REPUBLIC OF SOUTH AFRICA

REGULATION OF TRUSTS BILL, 2026

FISA PROPOSED REDRAFT

Alternative legislative text incorporating FISA technical, constitutional and implementation recommendations

Status: Working alternative Bill prepared for consultation. It preserves the architecture of the Department's 2026 Draft Bill while proposing replacement wording where FISA's consolidated review identified legal, practical, constitutional or implementation concerns. It is not represented as Government text.

Drafting approach: The redraft favours risk-based regulation, digital-first administration, proof-of-lodgement and deemed administrative outcomes, proportional enforcement, express procedural fairness and judicial oversight. Matters requiring detailed technical specification remain for regulation, but substantive duties and sanctions are retained in primary legislation.

BILL

To provide for the application of the Act; the creation and administration of trusts; the jurisdiction of the Master; authorisation of trustees; disqualification to act as trustee; powers and duties of trustees; risk-based financial and beneficial-ownership reporting; resignation and removal of trustees; variation and termination of trusts; compliance notices and proportionate administrative fines; offences and penalties; judicial review; implementation and service standards; repeal the Trust Property Control Act, 1988 (Act No. 57 of 1988); and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts as follows:-

ARRANGEMENT OF SECTIONS

CHAPTER 1

DEFINITIONS AND APPLICATION

Definitions

1. In this Act, unless the context indicates otherwise-

"accountable institution" means an accountable institution as defined in the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

"Administration of Estates Act" means the Administration of Estates Act, 1965 (Act No. 66 of 1965);

"AML/CFT" means **Anti-Money Laundering** and **Combating the Financing of Terrorism**.

"beneficial owner" in respect of a trust, means a natural person who is required to be identified for transparency purposes because that person is a founder, trustee, effective controller or beneficiary as contemplated in section 23, but no person is regarded as the owner of trust property merely by reason of being a founder or beneficiary;

"beneficiary" means a person, trust, organisation or legal entity who may be benefited or has been benefited by the trustees, or has a vested right to benefits under a trust; in relation to an open discretionary class, the class may be identified by its objective description until an individual member becomes reasonably identifiable for purposes of section 23;

"business day" means any day other than a Saturday, Sunday or public holiday;

"Chief Master" means the Chief Master appointed in terms of section 2 of the Administration of Estates Act;

"court" means the High Court and, in relation to an offence under this Act, includes a Magistrates' Court having jurisdiction;

"document" means any record of information in physical or electronic form;

"Electronic Communications and Transactions Act" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"Financial Intelligence Centre Act" means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

"founder" means a person who, with the intention of creating a trust, makes over or bequeaths property to a trustee or places property under the control of a trustee for administration in accordance with a trust instrument, and includes a donor or settlor who performs that founding act, but does not include a person solely because that person subsequently contributes property to an existing trust;

"independent trustee" means a trustee who is not related to the founder or other trustees, has no material personal interest in the trust property inconsistent with independent judgment, and is able to exercise objective oversight of the administration of the trust;

"juristic person" means an entity with separate legal personality and does not include a natural person, trust or partnership;

"Master" means the Master as defined in the Administration of Estates Act;

"Minister" means the Cabinet member responsible for the administration of justice;

"prescribed" means prescribed by regulation under section 32;

"trust" means an arrangement under a trust instrument by which property is made over, bequeathed or placed under the control of a trustee to be administered or disposed of for a beneficiary, class of beneficiaries or lawful object, but excludes property administered by a lawfully appointed executor, tutor, curator or administrator;

“trust instrument” means a written arrangement, court order or valid will according to which a trust is created, and includes a lawful written amendment thereof;

“trust property” means property administered or disposed of by a trustee according to a trust instrument;

“trustee” means a natural or juristic person appointed to office as trustee and authorised by the Master in terms of this Act;

“will” means a will as defined in the Wills Act, 1953 (Act No. 7 of 1953) or its successor.

Related persons

2. (1) For purposes of this Act, natural persons are related if they are married or live together in a relationship similar to marriage, or are separated by not more than two degrees of natural or adopted consanguinity or affinity.

(2) Where a provision applies to a juristic person, the prescribed criteria may identify natural persons who exercise effective control of that juristic person for purposes of determining independence, provided that those criteria are consistent with the purpose of the provision concerned.

Application of Act

3. (1) A court may create or approve a trust to protect damages awarded to a child or a person unable to manage the funds if the court, after considering a report by an appropriately appointed representative where required, is satisfied that a trust is an appropriate protective mechanism, the proposed instrument adequately protects the person, and trustee remuneration and governance are reasonable.

(2) Nothing in subsection (1) limits a court's power to select another lawful protective mechanism under the Administration of Estates Act, the Mental Health Care Act, 2002, or any other law.

(3) A trust may not be created to administer property received by a community from the State where another Act expressly requires that property to be administered through a different statutory vehicle.

(4) A trust validly created before commencement for a purpose contemplated in subsection (3) continues subject to section 38.

CHAPTER 2

CREATION OF TRUST

Requirements for creating trust

4. (1) Subject to the common law, a trust is created when a founder clearly and with reasonable certainty-

(a) indicates in a trust instrument an intention to create a trust;

(b) identifies the trust property or provides an objectively ascertainable mechanism for identifying it;

(c) identifies the beneficiaries, a class of beneficiaries or the lawful object of the trust; and

(d) appoints a trustee or provides a mechanism for appointment of a trustee.

(2) The object of a trust must be lawful.

(3) A sole trustee may not be the sole beneficiary of the trust.

(4) If a requirement in subsection (1) or (2) was not satisfied when the trust was purportedly created, a court may declare the trust invalid from inception and make any order that is just and equitable.

(5) Where a trust was validly created and a requirement later ceases to be satisfied, the trust does not thereby become invalid. A court must, where reasonably possible, allow rectification and may regulate administration pending rectification.

(6) In exercising powers under subsections (4) and (5), a court must have regard to beneficiary interests, accrued rights, creditors, tax consequences and the rights of bona fide third parties, and may preserve acts performed in good faith unless fraud or abuse requires otherwise.

(7) In the case of a trust created by court order, the order constitutes the trust instrument and fulfils the functions of the founder for purposes of subsection (1).

CHAPTER 3

ADMINISTRATION OF TRUST

Jurisdiction of Master

5. (1) Jurisdiction lies with-

(a) for a testamentary trust, the Master in whose office the deceased estate is registered;

(b) for a trust created by court order, the Master having jurisdiction where the trust is principally administered, unless the court directs otherwise; or

(c) in any other case, the Master for the area in which the principal place of administration of the trust in the Republic is situated.

(2) If there is no principal place of administration in the Republic, jurisdiction lies with the Master for the area in which the greater portion of South African trust property is situated.

(3) A Master who has assumed jurisdiction retains it until jurisdiction is formally transferred by agreement between the Masters concerned or by court order.

(4) An act performed in good faith by a Master or trustee is not invalid solely because another Master should have exercised jurisdiction.

(5) A transfer of jurisdiction does not invalidate an existing trustee authorisation; the receiving Master must record the transfer and issue updated administrative records without interrupting trusteeship.

Lodgement of trust instrument and amendments

6. (1) A person appointed as trustee must lodge the trust instrument or electronic copy thereof with the Master in the prescribed manner and pay any prescribed fee.

(2) No person may assume control of trust property or exercise powers as trustee before being authorised in writing under section 8, except to the extent expressly permitted by law to preserve property pending authorisation.

(3) A trustee must lodge a lawful amendment to a trust instrument within 20 business days after it takes effect, together with prescribed information and any prescribed fee.

(4) Lodgement under subsection (3) is a regulatory filing requirement and does not determine the private-law validity or effective date of an amendment, unless another law or the trust instrument expressly provides otherwise.

(5) The Master must issue an electronic or written receipt immediately upon lodgement. If the Master considers the filing materially incomplete, the Master must issue a deficiency notice within 10 business days, failing which the filing is deemed acknowledged.

(6) No act is invalid, and no trustee incurs personal, administrative or criminal liability, solely because the Master has not processed or acknowledged a compliant filing within the period contemplated in subsection (5).

(7) A trustee may not rely on this section to exercise a power that is unlawful, was not validly conferred by the trust instrument, or is prohibited by a court order.

Notification of address and contact details

7. (1) A trustee must furnish the Master with a physical address in the Republic for service and prescribed electronic contact details when first authorised.

(2) A trustee must notify the Master of a material change within 20 business days after becoming aware, or reasonably being expected to have become aware, of that change.

(3) Existing trustees must comply within 12 months after the commencement of this section, subject to any phased or bulk-filing arrangements prescribed.

(4) The Master must provide an electronic mechanism for notification and immediate proof of receipt.

Authorisation of trustee and provision of security
8. (1) A person appointed as trustee may act only if authorised in writing by the Master.

(2) The Master may require security only to the extent reasonably necessary to protect trust property or beneficiaries, having regard to prescribed risk-based criteria including the nature and value of assets, liquidity, trustee profile, governance safeguards and the cost of security relative to the trust.

(3) A court or trust instrument may exempt a trustee from security, but the Master may, for stated sound reasons and after fair procedure, require, vary or dispense with security where necessary to protect the trust.

(4) Before increasing or imposing security contrary to an existing exemption, the Master must give written reasons and at least 20 business days for representations, unless urgent interim protection is objectively required.

(5) Pending security, the Master may authorise specified preservation or administrative acts.

(6) Where a juristic person is trustee, authority must be issued in the name of the juristic person and record one or more natural persons authorised to represent it. A change of representative takes effect on compliant notification and does not terminate or suspend the juristic person's trusteeship.

(7) The Master must determine a complete application for authorisation within 20 business days. Where the period expires without a decision, the applicant is entitled to an expedited escalation procedure by the Head of office of the applicable Master’s office. No deemed authority arises unless prescribed safeguards by way of regulation or directive are satisfied.

Disqualification to act as trustee
9. (1) A person is disqualified if that person is an unrehabilitated insolvent; is prohibited by law or court order from holding a comparable fiduciary office; has been removed from an office of trust for dishonesty; is subject to applicable United Nations financial sanctions; is an unemancipated child or under equivalent legal disability; or has a final conviction for an offence involving fraud, theft, dishonesty, money laundering, terrorist financing, proliferation financing or comparable serious fiduciary misconduct.

(2) A technical or administrative contravention of this Act does not by itself result in disqualification unless it is material, repeated after notice and remediation opportunity, and a court or the Master, acting under a power expressly conferred by this Act, determines that disqualification is necessary and proportionate.

(3) A disqualification based on removal or conviction ends five years after removal or completion of sentence unless a court, on evidence and after fair procedure, extends it for a period not exceeding five years at a time.

(4) A court may on good cause exempt a person from a disqualification where this will not materially prejudice administration or beneficiaries.

(5) The Chief Master must maintain a public register of disqualified persons. No person may be entered without prior notice and a reasonable opportunity to show that the disqualification does not apply or has ended, except where the entry directly records a final court order.

(6) The Chief Master must provide an expedited correction mechanism and remove expired or erroneous entries without delay.

Appointment of trustee, co-trustee or independent trustee by Master

10. (1) Where a vacancy reduces trustees below the number required by the instrument and the instrument contains no effective mechanism to fill it, the Master may appoint a trustee after consulting remaining trustees, the founder where available and beneficiaries with vested rights.

(2) Where all trustees have vacated office, and the trust deed fails to provide otherwise, the founder must be invited by the Master to nominate one or more trustees, failing which, the beneficiaries with vested rights must be invited to nominate replacement trustees.

(3) The Master may only appoint trustees or co-trustees of own accord, despite the trust instrument, where objectively necessary for proper administration or protection of trust property or the beneficiaries, subject to sub-clause 5 below.

(4) The Master must require the appointment of an independent trustee where all of the following are present: (a) all trustees are beneficiaries; (b) all trustees are related to one another; and (c) the trust carries on business or trading activities with third parties that give rise to material obligations to those third parties, and equivalent independent governance safeguards are absent.

(5) Before an appointment under subsection (3), the Master must consider the nature and value of the trust property and existing safeguards and provide written reasons when requested by any person with a direct interest in the administration of the trust.

(6) An appointee must be fit and proper, competent for the trust concerned and free of material conflict.

(7) An affected person may apply to court under section 37 to review an appointment.

Foreign trustees

11. (1) The Master may authorize a person not residing permanently in the Republic of South Africa as trustee of a trust under its jurisdiction, subject to any conditions required by the Master, including security.

(2) The Minister may prescribe simplified or exempt treatment for isolated transactions, temporary acts, low-risk property or foreign trustees subject to equivalent supervision.

(3) Nothing in this section subjects foreign trust property with no material South African nexus to administration by the Master.

Request by Master for trustee to account

12. (1) The Master may by written notice require a trustee to provide information, documents or an account reasonably relevant to the administration or disposal of trust property.

(2) The notice must identify the subject matter, reasonable scope and period for compliance.

(3) If information reasonably indicates material misconduct, or if a trustee materially fails to comply, the Master may appoint a fit, proper and suitably qualified independent person to investigate.

(4) A person requesting an investigation must have a sufficient interest in the trust or trust property; the Master may require reasonable security against costs where the request may impose material expense.

(5) The investigator must act within written terms of reference, preserve confidentiality, afford affected persons a reasonable opportunity to respond to adverse material and submit a reasoned report.

(6) Investigation costs are borne by the trust unless the Master, for written reasons, directs a trustee who materially breached fiduciary duty or a complainant who acted vexatiously or without reasonable basis to bear all or part of the costs.

(7) A cost decision is reviewable under section 37.

(8) Reasonable grounds to suspect an offence must be referred to the appropriate law-enforcement authority.

Money laundering and terrorist financing risk assessment

13. (1) The Chief Master must periodically assess domestic and international money-laundering, terrorist-financing and proliferation-financing risks to which trusts are exposed.

(2) The methodology, material findings and trust-category risk profiles must be recorded and, subject to legitimate security considerations, published in sufficient detail to enable affected persons to understand the risk-based framework.

(3) The assessment must be reviewed at least every three years and after a material change in risk.

(4) After consultation with the Cabinet member responsible for finance, the Financial Intelligence Centre and relevant sector stakeholders, the Minister may prescribe full exemptions, partial exemptions or simplified measures for low-risk trusts or categories of trusts.

(5) Conditions imposed under subsection (4) must be proportionate to the assessed risk and may be varied or revoked after reasonable notice and consideration of representations.

CHAPTER 4

POWERS AND DUTIES OF TRUSTEE

General powers of trustee

14. Subject to the trust instrument, this Act and any other law, a trustee has the powers reasonably necessary to administer and dispose of trust property and achieve the objects of the trust, but exercises those powers in a fiduciary capacity and not as beneficial owner.

Care, diligence and skill required of trustee

15. (1) A trustee must act with the care, diligence and skill reasonably expected of a person managing the affairs of another, having regard to any special knowledge or experience actually held or represented and, for a professional trustee, reasonably expected in that profession.

(2) The standard is contextual and fault-based and does not make a trustee strictly liable for loss.

(3) A trustee may reasonably rely on suitably qualified advisers or delegates where permitted, but remains responsible for proper selection, instructions and oversight.

(4) A trust instrument may not exempt or indemnify a trustee against fraud, wilful misconduct, gross negligence or a dishonest breach of trust; reasonable insurance and indemnities consistent with this subsection are not prohibited.

Investment by trustee

16. (1) A trustee exercising an investment power must act as a prudent person would in managing property for another, consistently with the trust instrument and purposes.

(2) Relevant factors may include beneficiary needs, diversification, risk, preservation and appreciation of capital, income, liquidity, duration, tax, inflation, fees, marketability and the overall investment strategy.

(3) The factors in subsection (2) are contextual and do not prescribe a particular outcome.

(4) No investment expressly prohibited by the trust instrument is permitted.

Engagements with accountable institutions by trustee

17. (1) A trustee must disclose to an accountable institution with which the trustee engages in that capacity that the trustee acts as trustee and that the relevant transaction or business relationship relates to trust property.

(2) A trustee must record the prescribed details of an accountable institution where, in the trustee's capacity as trustee, the trustee-

(a) uses the accountable institution as an agent to perform any function relating to trust property;

(b) obtains any service from the accountable institution in respect of the trustee's functions relating to trust property;

(c) enters into a single transaction, as defined in the Financial Intelligence Centre Act, with the accountable institution relating to trust property; or

(d) enters into a business relationship, as defined in the Financial Intelligence Centre Act, with the accountable institution relating to trust property.

(3) For purposes of subsection (2), the prescribed requirements must clearly describe or illustrate the meaning and scope of “agent” and “services” and must be aligned with the Financial Intelligence Centre Act and regulations made under this Act.

(4) Prescribed information may be satisfied by secure reuse of verified information lawfully held in another government or regulated system.

(5) A trustee who took reasonable steps to obtain and record accurate third-party information is not in breach solely because that information later proves inaccurate.

Trust account

18. (1) Money received in a trustee's capacity as trustee must be deposited without undue delay into a separate account identifiable as belonging to the trust.

(2) The account may be held with a bank, mutual bank or other regulated financial institution prescribed as providing equivalent segregation, traceability and protection.

(3) The Minister may prescribe limited operational exceptions for foreign-currency, investment, escrow or transactional arrangements where equivalent segregation is maintained.

Registration and identification of trust property

19. (1) Trust property does not form part of the personal estate of a trustee except to the extent that the trustee is entitled to it as beneficiary.

(2) A trustee must take reasonable steps to ensure that trust property is objectively identifiable as trust property in bookkeeping, registration, account designation or other records appropriate to the asset.

(3) Electronic records and account designations may satisfy subsection (2) where they provide reliable and auditable identification.

Annual financial statements

20. (1) A trustee must ensure that financial information appropriate to the nature, value, activity and risk of the trust is prepared for each financial year.

(2) Where the trust instrument requires annual financial statements, they must be prepared in accordance with the instrument and any applicable prescribed minimum requirements.

(3) The Minister must prescribe proportionate reporting categories after consultation with relevant professional and fiduciary bodies, including full annual financial statements for prescribed higher-risk or higher-activity trusts and simplified financial information or statements for prescribed inactive, low-activity or objectively low-risk trusts.

(4) In determining categories or thresholds, regard must be had to asset value, the value and volume of receipts and payments, complexity, business or trading activity, public-benefit status, number and nature of beneficiaries and AML/CFT risk.

(5) Unless the trust instrument or another law requires an earlier date, annual financial statements required under this section must be prepared within six months after the end of the trust financial year, or within a longer period permitted by prescribed extension criteria.

(6) No existing trust that was not previously required to prepare annual financial statements is required to prepare retrospective statements solely because of this Act.

(7) The first reporting period for existing trusts must be phased as prescribed and may not fall earlier than 12 months after the relevant regulations and filing systems become operational.

(8) The Master may for reasonable cause request annual financial statements or prescribed financial information, but may not require annual financial statements before the applicable preparation period in subsection (5) has expired and must allow the trustees at least 20 business days, or any longer reasonable period, to respond.

Annual return

21. (1) A trustee must file a prescribed annual return in the prescribed electronic manner once in each 12-month filing cycle, by a date prescribed by reference to the anniversary month of the trust's registration or another equivalent staggered cycle designed to distribute filings across the year.

(2) The return must be limited to information reasonably necessary for administration, supervision and risk assessment and must not require duplicate capture of information already current and lawfully accessible to the Master from another public system.

(3) The filing system must, where practicable, support pre-population, bulk filing, application programming interfaces and immediate proof of receipt.

(4) An inactive or objectively low-risk trust may file a simplified or nil return as prescribed.

(5) Existing trusts must be allocated to a first filing cycle by reference to the trust registration anniversary or another equivalent staggered allocation, and no first return is due earlier than 12 months after the prescribed filing system becomes operational.

(6) A prescribed fee, if any, must be reasonable and proportionate to the administrative service provided.

Keeping of trust documents

22. (1) Trustees must ensure secure preservation and reasonable accessibility of the trust instrument, amendments, founding property records, material accounting and financial records, trustee resolutions, material contracts, appointment and removal records, and records evidencing investment, custody, administration, alienation or distribution of trust property.

(2) Records may be maintained in reliable electronic form and may be held in a secure central repository by the trust, current trustees or an authorised professional administrator.

(3) A trustee leaving office must make reasonable arrangements for orderly handover of records in that trustee's possession or control.

(4) A former trustee must retain or ensure retrievability of records necessary to evidence that trustee's own administration for at least five years, or longer where another law requires.

(5) No trustee is liable for failure to retain a predecessor's record that was never in that trustee's possession or control and could not reasonably be obtained.

Beneficial ownership registers

23. (1) A trustee must establish, record and keep prescribed information sufficient to identify the beneficial owners of the trust for AML/CFT and transparency purposes.

(2) The register must identify, as applicable-

(a) each natural-person founder;

(b) each natural-person trustee and, for a juristic-person trustee, the natural persons exercising prescribed effective control;

(c) any other natural person exercising effective control over the trust administration;

(d) each beneficiary with a vested right; and

(e) each beneficiary who has been specifically selected to receive a benefit or has actually received a benefit during the prescribed period.

(3) For an open discretionary class, the objective class description in the trust instrument may be recorded until an individual member becomes reasonably identifiable for purposes of this section, acquires a vested right, is selected for a benefit or receives a benefit.

(4) A trustee must lodge the prescribed register with the Master and update and lodge a material change within 20 business days after the trustee became aware, or reasonably ought to have become aware, of the change.

(5) A trustee who has taken reasonable steps to obtain and verify information is not in breach solely because information supplied by a third party is incomplete or inaccurate, provided the trustee corrects it within a reasonable period after becoming aware of the error.

(6) The Master must maintain a secure beneficial-ownership register and, where lawful and technically feasible, reuse verified information held by SARS, the Financial Intelligence Centre, CIPC or another competent authority rather than requiring duplicate capture.

(7) Access is limited to competent authorities and other categories expressly prescribed for a lawful purpose consistent with this Act, FICA, PAIA and POPIA.

(8) The Chief Master is responsible for appropriate technical and organisational safeguards, authentication, access logging, correction mechanisms, data minimisation and protection of information relating to minors and vulnerable persons.

(9) Information must be retained for at least five years after termination, subject to any longer period required by law.

Remuneration of trustee

24. (1) A trustee is entitled to remuneration provided for in the trust instrument or, where none is provided, reasonable remuneration.

(2) Reasonableness may take account of value and nature of trust property, time, skill, complexity, risk and comparable charges.

(3) A remuneration dispute may be referred to mediation by agreement or, where the instrument requires mediation, in accordance with that mechanism.

(4) A statutory mediation requirement must not prevent urgent relief, unreasonably delay access to court or prejudice prescription; a court may direct mediation where appropriate.

(5) Where a trustee is a professional person, trustee remuneration must be distinguished from separately rendered professional services, subject to applicable fee-assessment mechanisms.

CHAPTER 5

RESIGNATION AND REMOVAL OF TRUSTEE

Resignation by trustee

25. (1) A trustee may resign by signed written notice to the Master, the other trustees and known beneficiaries with vested rights, and by complying with any additional lawful requirement in the trust instrument.

(2) The resignation takes effect on the later of the date stated in the notice and the date on which proof of delivery to the Master and required recipients is lodged, provided that the resignation does not unlawfully leave the trust without a trustee or defeat an applicable handover requirement.

(3) The Master must issue an immediate receipt. If a formal acknowledgement is prescribed, it is deemed given 10 business days after compliant lodgement unless a deficiency notice is issued.

(4) Administrative processing does not prolong trusteeship after subsection (2) has been satisfied.

(5) Resignation does not release liability for breach of fiduciary duty occurring during office.

Removal of trustee

26. (1) A court may remove a trustee on application by the Master or a person with sufficient interest where removal is in the interests of the trust and beneficiaries.

(2) The Master may remove a trustee where the trustee is legally disqualified, fails to furnish lawfully required security after reasonable opportunity, becomes legally incapable of administering the trust, or materially and persistently fails to perform a statutory duty or comply with a lawful request.

(3) Except where urgent action is objectively necessary to protect trust property or beneficiaries, the Master may act under subsection (2) only after written notice of the alleged grounds, a reasonable opportunity to remedy or make representations, and a reasoned finding that removal is necessary and proportionate.

(4) Debt review, business rescue, sequestration or comparable financial circumstances do not automatically require removal unless they create a material risk to proper administration or constitute a disqualification under section 9.

(5) Removal is subject to review under section 37.

(6) A removed trustee must promptly hand over authority records and trust documents in that trustee's possession or control, but removal does not extinguish prior liability.

CHAPTER 6

VARIATION AND TERMINATION OF TRUST

Power of court to vary trust provisions

27. (1) If a trust instrument produces consequences not reasonably contemplated or foreseen by the founder and those consequences materially hamper the trust's objects, prejudice beneficiaries or conflict with public interest, a court may vary or delete the provision, substitute property or, where no less intrusive remedy is adequate, terminate the trust.

(2) The court must consider the founder's ascertainable intention, the interests of vested and discretionary beneficiaries, creditors and bona fide third parties, and reasonably foreseeable tax and regulatory consequences.

(3) This section does not limit a lawful amendment power contained in the trust instrument or otherwise available under law.

Termination and deregistration of trust

28. (1) A trust terminates on the date determined by the trust instrument or applicable law, provided that its liabilities have been discharged or adequately provided for and remaining property has been lawfully dealt with.

(2) The trustees must notify the Master in the prescribed manner and lodge prescribed evidence of termination within 20 business days.

(3) The Master must issue an immediate receipt and, within 20 business days, record the termination and remove the trust from the register or issue a reasoned deficiency notice.

(4) Removal from the register records and evidences termination but does not constitute termination.

(5) If the Master does not act within the period in subsection (3), the notification is deemed recorded for purposes of this Act, subject to later correction where material information was false or incomplete.

CHAPTER 7

GENERAL PROVISIONS

Failure by trustee to account or perform duties

29. If a trustee materially fails to comply with section 12 or to perform a duty imposed by the trust instrument or law, the Master or a person with sufficient interest may apply to court for an appropriate order, including compliance, protective or ancillary relief.

Reporting of irregularities

30. (1) This section applies to a registered auditor conducting an audit of a trust.

(2) If a material irregularity comes to the auditor's attention, the auditor must deal with it in accordance with the Auditing Profession Act, 2005, and must report it to the Master where that Act or prescribed coordinated procedures require.

(3) Regulations may prescribe coordinated reporting procedures but may not create inconsistent reporting thresholds.

(4) Any reporting obligation intended for a compiler, independent reviewer or other accounting professional must be expressly prescribed under an enabling provision that clearly identifies the persons, trigger and standard applicable.

Access to information held in terms of Act

31. (1) Access to information held by the Master or a trustee is governed by the Promotion of Access to Information Act, 2000, subject to any lawful restricted-access regime in this Act.

(2) Personal information must be processed in accordance with the Protection of Personal Information Act, 2013.

(3) The Chief Master is the responsible party for personal information held in central registers maintained under this Act and must establish appropriate security, correction, breach-response, access-control and audit procedures.

(4) No regulation or directive may authorise public disclosure of sensitive personal information beyond what is reasonably necessary for a lawful statutory purpose.

Regulations, directives and guidelines

32. (1) The Minister must make regulations necessary to implement this Act, including regulations concerning prescribed fees, security criteria, reporting categories and thresholds, annual returns, beneficial-ownership information and access, service standards, compliance notices, administrative fines and appeals.

(2) Before making a regulation imposing a material compliance burden, information-access rule, reporting threshold or maximum administrative fine, the Minister must publish the proposed regulation for public comment for a reasonable period.

(3) The Minister may prescribe forms, electronic filing specifications, payment methods, record formats, investigation procedures and ancillary administrative matters.

(4) The Chief Master may issue directives or guidelines to facilitate uniform administration and compliance.

(5) A directive or guideline may not create a substantive duty, offence, administrative fine, fee, disqualification or material compliance burden not authorised by this Act or regulations.

(6) Regulations, directives and guidelines must be publicly accessible in consolidated form.

Compliance notices

33. (1) Where the Master reasonably believes that a trustee has materially failed to comply with an obligation under sections 7, 12, 20, 21 or 23, the Master may issue a compliance notice.

(2) Before issuing a notice for a first non-material breach, the Master should, where practicable, issue an electronic reminder or deficiency notification and allow reasonable correction.

(3) A compliance notice must identify the trustee, statutory obligation, facts and extent of non-compliance, remedial steps, reasonable compliance period and possible consequences.

(4) The trustee may make representations concerning compliance, reasonable excuse, third-party dependence, official-system failure or other mitigating circumstances.

(5) No compliance notice may be based solely on failure caused by an unavailable or materially defective official filing system where the trustee took reasonable steps to comply and retained evidence thereof.

Administrative fines and appeals

34. (1) If a trustee materially fails, without reasonable excuse, to comply with a final compliance notice, the Master may, after considering representations, impose an administrative fine not exceeding the prescribed maximum.

(2) The notice of fine must provide reasons, amount, due date and appeal and review rights.

(3) In determining amount, the Master must consider seriousness, duration, harm or risk, AML/CFT relevance, prior conduct, remediation, cooperation, ability to comply, system failure and other mitigating or aggravating factors.

(4) A trustee may appeal within 30 business days to an official or tribunal designated by regulation who was not involved in the original decision.

(5) Lodging an appeal suspends enforcement unless the appellate authority, for written reasons, determines that suspension creates an imminent material risk.

(6) The appellate authority may confirm, reduce, vary or set aside the fine and must provide written reasons.

(7) An appeal decision is final within the administrative process but remains subject to judicial review under section 37 and the Constitution.

(8) An unpaid final fine may be recovered as a civil debt through a competent court in the prescribed manner.

(9) A fine is payable personally by a trustee only where the trustee is personally responsible for the non-compliance; a trustee may not recover a fine from trust property except where a court determines that another person is legally liable to indemnify that trustee.

(10) Maximum fines must be prescribed by category and must be proportionate to the nature and seriousness of the contravention.

Offences and penalties

35. (1) A person commits an offence if that person intentionally-

(a) administers, controls or disposes of trust property while knowing that the person is required to be, and is not, authorised under section 8;

(b) provides materially false beneficial-ownership information for purposes of section 23 with intent to deceive;

(c) destroys, falsifies or conceals a material trust record with intent to obstruct lawful supervision or conceal a breach of trust; or

(d) repeatedly and wilfully refuses to comply with a final lawful order or compliance obligation after reasonable opportunity to remedy, where the refusal creates a material risk to beneficiaries, trust property or the integrity of the AML/CFT regime.

(2) A trustee who knowingly exercises a power that the trustee knows was not validly conferred by a trust instrument of amendment, commits a criminal offence only where the conduct is fraudulent, dishonest or intended to cause material prejudice; administrative delay in processing a compliant trust instrument or amendment is not a criminal offence.

(3) A person convicted under subsection (1)(a), (c) or (d) is liable to a fine or imprisonment not exceeding five years, or both, having regard to proportionality.

(4) A person convicted under subsection (1)(b) is liable to a fine not exceeding R10 million or imprisonment not exceeding five years, or both.

(5) No person commits an offence for a technical, inadvertent or immaterial failure, for reasonable reliance on materially false third-party information, or for failure caused by official-system unavailability where reasonable compliance steps were taken.

(6) Conduct that has been fully remedied through an administrative process may be prosecuted only where the elements of a distinct offence under this section are independently established.

Magistrates' Court jurisdiction to impose penalties
36. A Magistrates' Court having jurisdiction may impose a penalty provided for in section 35, subject to ordinary criminal-procedure and constitutional safeguards.

Preservation of judicial review and access to court
37. (1) Nothing in this Act excludes, limits or ousts a person's right to judicial review or other appropriate relief under the Constitution, the Promotion of Administrative Justice Act, 2000, or any other applicable law.

(2) Where this Act provides an internal administrative remedy, that remedy must be interpreted consistently with the Promotion of Administrative Justice Act and may not be treated as excluding the jurisdiction of a competent court.

(3) A court may grant interim relief where necessary to prevent irreparable prejudice to trust property, beneficiaries, trustees or third parties pending determination of a review or other proceeding.

Repeal, savings and transitional provisions
38. (1) The Trust Property Control Act, 1988 (Act No. 57 of 1988), is repealed on the date determined under section 39, subject to this section.

(2) Anything validly done, authority validly issued, trust validly created, amendment validly made, right accrued or liability incurred under the repealed Act remains valid unless expressly inconsistent with this Act.

(3) A trust created orally before commencement and subsequently reduced to writing in accordance with the law then applicable is not invalid solely because this Act requires a written trust instrument.

(4) Existing regulations remain in force only to the extent consistent with this Act and until replaced, but no offence or administrative fine may be based on an obsolete or materially inconsistent provision.

(5) Pending applications, investigations and proceedings continue under transitional rules prescribed to protect accrued rights and procedural fairness.

(6) Existing trusts must be given at least 12 months after the relevant regulations and operational digital systems are available to remediate core information and governance requirements.

(7) The Minister may prescribe longer transitional periods, not exceeding 24 months after operational readiness, for annual returns, financial reporting, historical data remediation or other high-volume recurring obligations.

(8) No trustee may be fined, disqualified or prosecuted for failure to comply with a new recurring electronic filing obligation during a period in which the prescribed official system is materially unavailable, provided reasonable alternative compliance steps were taken.

(9) Before bringing sections 20, 21, 23, 33, 34 or any new recurring electronic filing obligation into operation, the Minister must be satisfied, on a published implementation assessment, that the necessary regulations, forms, digital systems, information-security controls, staffing, service standards and escalation mechanisms are operational.

Short title and commencement

39. (1) This Act is called the Regulation of Trusts Act, 2026.

(2) The President may bring different provisions into operation on different dates by proclamation in the Gazette.

(3) A proclamation may not bring a provision referred to in section 38(9) into operation before the requirements of that subsection have been substantially met.

(4) The Minister must publish an implementation schedule at least 60 days before commencement of a material recurring compliance obligation.

FISA DRAFTING NOTES - NOT PART OF THE PROPOSED BILL

1. Structure retained. The Department's seven-chapter architecture and 39-section framework have been retained so that the alternative text can be compared directly with the published Draft Bill.

2. Main structural changes. A new express section 37 preserves PAJA, constitutional judicial review and access to appropriate court relief. Repeal and transitional provisions are consolidated into section 38, and section 39 expressly permits phased commencement.

3. Administrative dependency. Sections 6, 25 and 28 are recast so that compliant lodgement, notice and substantive trust law determine legal consequences rather than indefinite Master processing.

4. BO framework. Section 23 retains transparency but distinguishes founders, trustees/controllers, vested beneficiaries and open discretionary classes, and moves the update trigger to 20 business days from actual/constructive knowledge.

5. Enforcement. Sections 33-35 separate remediation, administrative fines and genuinely criminal misconduct. Fault, materiality, reasonable excuse and official-system failure are expressly addressed.

6. Master capacity. Sections 21, 28, 32, 38 and 39 embed digital filing, service standards, phased commencement and operational-readiness safeguards.

7. Policy choices for FISA final approval. The proposed 10-business-day deemed acknowledgement, 20-business-day BO/contact periods, 12-24 month transitional periods, scope of low-risk reporting, and precise maximum administrative fines should be treated as FISA policy choices for final technical approval rather than immutable drafting assumptions.

8. Legal Practice Amendment Bill. The alternative Trust Bill does not attempt to amend the Legal Practice Act. FISA's cross-Bill concerns should remain in the separate submission on the Legal Practice Amendment Bill, particularly reserved work and advertising of deceased-estate services.