

SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS (SAICA)

Comment Letter on the Regulation of Trust Bill, 2026 ("the Bill")

Date: 11 September 2026

Director-General: Department of Justice and Constitutional Development

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Subject: Comments on the Regulation of Trust Bill, 2026 (Published 07 August 2026)

The South African Institute of Chartered Accountants ("SAICA") welcomes the opportunity to comment on the Regulation of Trusts Bill, 2026 ("the Bill"), published for public comments in the Government Gazette on 7 August 2026.

SAICA is South Africa's pre-eminent accountancy body and is widely recognised as one of the world's leading accounting institutes. The Institute provides a wide range of support services to its members, associates and students, and is committed to the development of a sound financial sector that supports economic growth in South Africa.

SAICA members act extensively as trustees, accounting officers, auditors, independent reviewers and advisors to trusts, and accordingly have a direct interest in ensuring that the Bill is practical, workable, and internally consistent with existing legislation and current Master's office practice.

SAICA supports the objective of modernising South Africa's trust legislation and strengthening accountability, transparency, beneficial ownership compliance, trustee governance and the oversight role of the Master of the High Court. The Trust Property Control Act 57 of 1988 ("the current Act") has been in operation for almost four decades and the regulatory, technological, economic and practical environment in which trusts operate has changed substantially.

We would welcome the opportunity to engage further on any of the matters raised, and would be willing to discuss our comments in person or virtually if that would assist. Please do not hesitate to contact Nomandla Gumede at nomandlag@saica.co.za in this regard.



Thandokuhle Myoli

Head: Audit and Assurance

The South African Institute of Chartered Accountants ("SAICA")



GENERAL COMMENTS

Comment Period

1. SAICA notes that the Bill was published for public comment on 7 August 2026 and that comments are required by 11 September 2026. While SAICA appreciates the Department's invitation for stakeholders to participate in the legislative process, the period provided is approximately 35 days. This is particularly short given that the Bill proposes to repeal and replace an entire Act.
2. The Bill constitutes a fundamental restructuring of the law applicable to trusts, rather than a limited amendment to the current Act. It repeals the current Act and introduces significant new obligations relating to the establishment and validity of trusts, trustees, trust deeds, investments, accounting records, annual financial statements, annual returns, beneficial ownership, compliance notices, administrative fines, removal and resignation of trustees and the powers of the Master.
3. The Bill contains numerous provisions with significant implications for existing trusts, trustees, beneficiaries and professional advisers, including accountants, tax practitioners, attorneys and other trust administrators.
4. The implications cannot adequately be assessed by stakeholders within the current timeframe, particularly where the Bill requires consideration of the interaction between the proposed legislation, existing trust deeds, tax legislation, AML/CFT requirements, accounting requirements and the administration of trusts by the Master.
5. SAICA is therefore concerned that the consultation period of approximately 35 days is insufficient to enable meaningful consultation on legislation of this magnitude.
6. **SAICA submission:** The comment period be extended to 60 or 90 days, to allow sufficient time for meaningful and informed consultation.

Consultation prior to publication

7. SAICA is concerned that there does not appear to have been sufficient structured consultation with the key stakeholders who administer and advise trusts prior to publication of the Bill.
8. SAICA is particularly concerned about the absence of meaningful consultation with professional bodies and persons directly involved in the administration of trusts before the Bill was drafted.
9. Professional advisers play a significant role in assisting trustees with accounting, tax, financial reporting, beneficial ownership, record keeping and general compliance. The proposed legislation will materially increase these responsibilities.
10. It is therefore important that the final legislation is informed by the practical experience of those responsible for implementing the requirements.

11. **SAICA submission:** SAICA recommends that the Department establish a technical working group comprising the Department, the Master, professional bodies, trustees, trust administrators and other relevant stakeholders to consider the practical implementation of the Bill before it is finalised.

Repeal of the current Act and treatment of existing trusts

12. The Bill repeals the Trust Property Control Act and replaces it with a substantially different framework.
13. This creates an important transitional question: how will existing trusts be treated when the new legislation commences?
14. Although the Bill contains transitional provisions, SAICA believes that substantially greater clarity is required regarding the application of the new requirements to existing trusts.
15. For example, existing trusts may currently:
- not have an independent trustee;
 - not have formal investment policies;
 - not prepare annual financial statements;
 - not prepare annual returns;
 - have trust deeds drafted under the current legislative framework;
 - have Letters of Authority issued under the current Act; and
 - have existing beneficial ownership information lodged with the Master.
16. **SAICA submission:** that the Bill contain detailed transitional provisions addressing, at a minimum:
- existing trust deeds;
 - existing Letters of Authority;
 - existing trustee appointments;
 - independent trustee requirements;
 - existing investment arrangements;
 - existing accounting and financial reporting practices;
 - beneficial ownership information already lodged;
 - existing trust records;
 - existing applications pending before the Master; and
 - trusts that are dormant or have limited activity.

Explanatory memorandum

17. SAICA notes the absence of a comprehensive explanatory memorandum accompanying the Bill.
18. Given the breadth and complexity of the proposed legislation, an explanatory memorandum is essential to enable stakeholders to understand:
- the policy rationale for each substantive change;
 - the shortcomings in the current legislation that each provision seeks to address;
 - the expected impact on existing trusts;
 - the intended interaction with other legislation;
 - the expected administrative and financial impact;
 - the rationale for new compliance obligations; and
 - the intended implementation approach.

19. **SAICA submission:** A comprehensive explanatory memorandum should be published and stakeholders should be afforded an opportunity to comment on it before the Bill proceeds further.

Existing trust deed

20. SAICA notes that the Bill introduces statutory requirements relating to the creation and validity of trusts.
21. However, greater clarity is required regarding the interaction between these statutory requirements and existing trust deeds.
22. The Bill should clearly state which provisions of existing trust deeds remain valid and which provisions would be overridden by the new legislation.

23. **SAICA submission:** The Bill should expressly provide that existing trust deeds remain valid to the extent that they are not inconsistent with mandatory provisions of the new Act, together with a clear process for dealing with provisions that are inconsistent.

Minimum Trust deed content

24. The Bill does not prescribe the minimum matters that a trust instrument must address, which contributes to inconsistency in the quality and completeness of trust deeds currently in use, and creates uncertainty for trustees, beneficiaries and third parties dealing with a trust.

25. **SAICA submission:** that the Bill, or regulations issued under it, prescribe minimum trust deed content, covering: the trust instrument itself, including its form and execution; the identification and classes of beneficiaries and the vesting of their rights; the number of trustees required and the process for their appointment; the circumstances and

mechanism for termination of the trust; the requirement to compile annual financial statements, including any threshold-based requirement for audit or independent review; where relevant, a description of what constitutes the business of the trust; and the process by which the trust deed may be amended. This proposal should be cross-referenced against Clause 14 (general powers of trustees) and the annual financial statement and annual return provisions already contained in the Bill, to avoid duplication.

Master's capacity and implementation

26. The effectiveness of the proposed framework will depend substantially on the capacity of the Master's Offices.

27. The Bill introduces substantially increased responsibilities, including:

- maintaining trust records;
- maintaining beneficial ownership information;
- maintaining the Trust Register;
- receiving annual returns;
- receiving financial statements where required;
- processing trust deed amendments;
- dealing with trustee appointments and resignations;
- issuing compliance notices;
- imposing administrative fines;
- conducting investigations; and
- exercising increased supervisory powers.

28. SAICA is concerned that imposing additional obligations on trustees without first ensuring sufficient capacity within the Master's Offices may result in increased delays and unintended non-compliance.

29. **SAICA submission:** The implementation date should be linked to the readiness of the Master's systems, staffing, training and technology.

Regulatory burden and proportionality

30. SAICA supports the Department's objective of strengthening trust regulation while avoiding unnecessary regulatory burdens.

31. The Bill should therefore adopt a clearly articulated risk-based and proportionate approach.

32. The regulatory requirements applicable to:

- a large commercial trust;

- a business trust;
- a family trust;
- a testamentary trust;
- a dormant trust; and
- a trust holding a single asset

should not necessarily be identical.

33. **SAICA submission:** The Bill and regulations should provide appropriate exemptions, thresholds and simplified compliance mechanisms for low-risk and low-activity trusts.

SPECIFIC COMMENTS

Trust Register

34. SAICA notes the references in the Bill to a trusts register.

35. However, the current regulatory environment has primarily focused on the beneficial ownership register maintained by the Master.

36. The Bill should clearly distinguish between:

- the general Trust Register;
- the beneficial ownership register; and
- any other registers or records maintained by the Master.

37. It is important that stakeholders understand:

- what information will be contained in the Trust Register;
- who will be responsible for maintaining it;
- whether it will be publicly accessible;
- what information will be confidential;
- how information will be updated; and
- how the Trust Register will interact with the beneficial ownership register.

38. **SAICA submission:** The Bill should expressly establish the Trust Register, specify its purpose and information requirements, and provide for appropriate data protection and confidentiality safeguards.

Requirements for creating the trust

39. SAICA notes that the Bill provides for a founder to appoint a trustee or provide for the appointment of a trustee. However, the Bill does not clearly set out the steps or process to be followed by the founder in appointing a trustee.

40. It is unclear whether the appointment is required to be made in a particular form, whether the proposed trustee must formally accept the appointment, what information or documentation must accompany the appointment, and at what point the appointment becomes effective. It is also unclear how the founder's appointment interacts with the trustee's subsequent authorisation by the Master and the issuing of a Letter of Authority.

41. **SAICA submits:** that the Bill clearly prescribe the process for the appointment of a trustee by the founder, including the requirements for making and accepting the appointment, the documentation required, the effective date of the appointment, and the relationship between the appointment by the founder and the Master's authorisation. Clear procedural requirements would provide certainty to founders, trustees and professional advisers and reduce potential delays or disputes in the establishment and administration of trusts.

Annual Financial Statements: meaning of “inflows and outflows”

42. The Bill does not sufficiently explain what is intended by “aggregate inflows and outflows of trust property”.

43. It is unclear whether this refers to:

- cash receipts and payments;
- income and expenditure;
- movements in trust capital;
- contributions to the trust;
- distributions to beneficiaries;
- acquisitions and disposals of assets; or
- all movements in trust property.

44. For example, a trust could hold a significant property asset but have very limited cash movements during a financial year. Conversely, a trust could have substantial cash transactions without having significant net income.

45. **SAICA submission:** The Bill or regulations should clearly define “inflows and outflows” and prescribe how the threshold will be calculated.

Initial Annual Financial Statements

46. The Bill requires trusts that were not previously preparing annual financial statements to prepare their first financial statements within six months after commencement.

47. This does not take into account the financial year-end of the trust.

48. For example, requiring financial statements within six months of commencement could result in a trust having to prepare financial statements for an unusual period that does not correspond with its existing financial year.

49. **SAICA submission:** The first financial reporting period should be aligned with the trust’s financial year-end, with appropriate transitional arrangements.

Annual Financial Statements: applicable financial reporting framework

50. The Bill does not adequately specify the accounting framework that should be applied.

51. For companies, Section 29 of the Companies Act mandates that financial statements must fairly present the state of affairs and business of the company, complying with IFRS or IFRS for SMEs.

52. **SAICA submission:** the legislation clarify whether financial statements should be prepared in accordance with:

- IFRS;
- IFRS for SMEs;
- a specific trust accounting framework;
- an accounting standard prescribed by regulation; or
- another appropriate basis of accounting.

53. **SAICA submission:** the requirements should also recognise that trusts vary significantly in size, purpose and complexity.

Annual Financial Statements: who prepares the financial statements

54. The bill does not clarify who should prepare financial statements

55. **SAICA submission:** The Bill should clarify whether the financial statements must be prepared by:

- the trustees;
- an accounting officer;
- a professional accountant;
- a CA(SA);
- another suitably qualified person; or
- any person appointed by the trustees.

Independent review or audit

56. SAICA notes that the Bill does not appear to impose a general audit requirement, although the trust instrument may require one.

57. However, the Bill contains provisions relating to **reportable irregularities identified during an audit**.

58. This creates uncertainty because the legislation does not establish a corresponding general audit requirement.

59. **SAICA submission:** The Bill should clearly distinguish between:

- preparation of annual financial statements;
- independent review;
- audit; and
- circumstances in which reportable irregularities become applicable.

Annual return

60. SAICA supports the principle of an annual return as a mechanism for improving oversight of trusts.
61. However, the proposed reporting cycle does not appear to be aligned with the financial year-end of the trust.
62. This may result in trustees having to prepare financial information for different reporting periods and submit multiple compliance reports at different times.

63. **SAICA submission:** Consideration should be given to aligning the annual return cycle with the trust's financial year-end.

Master's systems

64. SAICA also has concerns regarding the capacity of the Master's systems to accommodate the proposed increase in reporting requirements.
65. There are already practical challenges experienced by users in submitting information and obtaining responses from Master's Offices.
66. The introduction of:
- annual returns;
 - financial statements;
 - beneficial ownership information;
 - trust deed amendments; and
 - other prescribed information
67. will significantly increase the volume of information required to be processed.

68. **SAICA submission:** The Department should ensure that the Master has the necessary technological infrastructure, resources and capacity before imposing the new reporting obligations. The system should be tested with professional bodies and users before implementation.

Administrative fines

69. SAICA supports proportionate administrative enforcement but has significant concerns regarding the proposed administrative fines.
70. The Bill should clarify how accountability will operate where a trust has multiple trustees.
71. For example, if an annual return is not submitted:
- Is every trustee liable?
 - Is only the trustee responsible for compliance liable?

- Can the Master determine which trustee is accountable?
- Can all trustees be fined separately?

72. The legislation should avoid a situation where trustees are individually penalised for a compliance failure for which responsibility cannot reasonably be attributed to them.

73. **SAICA submission:** The Bill should establish clear principles for attributing responsibility where there are multiple trustees.

Administrative Fines: Personal liability for fines

74. SAICA notes that the administrative fine is payable personally by the trustee and may not be recovered from trust property.

75. While personal accountability may be appropriate for misconduct, the provision could result in unfair outcomes where the underlying failure arose from circumstances beyond the individual trustee's control.

76. For example, beneficiaries may fail to provide information necessary for compliance with the Act.

77. A trustee should not automatically be personally liable where the trustee has taken reasonable steps to obtain the required information.

78. **SAICA submission:** The legislation should include a defence where a trustee can demonstrate that they took reasonable steps to comply and that non-compliance resulted from circumstances outside their reasonable control.

Appeal process

79. SAICA is concerned that the Director-General's decision is described as final.

80. The Bill should provide an appropriate independent appeal or review mechanism.

81. An appeal to the same administrative structure that imposed or oversees the original sanction may not provide sufficient independence.

82. **SAICA submission:** Consideration should be given to establishing an independent appeal mechanism or tribunal for administrative fines, with appropriate rights to mediation, arbitration, appeal or judicial review.

Amendments to trust deeds

83. SAICA has significant concerns regarding the requirement that an amendment to a trust deed only becomes effective once it has been lodged with and acknowledged by the Master.

84. The Bill also appears to prevent the lodging of an amendment where the prescribed beneficial ownership information has not been lodged or updated.

85. While the objective of ensuring accurate records is supported, this could create serious practical consequences.

86. There are already instances where applications submitted to Master's Offices, including applications relating to Letters of Authority, may experience significant delays.
87. If a trust deed amendment cannot be implemented until acknowledged by the Master, delays at the Master's Office could prevent trustees from exercising powers that have otherwise been validly approved under the trust deed.

88. **SAICA submission:** The Bill be amended to provide that changes to a trust deed take effect once made in accordance with the trust deed and lodged with the Master in the prescribed manner, and that if the Master does not respond within a fixed period, for example 10 business days, the trust may proceed on the basis that no issue has been identified with the amendment.
89. This approach mirrors section 16(9)(b) of the Companies Act 71 of 2008, under which an amendment to a Memorandum of Incorporation becomes effective 10 business days after receipt of the Notice of Amendment by the Commission, unless the amendment is endorsed or rejected with reasons before expiry of that period, or on such later date as is set out in the Notice of Amendment.

Removal and resignation of trustees: Delays in acknowledgement

90. SAICA notes the additional requirements relating to trustee resignation, including notification to the Master, other trustees and beneficiaries with vested rights and the requirement for written acknowledgement by the Master.
91. If resignation only becomes effective upon acknowledgement by the Master, a trustee could remain legally appointed despite having resigned and complied with all prescribed requirements.
92. Given existing concerns about delays in Master's Offices, this could expose trustees to continuing liability.

93. **SAICA submission:** Resignation should become effective upon compliance with the prescribed notification requirements, subject to the Master subsequently recording the resignation.
94. Alternatively, a deemed acknowledgement mechanism should apply where the Master does not respond within a prescribed period.

Removal and resignation of trustees: Removal by another trustee

95. The Bill appears to provide for removal of a trustee by another trustee in circumstances where this is considered to be in the best interests of the trust.
96. SAICA recommends greater clarity regarding this provision.
97. It is unclear:
- who determines whether removal is in the best interests of the trust;
 - what evidence must be considered;
 - whether the Master must approve the removal;

- whether the affected trustee must be given an opportunity to make representations; and
- what safeguards exist against removal motivated by disputes between trustees.

98. **SAICA submission:** The Bill should provide a clear, objective process and procedural safeguards to ensure that removal is genuinely in the best interests of the trust and is not used unfairly or for ulterior purposes.

Reporting of irregularities – Section 30(1)

99. SAICA notes that the Bill refers to irregularities identified during an audit.

100. However, the Bill does not establish a general audit requirement for trusts.

101. This creates uncertainty regarding:

- which trusts are expected to be audited;
- who is regarded as the auditor;
- what constitutes a material irregularity;
- to whom the report must be made;
- whether the obligation applies only where an audit is voluntarily undertaken; and
- how the requirement interacts with the Auditing Profession Act and applicable auditing standards.

102. The Bill requires an auditor to report any material irregularities identified during an audit to the Master if the irregularity is not rectified to the satisfaction of such person within one month from the date upon which it was reported to the trustee. In addition, the auditor is required to deal with such in terms of the Auditing Profession Act. This creates additional reporting obligations for auditors and may result in duplication of reporting requirements.

103. We are concerned that the proposed wording in Section 30(1) of the Bill may create uncertainty regarding the interaction between the reporting obligations under the Regulations of the Trust Bill and those reporting obligations of a Registered Auditor (RA) per Section 45 of the Auditing Profession Act, 2005 (Act No. 26 of 2005) (APA).

Proposed Section 30(1) of the Bill appears to require an auditor (with "auditor" not defined in the Bill, and the term "auditor" therefore assumed to refer to a registered auditor (RA) as is defined in the APA) to first report a material irregularity to the trustee and only to "deal with the irregularity in terms of the provisions of the Auditing Profession Act..." if the irregularity is not rectified within one month. This could be interpreted as permitting a delay in complying with the auditor's obligations under section 45 of the APA.

Where an irregularity constitutes a reportable irregularity as defined in the APA, a registered auditor is required to comply with the provisions of section 45 of the APA without delay. The auditor's obligations under the APA should not be deferred pending the expiry of a one-month remediation period under the proposed Section 30(1) of the Bill.

We therefore recommend that the wording be revised to make it clear that compliance with the APA is required immediately when the irregularity meets the definition of a reportable irregularity, irrespective of any separate reporting

process or rectification period provided for in Section 30(1) of the Bill. This would avoid any potential conflict between the two legislative frameworks and ensure that auditors (i.e. RAs) are able to fulfil their statutory obligations under the APA in a timely manner."

104. **SAICA submission:** that the Bill clarify how these reporting obligations are intended to operate together and consider whether the reporting requirement to the Master can be aligned with the existing reporting requirements under the Auditing Profession Act to avoid unnecessary duplication and administrative burden for auditors.
105. SAICA recommends an extract similar to Medical Schemes Guide: As per Section 36(5)(a) of the Act, if an auditor reports a reportable irregularity to the IRBA in terms of Section 45 of the APA, that auditor is required to submit the same report to the Registrar. Refer to the section on Reporting on Reportable Irregularities. An auditor is required to furnish the Registrar with a copy of both the first and second reports of an auditor furnished to the IRBA in terms of Section 45 of the Auditing Profession Act, as per Section 36(5)(a) of the Act.

16. Reporting of non-compliance

106. SAICA recommends insertion of clause regarding the reporting of non-compliance.
107. The Bill should distinguish between non-compliance identified by:
- a trustee;
 - another trustee;
 - a beneficiary;
 - a professional adviser;
 - an accounting practitioner;
 - an auditor;
 - a tax practitioner;
 - an independent trustee; or
 - another person administering or dealing with the trust.
108. It is unclear what obligation exists where, for example, a beneficiary becomes aware that required information has not been lodged, or a professional adviser identifies a compliance failure while providing accounting or tax services.
109. The legislation should also avoid creating conflicting reporting obligations under the Regulation of Trusts Act, the FIC Act, the Auditing Profession Act, tax legislation and other applicable laws.

110. **SAICA submission:** The Bill should establish a clear and coherent framework specifying:
- who must report non-compliance;

- what constitutes reportable non-compliance;
- to whom the report must be submitted;
- the time period for reporting;
- protections for persons making reports in good faith; and
- how the obligation interacts with existing statutory reporting requirements.

Conclusion

111. SAICA appreciates the opportunity to participate in the development of the proposed trust regulatory framework.
112. The objectives of the Bill are supported. However, the successful implementation of the proposed framework will depend on ensuring that the legislation is clear, practical, proportionate, administratively workable and supported by adequate systems and capacity.
113. Given that the Bill proposes the repeal and replacement of the Trust Property Control Act, SAICA respectfully requests that the Department allow further consultation and engagement with affected stakeholders before the Bill is finalised.
114. SAICA would welcome the opportunity to participate in a technical consultation or workshop with the Department, the Master of the High Court and relevant stakeholders to work through the practical implementation issues identified in this submission.