FIDUCIARY INSTITUTE OF SOUTHERN AFRICA (FISA)

FORMAL SUBMISSION

Regulation of Trusts Bill, 2026

11 September 2026

The Department of Justice and Constitutional Development
Attention: Ms V Letswalo
Private Bag X81
Pretoria
0001

By email: VLetswalo@justice.gov.za

RE: COMMENTS ON THE REGULATION OF TRUSTS BILL, 2026

The Fiduciary Institute of Southern Africa (FISA) welcomes the opportunity to comment on the Regulation of Trusts Bill, 2026. FISA supports the modernization of South Africa's trust-law framework and the objectives of strengthening trust governance, beneficiary protection, transparency and effective anti-money laundering and counter-terrorist-financing supervision.

The Bill is, however, a substantial departure from the present Trust Property Control Act 57 of 1988. It introduces a considerably more intensive system of continuous statutory compliance and expands the supervisory, investigative and enforcement functions of the Master. In FISA's view, the success of the proposed framework will depend not only on the policy objectives of the Bill, but on legal certainty, proportionality, administrative workability, adequate digital infrastructure and effective procedural safeguards.

FISA's detailed Section-by-Section comments accompany this submission. The matters below are highlighted as the issues which, in our view, warrant consideration before the Bill is finalized.

1. Legal consequences should not depend indefinitely on administrative processing

Sections 6, 25 and 28 are of particular concern. The Bill makes the exercise of powers arising from an amended trust instrument, the effectiveness of a trustee's resignation and the termination of a trust dependent on action or acknowledgement by the Master. This converts administrative delay into substantive legal risk. A compliant electronic lodgement should generate immediate proof of receipt and, where an acknowledgement is required, the legislation should provide a short statutory processing period followed by deemed acknowledgement or an equivalent mechanism. Official delay should not invalidate otherwise lawful conduct, involuntarily prolong fiduciary office or prevent closure of an otherwise terminated trust.

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2. The regulatory framework should be proportionate to the nature and risk of the trust

The Bill applies extensive recurring obligations to a very diverse trust population. FISA supports a risk-based approach where the Bill itself contemplates it, particularly in relation to AML/CFT risk assessment and proportionate financial reporting. However, core record-keeping duties should apply consistently to all trusts. Annual-return obligations should retain a common core, with only limited simplified or nil filing for inactive or objectively low-risk trusts, and should be administratively streamlined through digital pre-population, interoperability and bulk-filing capability.

3. Beneficial ownership reporting must be practically achievable

FISA supports accurate and current beneficial-ownership information. The proposed 10-day period in Section 23 is, however, too short, particularly where trustees depend on beneficiaries, juristic persons or other third parties for information. The period should run from when trustees became aware, or reasonably ought to have become aware, of a material change and should be expressed in business days. FISA recommends at least 20 business days, together with a reasonable-steps defense, a correction mechanism and greater interoperability between the Master, SARS, FIC and other public repositories so that the same information need not repeatedly be captured. FISA further recommends a clear beneficiary definition that permits an open discretionary class to be identified by its objective description until an individual member becomes reasonably identifiable for section 23 purposes.

4. Annual financial statements require proportionality; annual returns require a digital and staggered approach

Sections 20 and 21 will create major new recurring compliance obligations. The applicable accounting framework, thresholds, prescribed information, filing format and fees should be available for consultation before the obligations commence. The legislation should also state when annual financial statements are due. FISA recommends a default period of six months after the financial year-end, unless the trust instrument, another law or a prescribed extension provides otherwise, and the Master should not be able to demand statements before that preparation period has expired. Low-risk, inactive and low-activity trusts should qualify for proportionate or simplified financial reporting. The reference in the Draft Bill to "aggregate inflows and outflows of trust property" should be clarified or replaced with objectively measurable concepts such as the value and volume of receipts and payments. Annual returns should be digital, pre-populated where possible, interoperable with existing government information and capable of bulk filing by professional administrators. To avoid a concentrated annual filing surge, the filing cycle for both existing and new trusts should be staggered by reference to the trust's registration anniversary or another equivalent prescribed staggered cycle.

5. Criminal and administrative sanctions should distinguish misconduct from technical non-compliance

FISA is concerned about the breadth of Sections 33 to 35. Routine administrative failures may lead to personal administrative fines and, in several instances, criminal exposure of up to five years' imprisonment, with some

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offences attracting fines of up to R10 million. Serious sanctions are appropriate for deliberate dishonesty, obstruction and material misconduct. Technical, interpretive, third-party or system-related failures should ordinarily first be dealt with through remediation and compliance notices. Criminal liability should contain an appropriate fault and materiality requirement, together with reasonable steps and official-system-failure protections. Several subsections under section 35 do not contain a maximum fine amount, which should be indicated.

6. Effective judicial oversight should be expressly preserved

The Bill materially expands the powers of the Master. FISA recognizes that the Promotion of Administrative Justice Act, 2000 already provides the general statutory framework for judicial review of administrative action. The Bill should nevertheless avoid any wording that could be read as ousting or unduly restricting PAJA or constitutional review, particularly where an internal administrative decision is described as final. The final text should make clear that internal remedies remain subject to applicable judicial review principles.

7. The Master's Office must be operationally capable of administering the new regime

The Bill should be assessed against the cumulative administrative workload it creates. The Master's Offices would be required to absorb new recurring annual returns and financial reporting while continuing to process trust amendments, trustee authorizations, security, investigations, resignations, terminations, information-access requests, compliance notices and administrative fines. FISA notes that section 6(4) does not require beneficial-ownership information to be resubmitted with every amendment where the section 23 register is already current; the concern is therefore the cumulative volume of distinct compliance and supervisory functions rather than duplicate BO filing under section 6. These functions will operate alongside the Master's existing statutory responsibilities. FISA accordingly recommends that commencement of major recurring obligations be preceded by an implementation and capacity assessment covering staffing, expected transaction volumes, funding, ICT infrastructure, cybersecurity, business continuity, service standards and escalation mechanisms. The legislation should provide immediate electronic filing receipts, published turnaround standards, deemed outcomes where appropriate and a safe harbor where non-compliance results from official system failure or administrative delay.

8. The Bill should preserve appropriate private-law autonomy

FISA accepts that trusts may properly be subjected to mandatory statutory safeguards. The regulatory framework should nevertheless preserve an appropriate balance between public supervision and the lawful governance arrangements embodied in trust instruments. State intervention that alters the founder's chosen governance structure, prevents agreed amendments from operating, prolongs trusteeship, dictates investment approaches, and restricts the administration of trust property should be clearly justified, objectively bounded and accompanied by procedural safeguards.

FISA does not suggest that freedom of contract is an absolute constitutional right. Rather, contractual and private-law autonomy should be considered together with the constitutional requirements of legality,

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rationality and proportionality and the protections afforded to privacy, property, occupational freedom, just administrative action and access to courts.

9. Privacy and access to trust information require stronger safeguards

The beneficial-ownership and trust-information regime may involve identity numbers, addresses, family relationships and information concerning minors and vulnerable beneficiaries. The categories of persons entitled to access this information should therefore be appropriately bounded in primary legislation. The framework should incorporate data minimization, purpose limitation, authentication, access logging, correction rights, onward-disclosure controls and enhanced protection for sensitive information.

10. The Trust Bill should be harmonized with the Legal Practice Amendment Bill, 2026

The two Bills were published in the same legislative process and affect overlapping parts of the fiduciary-services ecosystem. FISA supports appropriate reservation of genuinely legal work, but the legislation should clearly distinguish reserved legal services from lawful trust administration, estate administration (including deceased estates, Road Accident Fund and Medical Negligence trusts), will drafting, accounting, tax, governance and compliance services performed by non-legal fiduciary practitioners.

In particular, the proposed restriction on advertising work 'in connection with' deceased-estate administration should not prevent a person from advertising or performing a fiduciary service that another law permits that person to perform. FISA notes that the specific reserved-work list does not include trust deeds; the submission should therefore focus on ensuring that lawful trust administration and other non-reserved fiduciary services are not indirectly restricted by broader advertising or "in connection with" wording.

11. Accountable-institution record keeping requires legislative clarification

The current Trust Property Control Act requires trustees to record prescribed details relating to accountable institutions used as agents and from which services are obtained. The wording of section 11(1)(e) is capable of a cumulative reading because it uses "and", while regulation 3B separately addresses agent functions, services, single transactions and business relationships. The replacement Bill should remove this interpretive uncertainty. FISA recommends that clause 17 expressly list these circumstances as alternative triggers, using "or", and that regulations define or illustrate the intended meaning of "agent" and "services". This will provide a clear statutory perimeter and avoid uncertainty where a trustee transacts with an accountable institution outside a conventional agency or service-provider relationship.

12. Transitional implementation should be phased

The final Act should not create an immediate compliance cliff for existing trusts or a simultaneous filing surge for the Master's Offices. FISA recommends phased commencement linked to the availability of final regulations, forms and functioning digital systems. Existing trusts should receive a meaningful remediation period, with at least 12 months for core implementation and longer where new recurring reporting systems or

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historic information remediation are required. Valid historic acts, existing authority and pending applications should be expressly protected.

General

"Days" should be defined to clarify whether they refer to business or calendar days.

Conclusion

FISA supports the objective of establishing a modern, credible and transparent regulatory framework for trusts. In our view, the Bill can achieve those objectives more effectively if the final legislation is designed around practical compliance, proportionate supervision, digital interoperability, clear fault-based enforcement and administrative systems capable of delivering the legal consequences assigned to them.

We respectfully request that the Department consider the detailed comments and proposed amendments accompanying this submission. Given the breadth and practical significance of the proposed reforms, FISA further requests a consultation meeting with the Department after the submission date to discuss our proposals in person, clarify the principal technical concerns and assist with workable drafting and implementation solutions. FISA would also welcome continued engagement with the Department and other fiduciary-sector stakeholders on the regulations, implementation framework and operational design before commencement.

Yours faithfully

Dirk Coetzee

Chairperson – Trust Technical Committee

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Annexure A — Documents accompanying this submission

- Detailed Section-by-Section FISA comments on the Regulation of Trusts Bill, 2026.
- Consolidated proposed amendments and drafting recommendations.
- Cross-cutting analysis addressing constitutional safeguards, Master's Office implementation capacity and the interaction with the Legal Practice Amendment Bill, 2026.

Note: The detailed master commentary remains the controlling technical document. This covering submission is intended to identify FISA's principal concerns and recommendations at executive level.

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