

Accountants be aware...



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Perception - the “superhuman” accountant - “*my accountant has everything under control*”



The gap...

Setting up a trust

Accounting and tax



Communicate with your client what you do and what you do not do

SA trusts unique - family trustees


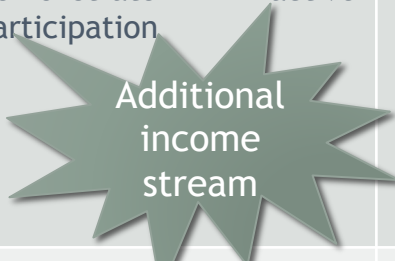
New measures may
cause convicts of
ordinary citizens

Where does it
leave the
independent
trustee?



Client communication is key!

Which service do (want) you to provide?

New trust registration	Trust administration and compliance	Independent trustee	Accounting and tax
	<p>Active hand-holding of trustees:</p> <ul style="list-style-type: none"> Trust deed execution Meetings Resolutions “Beneficial Owner” registers Accountable institution reports Supporting documents/contracts Audit trails Master requirements Demonstrate active participation 	<ul style="list-style-type: none"> Parker case of 2005 - IT should be an “independent outsider” who ensures there adequate separation of control from enjoyment with proper realisation of responsibilities of trusteeship Play active role in trust and ensure that trust functions properly and that provisions of trust instrument are observed (confirmed in Chief Master’s Directive of 2017) Conduct of trustees who do not observe trust instrument should be scrutinised and checked by IT 	<ul style="list-style-type: none"> Accounting is NOT compliance Do trustees have Asset Register? Audit trail backed up with resolutions and contracts Does Asset Register, financials, IT3(t)’s, Beneficial Owner info and tax returns reconcile? Real-time trust information
Accountable institution	Accountable institution	Accountable institution	Accountable institution soon?
Charge	Extra compliance; PI cover?	Risk-based pricing; PI cover?	Fees; PI cover?

Separate Engagement Letter for each service - include indemnification for non-participative trustees and “beneficial owners”

Scary new legislation - look on the bright side...

1. Business opportunity - additional ongoing income streams
2. Business opportunity - most trust deeds need amendment
3. Clean up book - those clients who do not pay
4. Get participation of all trustees - manage reputational risk
5. More professional service
6. Risk-based pricing
7. Involvement of all trustees
8. Register trusts for the right reasons



Careful about the false prophets...



- The Master is ready
- Trustees have to submit info to Master
- Not 6 months to submit
- Much more info to be kept by trustees
- Not beneficiaries who have received benefits
- The URN number does exist
- Not a once off exercise
- Not updated annually
- Etc. etc.

Who is who in the zoo? Know their requirements



Money Laundering - why are trusts targeted?

- ✧ Criminal act of legitimising the money acquired through illegal or unethical means by disguising the origin of the crime
- ✧ Usually involves the creation of assets to conceal the relationship between the funds and their dirty sources
- ✧ People do laundering by often exploiting the vulnerabilities of legal or financial systems
- ✧ 3 stages of money laundering:



Placement



Layering



Integration

Money Laundering - why are trusts targeted? (cont.)

- ✧ The Trust Property Control Act, 1988 (TPCA) was last amended in 1997. Mainly deals on a high level with trust operations and the office of the Master of the High Court as the trust regulator
- ✧ Currently, the Master's Office only has records of the identity of trustees, founders and the beneficiaries specifically named in the trust instrument
 - ✧ No requirement to disclose the ultimate ownership or control of these persons
- ✧ The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act of 2022, however, introduced significant changes to the TPCA
 - ✧ Intention - to prevent misuse of trusts and ensure there is adequate, accurate, and timely information on control of trusts available to authorities

Changes to TPCA - Effective 1 April 2023!

- ✧ New Section 1 definitions of 'accountable institution' and 'beneficial owner'
- ✧ New Section 6(1A) (Section 6 - Authorisation of trustee and security) - to specify matters that would disqualify a person from acting as a trustee, for example failing the 'fit and proper' test; in line with existing Section 20 (removal criteria) plus more
- ✧ Amended Section 8 - Foreign trustee to act only if authorised by Master in writing
- ✧ **New Section 10 (2) (Section 10 - Trust account) - to require a trustee to disclose their position as trustee to any accountable institution with which the trustee engages in that capacity, and to make it known to that accountable institution**
- ✧ **New Section 11(1) (Section 11 - Registration and identification of trust property) - details of accountable institutions which trustees use as agents to perform trustee functions and who provide any services to trustees**
- ✧ **New Section 11A (Section 11 - Registration and identification of trust property) - information in relation to beneficial ownership**
- ✧ Amended Section 19 (Failure by trustee to account or perform duties) - Just clarifying - Master/any person having an interest in the trust property may apply to Court to direct trustee to comply with Master's request or to perform duty imposed upon trustee by TPCA, trust instrument or any other law
- ✧ Note - Master can only remove a trustee ito Section 20 if they do not comply with TPCA
- ✧ **New Section 19(2) - If trustee fails to comply with highlighted Sections, commits an offence and on conviction liable to fine not exceeding R 10 million/imprisonment not exceeding 5 years or both**
- ✧ Amended Section 20 (Section 20 - Removal of trustee) - added that Master MAY remove trustee if they become disqualified to act as trustee ito new Section 6(1A); also expanded that trustee may be removed if they do not comply with the requirements of the TPCA (over and above the requirement to comply with any duty imposed upon them ito the TPCA)

What are these 8 strategic actions? What is to come... in the next couple of months

Industries and professions outside of financial sector (banking, insurance, asset management and stock exchange), through which money laundering can occur

1. Demonstrate a sustained increase in outbound Mutual Legal Assistance (MLA) requests that help facilitate money laundering/terrorism financing (ML/TF) investigations and confiscations of different types of assets in line with its risk profile;
 - 2. Improve risk-based supervision of Designated Non-Financial Businesses and Professions (DNFBPs) and demonstrate that all AML/CFT supervisors apply effective, proportionate, and effective sanctions for noncompliance;
 - 3. Ensure that competent authorities have timely access to accurate and up-to-date Beneficial Ownership (BO) information on legal persons and arrangements and applying sanctions for breaches of violations by legal persons to BO obligations;
4. Demonstrate a sustained increase in law enforcement agencies' requests for financial intelligence from the Financial Intelligence Centre for its ML/TFML/TF investigations;
5. Demonstrate a sustained increase in investigations and prosecutions of serious and complex money laundering and the full range of terrorist financing activities in line with its risk profile;
6. Enhance its identification, seizure, and confiscation of proceeds and instrumentalities of a wider range of predicate crimes, in line with its risk profile;
7. Update its terrorist financing risk assessment to inform the implementation of a comprehensive national counter-financing of terrorism strategy; and
8. Ensure the effective implementation of targeted financial sanctions and demonstrate an effective mechanism to identify individuals and entities that meet the criteria for domestic designation.

FIC

Master +
SARS

FIC

Who are “accountable institutions” for FIC?

Clarity provided that trust service providers are regarded as “accountable institutions”

Definition dealing with trustees and related service providers (item 2 in the Schedule) in the Financial Intelligence Centre Act, amended as follows:

A “board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act, 1988 (Act 57 of 1988)” replaced with:

“...

(c) A person who carries on the business of creating a trust arrangement for a client.

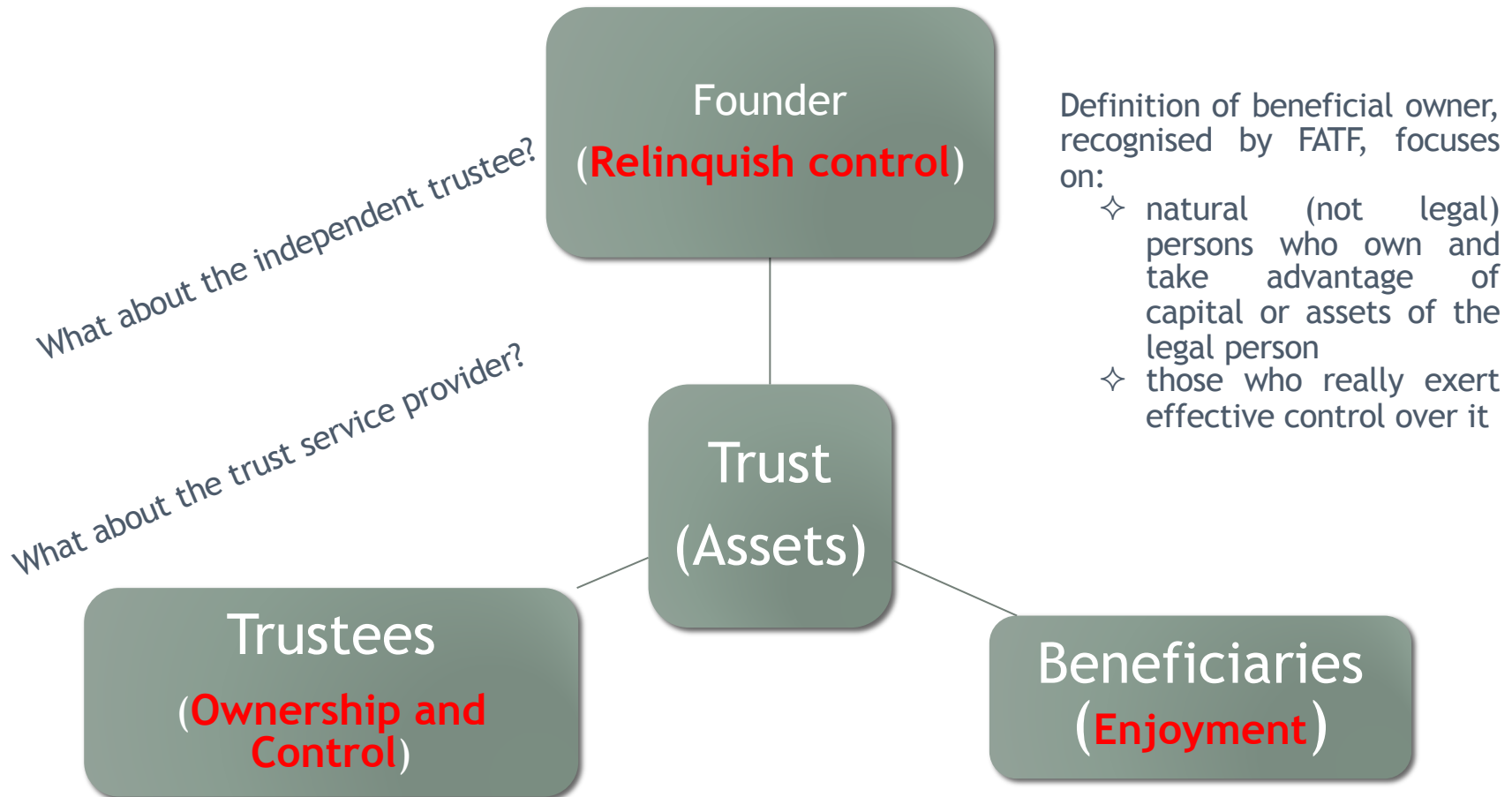
(d) A person who carries on the business of preparing for or carrying out transactions (including as a trustee) related to the investment, safe keeping, control or administering of trust property within the meaning of the Trust Property Control Act, 1988 (Act 57 of 1988).”

Therefore - when registering trust, when doing trust admin and/or when trustee (as business)

What do trustees have to do regarding their interactions with “accountable institutions”?

- ✧ Become a FIC “expert” to identify who are accountable institutions
- ✧ Keep a register of accountable institutions trustees deal with
- ✧ Inform accountable institution that trustee is acting in their capacity as trustee:
 - ✧ Paperwork!!!!
 - ✧ Discipline - Engagement Letter, indemnify!
 - ✧ Resolution of board of trustees
 - ✧ Confirmation to accountable institution - in writing
 - ✧ Careful FIC can cross check

It's no longer about "beneficial ownership does not work in SA", give the info



Beneficial owner - FIC Act

'beneficial owner'—

(a) means a **natural person** who directly or indirectly—

(i) **ultimately owns or exercises effective control** of—

(aa) a client of an accountable institution; or

(bb) a legal person, partnership or **trust** that owns or exercises effective control of, as the case may be, a client of an accountable institution; or

Makes sense to include trustee

(ii) **exercises control** of a client of an accountable institution on whose behalf a transaction is being conducted; and

(b) includes—

(i) in respect of legal persons, each natural person contemplated in section 21B(2)(a);

(ii) in respect of a partnership, each natural person contemplated in 30 section 21B(3)(b); and

(iii) **in respect of a trust, each natural person contemplated in section 21B(4)(c), (d) and (e)**

"owns" -
can only
be behind
trust

Wording confusing

Beneficial owner - FIC Act - section 21B(4)(c), (d) and (e)

(c) in respect of the **founders** of the trust, establish the identity of—

(i) [the] each founder; and

(ii) if a founder of the trust is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person, partnership or trust;

(d) in respect of the **trustees** of the trust, establish the identity of—

(i) each trustee;

(ii) (iA) if a trustee is a legal person or a person acting on behalf of a partnership, the beneficial owner of that legal person or partnership; and

(iii) (ii) **each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the trust, whether such a person is appointed as a trustee of the trust or not;**

(e) in respect of the **beneficiaries** of the trust, establish—

(i) the identity of each beneficiary referred to by name in the trust [deed] instrument or other founding instrument in terms of which the trust is created;

(iA) if a beneficiary referred to by name in the trust instrument is legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person, partnership or trust; **[or] and**

(ii) if beneficiaries are not referred to by name in the trust [deed] instrument or other founding instrument in terms of which the trust is created, the particulars of how the beneficiaries of the trust are determined

Accountable institution must take REASONABLE STEPS TO VERIFY

Beneficial owner - TPCA

'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

Beneficial owner - TPCA - what must trustees do?

11A.

(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 35 Centre Act, 2001 (Act No. 38 of 2001).

(j) the class or category of beneficial ownership under which the person falls;

(a) The full names;

(b) date of birth;

(d) an official identity document number or passport number, indicating the type of document and the country of issue;

(e) citizenship;

(c) nationality;

(f) residential address;

(g) if different from residential address, the beneficial owner's address for service of notices;

(h) other means of contact;

(i) if the person is a registered taxpayer in the Republic, the person's tax number;

(k) the date on which the person became a beneficial owner of the trust; and

(l) where applicable, the date on which the person ceased to be a beneficial owner of the trust.

URN - Unique reference number

Trust name
File number

Grounds on which the person is a beneficial owner of the trust

Full names/Entity name and surname

ID Type
ID number/passport number/registration number

Nationality

Residential address

Domicilium address

E-mail address

Contact number (cellphone)

Date on which the person became a beneficial owner of the trust

Date on which the person ceased to be a beneficial owner of the trust

<i>The Beneficial Ownership info - Regulations</i>	The Beneficial Ownership Register
	<p>Full name of representative/guardian</p> <p>Surname of representative/guardian</p> <p>ID/passport number of representative/guardian</p> <p>Nationality of representative/guardian</p> <p>Contact number of of representative/guardian</p> <p>Email address of representative/guardian</p> <p>Postal address of representative/guardian</p>

SARS requirements for Beneficial Ownership info

BO – Trust registration	BO - Trust tax return from 2023
<p>Indiv/Rep: Initials and surname ID/Passport nr</p> <p>Country of residence</p> <p>Tax type – reg or not Tax jurisdiction Income Tax number Cellphone number Email address Physical address Place of birth</p> <p>Co/trust/other: Registered name Registration number SA taxpayer? SA Tax Reference number</p>	<p>Indiv/Rep: Initials and surname ID/Passport nr Passport country Passport issue date</p> <p>SA taxpayer?</p> <p>Tax jurisdiction SA Tax Reference number Cellphone number Email address Physical address Place of birth</p> <p>Co/trust/other: Registered name Registration number</p> <p>Income Tax Number</p>

The capturer of Beneficial Ownership info

1. Ensure you have a signed power of attorney (POA) allowing you to capture the details before you do so.
2. You are required to confirm in a declaration:
 - a. That the trustees are keeping in their records, certified ID copies of all beneficial owners of the trust. Confirm that with the trustees if you are not one of them.
 - b. That you are authorised to attend to and deal with this matter and verify the authenticity of the submitted information and documentation. This implies that you have to verify the information supplied (refer to the next point).
 - c. That the information submitted is true and correct. In the event that the information is not true and correct, the Master of the High Court will not be held liable in any way whatsoever as a result of the misrepresentation. This clearly places the blame 100% on all trustees as well as the 'declarer'.

ICMS Masters Digital Trust platform

- Integrated Case Management System for Masters Trust (PEAST) - piloted Sep 2013
- PEAST (Paperless Estate Administration System - Trusts) - 2014

What is the URN Number? - Unique Reference Number

URN NUMBER			
MMM	YYYY	TRU	000000
Masters Office Code	Year	Trust code	Trust number
897 – Bisho (H)			
993 – Bloemfontein (B)			
899 – Cape Town (C)			
894 – Durban (D)			
991 – Grahamstown (E)			
992 – Johannesburg (G)			
997 – Kimberley (K)			
996 – Mafikeng (M)			
896 – Mthatha (U)			
893 – Nelspruit (MN)			
895 – Pietermaritzburg (N)			
999 – Polokwane (L)			
898 – Port Elizabeth (S)			
990 – Pretoria (T)			
998 – Thehoyandou (V)			

Example:

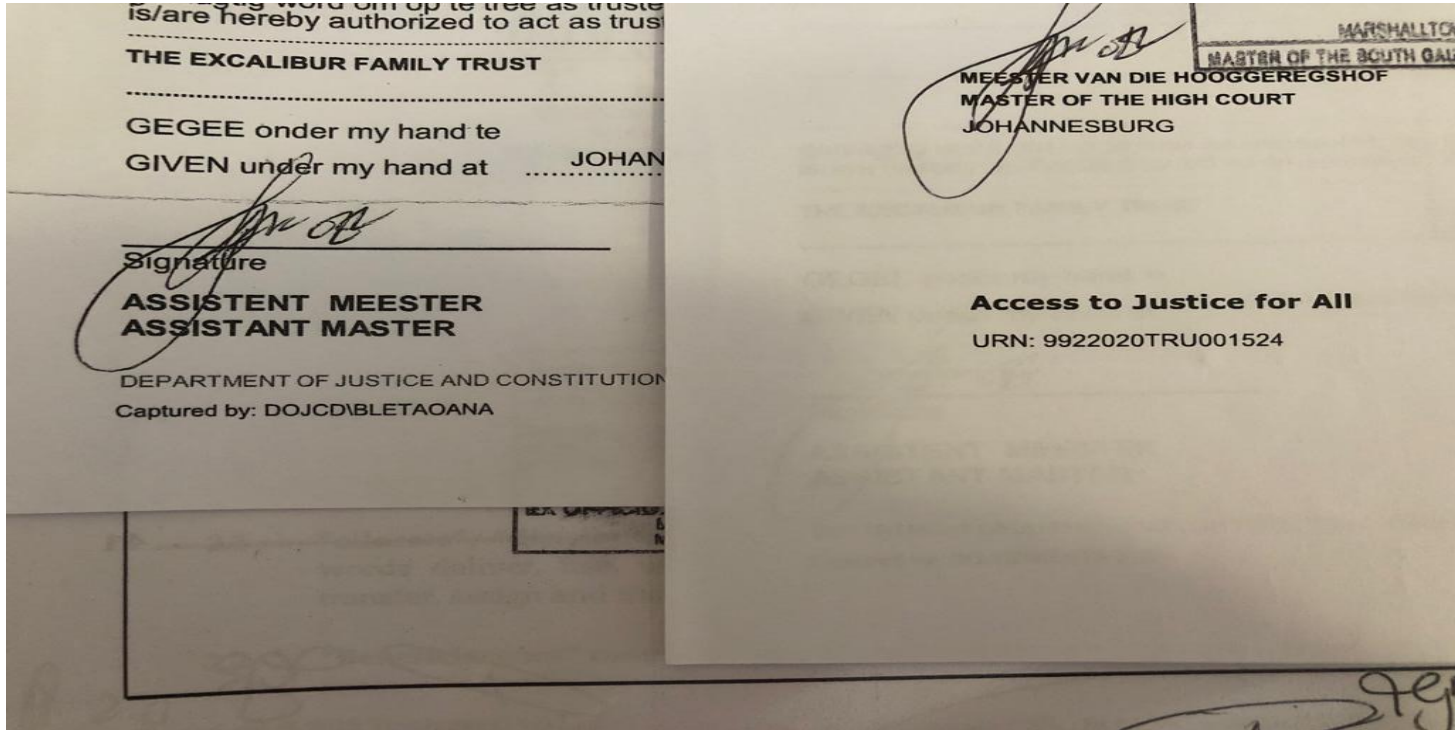
Trust name:

The URN Trust (IT 123/2023(T))

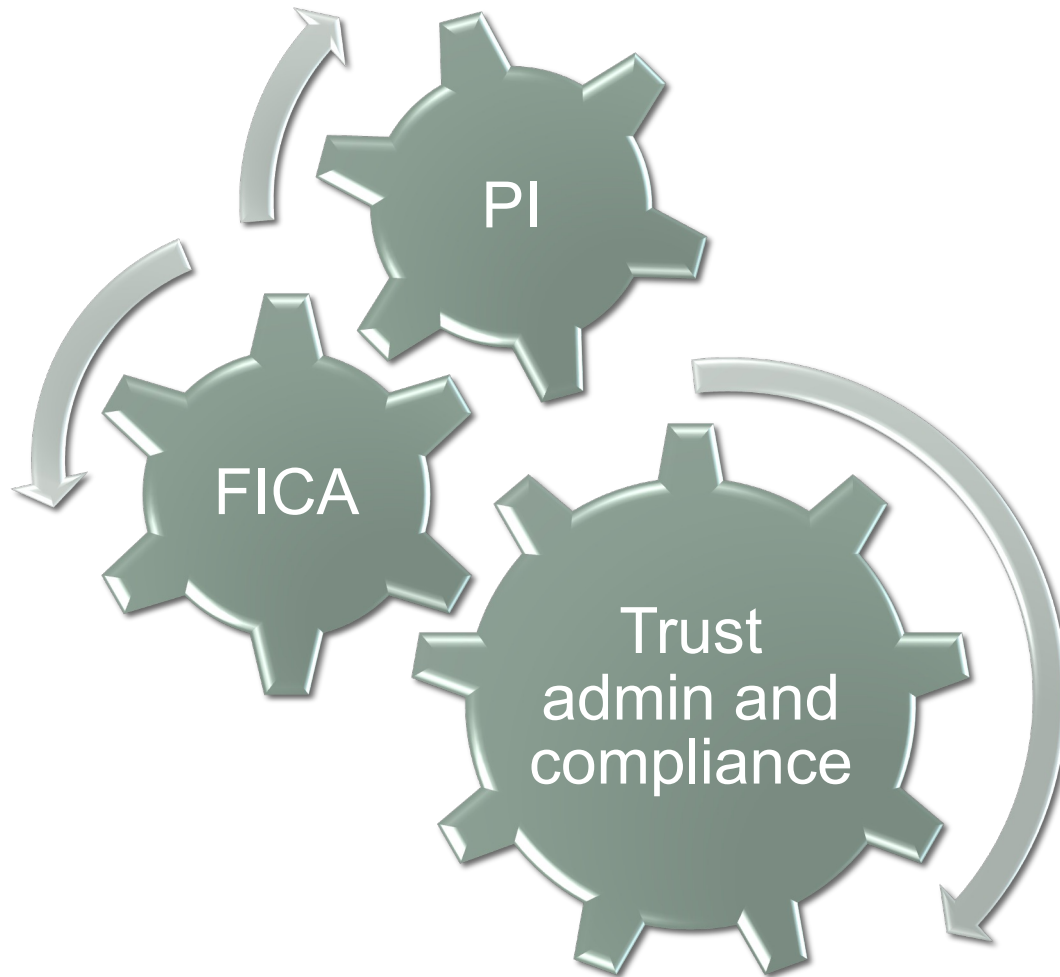
URN Number:

9902023TRU000123

URN Number



Ever increasing cost of compliance; digitalise



Thank you!

Linkedin -

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