust
 - (d) Protectors
- and
- (e) any other natural person exercising ultimate effective control over the trust

Natural person exercising control over the trust may include where that person has powers to:

- a. dispose of, advance, lend, invest, pay or apply trust property;
- b. vary or terminate trust;
- c. add or remove person as beneficiary to or from class of beneficiaries;
- d. appoint or remove trustee or give another person control over trust; or
- e. direct, withhold consent or overrule exercise of a power referred to in (a) – (d) above.

Corporate trustee licensed in BVI - only trustee is recorded as BO on register, but trustee still obliged to identify and verify other parties

Note all legislation relate to companies and requirement to identify beneficial owners. No reference to beneficial ownership in Trusts Act

How does this tie in with the topic today?

Question: Do you know the next generation of named beneficiaries?

Do you know who are members of the classes of beneficiaries?

Typical trust deed:

- Mr X, Mrs Y, descendants/children and grandchildren
- Mr X main point of contact

Question: What happens if Mr X dies or becomes incapable of engaging with trustee?

What happens if next generation wants to be more involved?

Offshore trusts: letter of wishes very important

Mauritius Trusts Act 2001 provides for letter of wishes with regard to exercise of any functions conferred on trustees by terms of the trust – can be given by settlor, beneficiary, member of class of persons

Real life examples

Family T:

- Family: client, wife, daughter UK, daughter SA
- Trust with Jersey proper law and BVI trustee
- Settlor: client
- Protector: client
- Beneficiary: UK daughter and children
- Letter of wishes: when client no longer capable/deceased, wife, SA daughter and her children should be added as beneficiaries and son in law (UK) appointed as protector
- Client is only contact and very involved with recommendations on investments
- Protector's consent required for any distribution over certain threshold

Challenges

- Client diagnosed with Alzheimer's
- Family relationships not great
- Wife and UK daughter do not want SA daughter and children to be added
- Can son in law be objective?
- Wife wants to rule

Opportunities

- More info on SA daughter and children = better idea of their needs
- Strong relationship with UK daughter and her husband
- Engaged Jersey trust lawyer for advice to ensure we act within requirements of the law
- Independent protector appointed

Real life examples (continued)

Family L:

- Family: Client, wife, 3 major children
- Trust with BVI proper law and Swiss trustee
- Settlor: Client
- Beneficiaries: Client, wife and 3 children
- Client only contact and very involved with investments

Challenges

- Client elderly, declining health
- Children want to be more involved – 2 in SA, 1 in Australia
- Children do not always agree
- Son and daughter in SA strong investment background
- Aus son in law strong investment background
- Children have different needs and investment goals

Opportunities

- 2 new trusts – 1 for SA son and family, 1 for SA daughter and family
- Pour over of portion of assets
- Aus daughter took her share due to negative tax consequences

Real life examples (continued)

Family VW:

- Family: client, wife, 2 major children
- Trust with BVI proper law and Swiss trustee
- Settlor: client
- Beneficiaries: client, wife and children
- Client only contact and very involved with investments

Challenges

- Lack of family involvement

Opportunities

- Started involving son more, he attends meetings
- Letter of wishes
- Son has business in SA and started online venture by registering company in US
- He needs tax efficient structure



Other challenges & opportunities



Beneficiaries across the globe – opportunity for efficient and holistic planning

Number of South Africans leaving the country - sources:

- Stats SA
- UN International Migrant Stock database
- National Statistics offices of foreign countries

Stats SA: number of South Africans living abroad in 2021 = > 2 million

Top countries:

1	United Kingdom	217,180 (2021)
2	Australia	206,730 (2022)
3	United States of America	139,332 (2022)
4	New Zealand	71,382 (2018)
5	Canada	51,590 (2021)
6	Netherlands	41,300 (2023)
7	Ireland	15,886 (2022)
8	Portugal	10,630 (2021)

Other challenges & opportunities (continued)

Challenges

- Trust concept not so prevalent in civil law countries
- Doctrine of numerus clausus - principle of separated protected fund owned by a trustee which is segregated from the rest of an estate owner's patrimony not recognised
- Hague Convention on Recognition of Trusts 1985

Ratifying - relevant country has no obligation to carry concept of trusts into domestic legislation, but it must in principle recognise existence and validity of trusts governed by foreign law as a matter of private international law as long as designated law is not inconsistent with mandatory rules of law applicable in that country.

Countries with SA emigrants:

- Ratified: UK, Australia, Netherlands, Ireland
- Partially ratified: Canada
- Not ratified: US, NZ, Portugal

Other challenges & opportunities (continued)

- Restructuring
- Setting up separate trusts
- Reconsider nature of assets in trust
- Advice on will



Sometimes no opportunities

Family B

- Family: client and 3 major children
- Trust with Jersey proper law and BVI trustee
- Settlor: client
- Beneficiaries: client and children
- Client only contact

Challenges

- Client died
- Children's needs are very different
- Trust value – no longer cost effective



Conclusion



No pain, no gain

With big risks come big rewards

Wie nie waag nie, wen nie

In the middle of difficulty lies opportunity

Every challenge is an opportunity to grow

Every wall is a door

The more that you read, the more things you will know. The more that you learn, the more places you'll go

An aerial view of a city with a river, overlaid with numerous yellow speech bubbles containing three dots. A bright sun flare is visible in the upper center, casting light across the scene. The top of the image features a blurred background of modern glass skyscrapers.

THANK YOU