

When the Master steps in: The appointment of trustees and independent trustees

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Summary

For decades, South African trust law has been founded on the principle that trustees are responsible for the administration of trust affairs. Although, trustees have always been subject to the supervisory authority of the Master of the High Court (Master), the trust deed has traditionally remained the source of authority governing the management and control of a trust. The proposed Regulation of Trusts Bill 2026 ("Bill") suggests a notable change in approach. The proposed legislation reflects growing concerns regarding trust governance, the misuse of family trusts and the need to maintain a genuine distinction between the control of trust assets and the enjoyment of those assets by beneficiaries. In this regard, clause 10 of the proposed Bill is particularly significant as it broadens the circumstance in which the Master may become involved in the composition and governance of trustees.

Article

Under the current legal framework, section 7 of the Trust Property Control Act 57 of 1988 ("the Act") primarily serves as a practical mechanism to ensure that a trust remains capable of functioning when vacancies arise or where additional trustees are required. Historically, the Master's role has largely been directed at preserving the administration of the trust rather than actively influencing the structure of the trustees. The proposed Bill, however, envisages a more active regulatory role for the Master.

Clause 10(1) of the proposed Bill retains the Master's ability to address vacancies but introduces a more structured process. Where the Master is required to appoint a trustee, consultation with both the existing trustees and beneficiaries holding vested rights in the trust property is required. This is an important development, as the principle of consultation is expressly incorporated into the legislation, promoting transparency and allowing affected parties an opportunity to participate in the appointment process.

Clause 10(2) of the proposed Bill introduces an entirely new mechanism for circumstances in which all trustees have vacated office. In such a case, the founder of the trust must nominate a replacement trustee for appointment by the Master. If the founder is deceased or otherwise unable to act, beneficiaries with vested rights must make the nomination. This provision is intended to ensure continuity in trust administration and prevent a trust from becoming incapable of functioning due to the absence of trustees.

Clause 10(3) of the Bill further enhances the Master's powers by authorizing the appointment of one or more co-trustees whenever this is considered necessary for the proper administration of the trust, regardless of any contrary provision contained in the trust instrument. This represents a departure from the more administrative focus of section 7 of the Act and illustrates a move towards greater oversight of trust governance. The emphasis is no longer merely on filling vacant positions, but on ensuring that trusts are administered effectively in accordance with accepted governance standards.

The most significant development contained in clause 10 is the proposed power of the Master to appoint an independent trustee. Clause 10(4) seeks to establish a clear statutory basis for the exercise of this power by permitting the appointment of an independent trustee in prescribed circumstances, notwithstanding the provisions of the trust deed. Under the existing legislative framework, the concept of an independent trustee developed largely through the directives issued by the Chief Master and the principles established by the courts, particularly in *Land and Agricultural Bank of South Africa v Parker and Others* (186/2003) [2004] ZASCA 56. The requirement for an independent trustee evolved through practice and judicial interpretation rather than through an express legislative provision. The proposed Bill seeks to change this position by codifying the principle and granting the Master a clear statutory power to intervene where the required circumstances exist. The inclusion of this provision is a clear response to longstanding concerns surrounding family business trusts where the trustees and

beneficiaries are often the same individuals and where decision-making may lack the degree of independence expected of a fiduciary structure.

In conclusion, clause 10 of the proposed Bill serves an important reminder that trusts can no longer be viewed as informal family arrangements with minimal external oversight. The proposed provisions reflect a broader movement towards increased regulation, accountability and governance within the trust environment. For family business trusts in particular, trustees will be expected to demonstrate independence, proper decision-making processes and a clear separation between control of trust assets and the enjoyment of trust benefits. If the proposed Bill is enacted in its current form, the Bill may well mark the beginning of a new era in South African trust administration, one in which the Master assumes a more active role in safeguarding the integrity of trust structures.

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