New standard of trusteeship: care, diligence and skill of trustees unpacked

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Summary:

The Draft Regulation of Trusts Bill, 2026 seeks to strengthen trust governance and improve the standard of trust administration in South Africa. One of the Bill's most important provisions is Clause 15, which deals with the standard of care, diligence and skill required of trustees. Although trustees have always owed fiduciary duties to trusts and beneficiaries, Clause 15 provides much needed clarity regarding the standard against which trustee conduct will be measured and, in doing so, reinforces the responsibility that accompanies the office of trustee.

Article:

Clause 15 requires trustees to exercise their powers and perform their duties with the care, diligence and skill that can reasonably be expected of a person who manages the affairs of another person. This provision reaffirms a fundamental principle of trust law, namely that trustees must always act in the best interests of the trust and its beneficiaries. More importantly, it makes it clear that trustees cannot adopt a passive or indifferent approach to trust administration. Trustees are expected to actively participate in decision-making, understand the affairs of the trust, properly consider the consequences of their decisions and ensure that trust assets are administered responsibly and in accordance with the provisions of the trust deed.

The most significant aspect of Clause 15 is that the required standard is linked to a trustee's own knowledge, experience and expertise. The Draft Bill specifically provides that regard must be given to any special knowledge or experience that a trustee possesses or holds out as having. Furthermore, where a person acts as a trustee in the course of a particular profession or business, that individual will be judged against the level of skill and competence reasonably expected from someone within that profession or business. This means that professional trustees, such as legal practitioners, accountants, fiduciary practitioners and trust companies, are likely to be held to a higher standard than family members or lay trustees who do not possess specialised trust knowledge. The rationale is that individuals who market themselves as trust specialists or who accept appointments because of their professional expertise should be expected to apply that expertise when administering trust affairs. Clause 15 introduces a heightened level of accountability for professional trustees and reinforces the expectation that specialised knowledge must translate into competent administration.

Another important aspect of Clause 15 is its treatment of trustee indemnity and exemption provisions. The Draft Bill provides that a trust deed cannot shield a trustee from liability where that trustee has failed to exercise the required degree of care, diligence and skill. Any trust deed provision that attempts to exempt or indemnify a trustee against such liability will be void to that extent. This represents a significant shift towards greater trustee accountability. In practice, trustees will need to ensure that their actions and decisions can withstand scrutiny, since reliance on broad indemnity clauses may no longer offer the level of protection that many trustees have historically enjoyed.

Clause 15 also serves as an important reminder that trusteeship is not merely an honorary appointment. Trustees occupy a position of trust and confidence and are responsible for safeguarding and administering assets for the benefit of others. This requires trustees to exercise independent judgment, remain informed about the affairs of the trust, properly evaluate matters before making decisions, maintain accurate records of trustee decisions and resolutions, obtain professional advice where necessary and, above all, act in the best interests of the trust and its beneficiaries. The message conveyed by the Draft Bill is clear that individuals who accept appointment as trustees must also accept the responsibilities, obligations and potential liabilities that accompany that office.

In many respects, Clause 15 represents a shift away from viewing trusteeship as a nominal role and towards recognising it as a position that requires active participation, competence and accountability.

Clause 15 introduces a new benchmark for trusteeship by placing care, diligence and skill at the centre of trust administration. By recognising the higher obligations of professional trustees and limiting the effectiveness of trustee indemnity provisions, the clause strengthens accountability and reinforces the fiduciary nature of the office of trustee. If enacted, this provision is likely to have a far-reaching impact on trust administration in South Africa, requiring trustees to adopt a more informed, proactive and responsible approach to the management of trust affairs. Ultimately, Clause 15 serves as a reminder that with the authority to administer trust assets comes an equally important duty to do so competently, diligently and in the best interests of those for whom the trust exists.

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