

2024 Compliance in Practice - Trusts



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MYTH 1...

FINANCIAL STATEMENTS ARE ENOUGH

Trust administration – the average accountant's version

Statement of Financial Activities

for the year to 31 March 2015

	For the Year to 31 March 2015			Year to 31 March 2014
	Unrestricted Funds £	Endowment Funds £	Total £	Total £
INCOMING RESOURCES				
Investment Income	2,568,562	-	2,568,562	2,346,226
TOTAL INCOMING RESOURCES	2,568,562	-	2,568,562	2,346,226
RESOURCES EXPENDED				
Cost of Generating Funds	-	904,469	904,469	1,056,585
Charitable Activities	1,851,757	-	1,851,757	1,519,755
Governance Costs	18,575	-	18,575	13,132
TOTAL RESOURCES EXPENDED	1,870,332	904,469	2,774,801	2,609,472
NET INCOMING / (OUTGOING) RESOURCES for the year before net recognised gains and losses	698,230	(904,469)	(206,239)	(263,246)
OTHER RECOGNISED GAINS AND LOSSES				
Realised and Unrealised Gains / (Losses) on Investment Assets	-	29,992,640	29,992,640	(813,164)
Realised (Loss) / Gain on currency held within investment assets	-	(1,753,222)	(1,753,222)	(3,865,842)
NET MOVEMENT IN FUNDS	698,230	27,239,419	28,033,179	(8,542,252)
FUNDS at 1 April 2014	2,031,061	276,854,984	278,887,645	63,429,000
TOTAL FUNDS at 31 March 2015	2,729,291	304,191,533	306,920,824	279,887,645

Balance Sheet

for the year to 31 March 2015

	2015 £	2014 £
FIXED ASSETS		
Tangible assets	12,071	22,449
Investments (at Market Value)	285,957,370	257,118,721
	285,970,041	257,161,170
CURRENT ASSETS		
Debtors	511,607	517,386
Cash at Bank in Hand	20,584,817	21,386,763
	21,096,424	21,904,069
CREDITORS - amounts falling due within one year	(145,601)	(173,074)
NET CURRENT ASSETS	20,950,783	21,726,475
TOTAL ASSETS LESS LIABILITIES	306,920,824	279,887,645
Represented by:-		
UNRESTRICTED FUNDS	2,729,291	2,031,061
EXPENDABLE ENDOWMENT FUNDS	304,191,533	276,854,984
TOTAL FUNDS	306,920,824	279,887,645

What does the law say?

- ✧ Trust Property Control Act does not require financial statements
 - ✧ Trust deed may
- ✧ Trust accounts need not be audited
 - ✧ Master can appoint an auditor - S 16 (Master may call upon trustee to account)
- ✧ Instead of seeking reliance on audited financial statements, onus rather on trustees to clearly identify and record trust property ito S 11 (Registration and identification of trust property)
 - ✧ Modern interpretation - asset register to be maintained by trustees that clearly describe the assets, including purchase dates, values and locations
- ✧ Onus on trustees to deliver to Master any trust documents and records when requested to do so to the satisfaction of the Master (S 16)
- ✧ Trustees to keep any document that serves as proof of any investment, safe custody, control, administration, alienation or distribution of trust property for 5 years after the termination of the trust - S 17 (Custody of documents)

MYTH 2...

MY ACCOUNTANT HAS EVERYTHING UNDER
CONTROL

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



The gap...

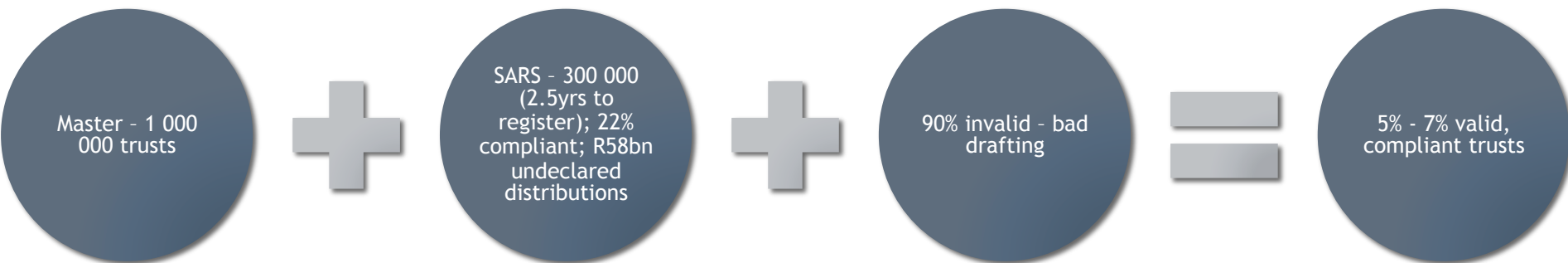
Setting up a trust

Accounting and tax



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

Stats speak for itself!



Clients need help – nowhere to go!

Your clients' trusts...?



The life of a trustee has changed overnight

- ✧ R 10 million fine and/or imprisonment
- ✧ They need to be FIC experts
- ✧ They need to keep real-time data
- ✧ They need to report

THE OPPORTUNITY...

TRUSTEES REQUIRE SPECIFIC SERVICES

Links to 2 recent articles:

- ✧ <https://www.iol.co.za/personal-finance/financial-planning/trust-worthy-do-trustees-receive-the-service-they-require-faa90f69-42d1-4290-9b13-93435e434825>
- ✧ <https://www.iol.co.za/personal-finance/financial-planning/can-the-independent-trustee-still-provide-free-services-44a96018-0fdf-4d3b-9f23-e9ee85ceb66f>

Which service do (want) you to provide?

Client communication is key!

Statutory	Trust administration and compliance	Independent trustee	Accounting and tax
<ul style="list-style-type: none"> • New trust deed • Trust deed amendments • Trustee changes • Accountant changes 	<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? • Realtime trust information
Accountable institution	Accountable institution	Accountable institution	Accountable institution?
Charge	Extra layers of compliance	Risk-based pricing; PI cover?	Fees; PI cover?

Is the tax practitioner becoming the ultimate reconciler and checker?

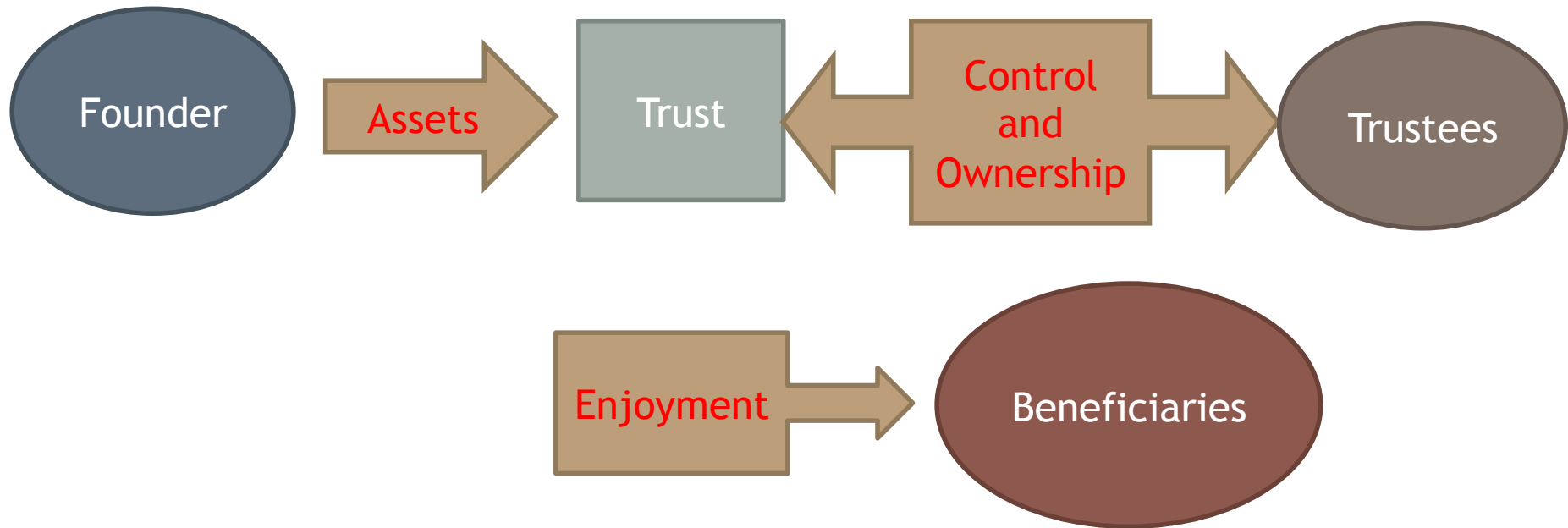
Separate Engagement Letter for each service - include indemnification for non-participative trustees and other “beneficial owners”

LET'S RECAP THE BASICS

How does the law define a trust?

- ✧ **Trust Property Control Act:** structure into which property is transferred, which is then administered by trustees, on behalf of one or more beneficiaries, in accordance with the trust instrument, which could be a trust deed or a will.
- ✧ **Income Tax Act (s1):** *“any trust fund consisting of cash or other assets which are administered and controlled by a person acting in a fiduciary capacity, where such person is appointed under a deed of trust or by agreement or under the will of a deceased person.”*
- ✧ The Deeds Registry Act, Transfer Duty Act, Value Added Tax Act and the Insolvency Act afford a trust legal personality.
- ✧ The Courts, on the other hand, hold that a trust is, in essence, a contract.

Structure of a trust



A trust is unique

- ✧ A trust is not similar to a will - requires active management
- ✧ A trust is unique, not same as company
 - ✧ not a legal person but just an accumulation of assets
 - ✧ a contract - follow the instructions - narrow powers
 - ✧ trustees custodians of assets as joint owners of trust assets -requires joint action
 - ✧ run by resolution
 - ✧ document retention - onerous
- ✧ SARS requires unique information
 - ✧ each asset treated as silo
 - ✧ “connected person” rules
 - ✧ Attribution rules - need to link asset to how it was acquired (loan terms and donations)
 - ✧ distributions of income/capital gains - conduit principle

Even tax is unique...

Trust is taxpayer of last resort:

1. Did you **donate or make loans** to trust at below-market interest rates? → Attribute income/capital gains to you and you pay tax (Section 7 of the Income Tax Act for income and Par 68 to 73 of the Eighth Schedule to the Income Tax Act for capital gains)
2. Did trustees use “**Conduit Principle**” to distribute income or capital gain to you as beneficiary (together with tax liability)? → You pay tax (Section 25B of the Income Tax Act for income and Par 80(2) of the Eighth Schedule to the Income Tax Act for capital gains (Armstrong and Rosen))
3. **Trust** pays tax on rest

START WITH THE TRUST DEED

Does the trust even exist? Essential elements for a trust to exist - Estate Richards v Nichol 1999

- ✧ A clear and unambiguous intention on the part of the founder to create a trust
- ✧ The founder expresses their intention in the creation of the trust instrument in such a way as to create an obligation
- ✧ Trust property should be clearly and certainly defined so that it can easily be identified
- ✧ Beneficiaries (or object) must be clearly and certainly defined to be identifiable
- ✧ The trust object (not purpose) must be lawful

Essential elements for a trust to exist - other considerations

- ✧ Should there be at least one appointed trustee?
- ✧ Is it a requirement to have a bank account to have a valid trust?
- ✧ Property must be transferred to the trustees (ownership trust - discretionary trust and vesting trust) or beneficiaries (bewind trust)

THEN THE EXECUTION OF THE TRUST DEED

Founder has to divest of assets... “mine is no longer mine”



The life of a trustee



Creditors have better
memories than debtors.

Benjamin Franklin



All trustees have the same fiduciary duty to look after trust assets in the beneficiaries' best interests, in a legal manner



No excuse for trustees

- Trustee has knowledge and understands the law of trust? Yes ☐ No ☐
- Trustee is aware of the fiduciary duties and responsibilities? Yes ☐ No ☐
- By accepting the position of trustee, you are exposing yourself to civil and criminal actions in terms of section 9 of the Trust Property Control Act, 1988 (Act 57 of 1988) Yes ☐ No ☐
- By accepting the position of trustee, you are exposing yourself to removal action by the Master for failure to comply with any lawful request of the Master including a request to account in terms of section 16 of the Trust Property Control Act, 1998 (Act 57 Act of 1998) Yes ☐ No ☐
- Trustee will exercise direct special personal control to maintain accurate trust records Yes ☐ No ☐

A *‘silent’*, *‘sleeping’*, *‘absent’*, or *‘puppet’* trustee **cannot claim ignorance** and will be joined with the wrongdoing trustee/s [Slip Knot Investments 777 (Pty) Ltd v du Toit case of 2011]

What is expected of a trustee?

- ✧ A Trustee has to act “bona fide” or in good faith in managing the affairs of the trust.
- ✧ Trustees are to act with the care, diligence and skill, which can reasonably be expected of a person who manages the affairs of others (Section 9(1) of the Trust Property Control Act).
- ✧ This is a far-reaching, onerous provision and the onus will be on the trustee to prove that he/she acted as such, in the event that he/she is accused of maladministration.
- ✧ No trust instrument can exempt a trustee from this liability. If the trust instrument contains such a clause, it may invalidate the entire trust instrument and cause the trust to cease to exist.

Main components of a trustee's fiduciary duty

- ✧ “*There is no magic in the term ‘fiduciary duty’*” (Phillips v Fieldstone Africa (Pty) Ltd case of 2004). The essential requirement for the existence of a fiduciary duty is that one party must stand towards another in a position of confidence and good faith which they are obliged to protect.
- ✧ The duty of care (Section 9(1) of the Trust Property Control Act).
- ✧ The duty of impartiality.
- ✧ The duty of independence.
- ✧ The duty of accountability.

Trustees need to understand and execute trust deed

- ✧ The **powers** given to trustees: Trustees may only act within the powers granted to them, for example, where the trust instrument does not grant trustees the power to acquire shares, they may not do so.
- ✧ The **process** to follow in the **appointment and removal of trustees**.
- ✧ The frequency of compulsory **meetings**.
- ✧ The **process** to follow in order for **meetings** to take place.
- ✧ The **number of trustees** required in order to reach agreement on certain issues.
- ✧ Requirements for **distributions**.
- ✧ The **signing of documents**.
- ✧ **Accounting and auditing**.
- ✧ **Beneficiaries' rights to reporting**.
- ✧ **Dispute resolution**.

Are you the independent trustee.. Do not be caught...



Independent trustee - Sworn Affidavit

- ✧ The Master of the High Court requires the independent trustee to sign the following **Sworn Affidavit** upon their appointment:
- ✧ “As independent trustee I declare and undertake the following: ...
 4. That I have **no family relation or connection, blood or other**, to any of the **existing or proposed Trustees, beneficiaries or founder of the trust**.
 5. That I am **competent** to scrutinize and check the conduct of the other appointed trustees who lack a sufficiently independent interest in the observance of substantive and procedural requirements arising from the Trust instrument.
 6. I have no reason to conclude or approve transactions that may prove to be invalid, because I am **knowledgeable in the law of trusts**”.

Are you the minority?

- ✧ **No assurance** that the trustees will act independently to achieve a separation between control and enjoyment of trust assets.
- ✧ **Uneven number** of trustees - you and husband and wife. Out-vote you if you do not agree with the husband and wife team (van der Merwe NO and Others v Hydraberg Hydraulics CC and Others, van der Merwe NO and Others v Bosman and Others case of 2010).
- ✧ Risk for you if two family members do not act for **the benefit of all beneficiaries** of the trust, but rather for their own.
- ✧ Expose the trust if the Court can prove that your appointment was just “**window dressing**” and that your vote does not “**really**” count.
- ✧ The Courts frown upon this practice and expect an independent trustee to be **involved** in decisions relating to the trust.
- ✧ Need majority independent trustees?
- ✧ A ‘silent’, ‘sleeping’, ‘absent’, or ‘puppet’ trustee will not be tolerated. In the Slip Knot Investments 777 (Pty) Ltd v du Toit case of 2011.

You provide the service for free???

Nothing in life is for free...

- ✧ Our law affords the contingent beneficiary the right to protect his or her interest against **mal-administration** by the trustee [Gross v Pentz 1996 (4) SA 617 (A)].
- ✧ Trustees held **personally liable** - “Going behind the trust form, on the other hand, entails accepting that the trust exists, but disregarding for given purposes the ordinary consequences of its existence. This might entail holding the trustees personally liable for an obligation ostensibly undertaken in their capacity as trustees” [Van Zyl NNO & Another v Kaye NO 2014 (4) SA 452 (WCC)].

TRUST REGULATORY FRAMEWORK

How are trusts governed in South Africa?

- ✧ The Trust Property Control Act
- ✧ Constitution
- ✧ Income Tax Act
- ✧ Alienation Of Land Act
- ✧ Estate Duty Act
- ✧ Common Law
- ✧ Promotion Of Administrative Justice Act (PAJA)
- ✧ Promotion Of Access To Information Act (PAIA)
- ✧ Protection Of Personal Information Act (POPIA)
- ✧ General Data Protection Regulation (GDPR)

Was Beneficial Ownership Transparency (BOT) a wise idea of government?

- ✧ 70% of selection of large corruption cases involved complex ownership structures designed to conceal identity of individuals, 15% involved trusts (World Bank study)
- ✧ International bodies developed guiding principles for the BOT of trusts. The relevant ones for South Africa:
 - ✧ FATF (Financial Action Task Force) Recommendations (South Africa is a member of the FATF),
 - ✧ Organisation for Economic Co-operation and Development's (OECD) Common Reporting Standard (CRS) (South Africa is a signatory to the CRS), and
 - ✧ G20 High-Level Principles (South Africa is committed to the G20 High-Level Principles).
- ✧ It is here to stay!
- ✧ Our compliance or lack thereof is determined by FATF; NOT us!
- ✧ We promised FATF that we would do enough to get off the greylist by January 2025! Only 1 year left!
- ✧ Severe impact on country if we not removed from greylist

Quick recap of 2023

- ✧ Government promulgated onerous amendments to the Trust Property Control Act (TPCA) on 22 December 2022 (which were gazetted on 29 December 2022)
- ✧ Issued Regulations for its implementation on 31 March 2023, effective from 1 April 2023
- ✧ April 2023 - Temporary capability to upload “Beneficial Ownership” information onto the Master’s portal. Government only managed to replace this temporary beneficial ownership register developed on a Google Docs platform with a permanent Beneficial Ownership register in October 2023
- ✧ Department of Justice and Constitutional Development issued media statement on 4 May 2023 reminding (informing) public that new measures have come into effect from 1 April 2023 with the heading “*Increased measures for Trusts to combat money-laundering and terrorism financing crimes*”.
- ✧ Chief Master also issued Directive 8 of 2023, effective 16 October 2023, titled “*Beneficial Ownership Register*”, which reminds trustees that the requirements apply to all trusts, “*irrelevant of when and for what purpose it has been registered*”. No extension is provided to submit beneficial ownership information to the Master and it stresses that “*all South Africans are required to provide records and reports on all information about beneficial owners as from 1 April 2023*”.

Quick recap of 2023 (cont.)

- ✧ The Minister of Finance, Enoch Godongwana, delivered Medium-Term Budget Policy Statement (MTBPS) on 1 November 2023:
 - ✧ Stressed that “*there is also a significant amount of work that must still be done*” to prove to FATF that enough done to remove South Africa from greylist.
 - ✧ Government expects to address all the deficiencies identified by the FATF by early 2025
 - ✧ Some of the relevant areas the FATF requires South Africa to still address:
 - ✧ Focus on improving risk-based supervision of designated non-financial businesses and professions such as lawyers, notaries, other independent legal professionals and accountants, and trust and company service providers
 - ✧ Ensuring that competent authorities have timely access to accurate and up-to-date beneficial ownership information on legal persons and arrangements
 - ✧ Applying sanctions for breaches of violations by legal persons to beneficial ownership obligations, and demonstrating that all anti-money laundering and counter-terrorism finance supervisors apply effective, proportionate, and effective sanctions for non-compliance.

Warning of fines and/or
imprisonment in 2024?

Quick recap of 2023 (cont.)

- ✧ Nov 2023 - Justice and Correctional Services Minister Ronald Lamola, approved welcome rescue plan for the Master's Office, which has been plagued with backlogs and inefficient processes across the country.
- ✧ Attempts to address various shortfalls in the Master's administration of deceased estates, the setting up and liquidating of trusts, and managing the Guardian's Fund
- ✧ Aim to address backlogs, improve digitisation (interesting the choice of words as digitisation only focuses on converting and recording data, whilst digitalisation is about developing processes and changing workflows to improve manual systems), increase capacity, ensure standardisation and transparency, and to stop corruption in offices across the country
- ✧ Not public document
- ✧ Bill in process to be approved - expected to present to president in December 2023? Includes rights of the Chief Master to review decisions of the Masters
- ✧ Online trust portal, similar to estates?

Quick recap of 2023 (cont.)

The South African Revenue Service (SARS) also jumped on bandwagon:

- ✧ SARS webinar on 29 July 2021 - *“Trust and Tax obligations”*
- ✧ *“Trust Filing Season: Form and System Changes to be Introduced from 23 June 2023”*
 - ✧ Attribution rules
 - ✧ Beneficial Ownership Declaration
 - ✧ Upload mandatory supporting documents - upload mandatory supporting documents
- ✧ Government Gazette (30 June 2023) - *“Returns of information to be submitted by third parties in terms of Section 26 of the Tax Administration Act, 2011”* - Submission date of IT3(t) May 2024, BUT moved to 30 Sep 2024 in Government Gazette on 10 Nov 2023
- ✧ SARS provided guidance on 31 August 2023, when they issued a communication titled *“Clarification of certain matters pertaining to the completion of the trust income tax return (ITR12t)”*. SARS confirmed that its aim is to record all beneficial owners of registered trusts to comply with the FATF requirements.

ARE WE GETTING OFF THE GREYLIST? WHAT
IS THE PROGRESS AND THE PLAN?

Quick recap

- ✧ Dec 2022 – Government introduced far-reaching changes to our legislation (the Trust Property Control Act, Nonprofit Organisations Act, Financial Intelligence Centre Act, Companies Act, and Financial Sector Regulation Act) in an attempt to avoid being greylisted - **[NOT INCOME TAX ACT OR TAA]**
- ✧ attempted to address 70% of the technical/legislation deficiencies identified by the FATF.
- ✧ Jan 2023 - FATF assessed our progress, and even though we have made significant and positive progress, reducing the 67 Recommended Actions to 8 strategic deficiencies, the FATF found that more was to be done
- ✧ 24 Feb 2023 – Greylisted by FATF - classifying it as a jurisdiction under increased monitoring

LEGISLATION ADEQUACY - ONLY 50% SCORE IN 2021... WHAT HAPPENED?

Recap: FATF final report, published in October 2021, scored 40 technical areas/legislation adequacy. SA found to be:

- ✧ fully compliant in only 3 of 40
- ✧ comply or largely comply with 20 of 40
- ✧ partially compliant/non-compliant in 20

Another attempt to pass - Technical areas/ legislation adequacy

- ✧ 27 October 2023 - FATF Plenary formally re-rated 18 of 20 deficiencies on application by SA
 - ✧ 14 Recommendations are now fully or largely compliant, and 1 Recommendation was rated as not being applicable to SA
 - ✧ SA now deemed to be fully or largely compliant (or not deficient) in 35 of 40 FATF Recommendations, including in 5 of the 6 core FATF Recommendations.
 - ✧ SA left with 5 deficiencies in technical compliance (including 3 of the 18 which were upgraded from non-compliant to partially compliant), and 2 which remain as partially compliant since 2021
 - ✧ SA to continue to address the remaining 5 deficiencies, with the expectation that they will be deemed to be addressed in the next FATF Follow-up report in October/November 2024

Another attempt to pass - Technical areas/ legislation adequacy (cont.)

- ✧ 28 Nov 2023 - FATF published their follow-up report “*South Africa: Follow-up Report on Technical Compliance Re-rating*” (South Africa 2nd Follow-Up Report)
 - ✧ Positive progress in addressing technical compliance deficiencies in its anti-money laundering system
- ✧ 29 Nov 2023 - National Treasury issued media statement “*Greylisting: Positive Progress in Addressing Technical Compliance Deficiencies in South Africa’s Anti-Money Laundering System*”
 - ✧ Confirms that South Africa will continue to address remaining 5 deficiencies, with expectation that they will be deemed to be addressed in the next FATF Follow-up report in Oct/Nov 2024.
 - ✧ Our authorities would also have to demonstrate that the improvements are sustainable before they would be deemed by the FATF to have been adequately addressed.
 - ✧ Addressing remaining actions within agreed timelines will require significant effort from all relevant South African authorities. SA authorities will also need to demonstrate that improvements are sustainable, before deemed by FATF to have adequately addressed all action items.

National Treasury issued media statement “*Greylisting: Positive Progress in Addressing Technical Compliance Deficiencies in South Africa’s Anti-Money Laundering System*” on 29 November 2023

In summary, the FATF Plenary approved the following upgrades:

Recommendation	Measure	October 2021	October 2023
1	Assessing risks & applying a risk-based approach	Partially Compliant	Largely Compliant
2	National cooperation and coordination	Partially Compliant	Partially Compliant
5 (Core)	Terrorist financing offence	Partially Compliant	Compliant
6 (Core)	Targeted financial sanctions related to terrorism and terrorist financing	Non Compliant	Partially Compliant
7	Partially Compliant	Partially Compliant	Largely Compliant
8	Non-profit organisations	Non Compliant	Partially Compliant
10 (Core)	Financial institution secrecy laws	Partially Compliant	Largely Compliant
12	Politically exposed persons	Non Compliant	Largely Compliant
14	Money or value transfer services	Partially Compliant	Largely Compliant
15	New technologies	Non Compliant	Partially Compliant
17	Reliance on third parties	Non Compliant	Not Applicable
18	Internal controls and foreign branches and subsidiaries	Partially Compliant	Largely Compliant
22	DNFBPs: Customer due diligence	Partially Compliant	Largely Compliant
23	DNFBPs: Other measures	Partially Compliant	Compliant
24	Transparency and beneficial ownership of legal persons	Partially Compliant	Largely Compliant
25	Transparency and beneficial ownership of legal arrangements	Partially Compliant	Largely Compliant
26	Regulation and supervision of financial institutions	Partially Compliant	Largely Compliant
27	Powers of supervisors	Partially Compliant	Largely Compliant
28	Regulation and supervision of DNFBPs	Partially Compliant	Largely Compliant
32	Cash couriers	Partially Compliant	Partially Compliant

IMPLEMENTATION OF LEGISLATION - 100% FAILED IN 2021... WHAT HAPPENED?

Recap: The FATF final report, published in October 2021, scored 11 areas of efficiency of implementing legislation. SA found to be critically weak on all



Implementation of legislation

- ✧ Had to address our 100% deficient implementation areas identified by the FATF in 2021.
- ✧ 31 March 2023, effective from 1 April 2023 - government issued Regulations.
- ✧ Early in April 2023 - government implemented a temporary Google Docs platform to upload “Beneficial Ownership” information onto the Master’s portal.
- ✧ On 4 May 2023 - Department of Justice and Constitutional Development issued a media statement reminding (informing) the public that the new measures have come into effect from 1 April 2023 with the heading *“Increased measures for Trusts to combat money-laundering and terrorism financing crimes”*.
- ✧ Reminded South Africans that we obliged, as a member of FATF, to ensure that its regulatory environment is geared towards international standards in anti-money laundering and combating financing of terrorism and that South Africa will be evaluated again by FATF (with potentially severe consequences for the country for non-compliance).

Implementation of legislation (cont.)

- ✧ Effective 16 Oct 2023 - The acting Chief Master issued Directive 8 of 2023, titled “*Beneficial Ownership Register*”
 - ✧ Reminds trustees that requirements apply to all trusts, “*irrelevant of when and for what purpose it has been registered*”.
 - ✧ Trustees legally obliged to submit Beneficial Ownership registers electronically on platform provided by Master.
 - ✧ Government introduced permanent Beneficial Ownership register, which replaced temporary Google Docs platform people complained about.
 - ✧ “*web-based system that will enable trustees and other authorized parties to submit Trust Beneficial Owners details in a safe and secure environment*”. The previously used Google form decommissioned.
 - ✧ No extension to submit beneficial ownership information to the Master.
 - ✧ “*all South Africans are required to provide records and reports on all information about beneficial owners as from 1 April 2023*”.
 - ✧ Trustees should submit information “*within a reasonable time after the launching of the Master’s electronic BOR*”.
 - ✧ Trustees reminded of the penalty for non-compliance (up to R 10 million and/or five years imprisonment).

Implementation of legislation (cont.)

- ✧ 1 Nov 2023 - Minister of Finance, Enoch Godongwana stressed there is “a significant amount of work that must still be done” to prove to the FATF that enough was done to remove South Africa from the greylist when he delivered his Medium-Term Budget Policy Statement (MTBPS)
- ✧ Media statement issued by National Treasury on 29 November 2023 (referred to above)
 - ✧ FATF Follow-up Report did not address progress made by South Africa to improve effectiveness deficiencies identified
 - ✧ Distinct process from addressing technical compliance - should be conducted under the FATF’s International Co-operation Review Group Joint Group (ICRG JG) process
 - ✧ It was stressed that overcoming effectiveness deficiencies were essential for South Africa to exit FATF greylist

National Treasury issued media statement “*Greylisting: Positive Progress in Addressing Technical Compliance Deficiencies in South Africa’s Anti-Money Laundering System*” on 29 November 2023

- ✧ Completing implementation of Action Plan essential for South Africa to exit FATF “greylist”.
- ✧ SA’s progress against Action Plan is reviewed by the FATF Africa/Middle East Joint Group (FATF AME JG) - meets every 4 months.
- ✧ Cabinet and the Justice, Crime Prevention and Security (JCPS) Cluster oversee implementation of Action Plan, via the Interdepartmental Committee on AML/CFT (IDC-AML/CFT) chaired by the Director-General of National Treasury.
- ✧ The IDC-AML/CFT includes large number of government departments and agencies - including the South African Police Services’ Directorate for Priority Crime Investigation (the Hawks), the National Prosecuting Authority, the Special Investigating Unit, the State Security Agency, the Financial Intelligence Centre, the South African Reserve Bank, the Financial Sector Conduct Authority, the Department of Justice and Constitutional Development, the Companies and Intellectual Property Commission and the South African Revenue Service. Cabinet has been closely monitoring progress by the IDC-AML/CFT and government departments and agencies, as noted in the Cabinet statement of 18 October 2023.
- ✧ Through the IDC-AML/CFT, SA reported on its progress against the Action Plan at 2 AME Joint Group meetings in May and September 2023, and currently preparing to engage on 3rd report to Joint Group.

National Treasury issued media statement “Greylisting: Positive Progress in Addressing Technical Compliance Deficiencies in South Africa’s Anti-Money Laundering System” on 29 November 2023 - Action Plan and the timelines for completion adopted by the FATF when greylisting South Africa in February 2023:

Immediate Outcome	Action Item	Expiry date
IO2	1. South Africa should demonstrate a sustained increase in outbound MLA requests and timely follow up to help facilitate ML/TF investigations and confiscations of different types of assets in line with its risk profile.	May 2024
IO3/4	1. The authorities should proactively identify and take action against unlicensed cross-border MVTs.	January 2025
	2. South Africa should improve risk-based supervision of DNFBPs by: a) implementing and keeping up-to-date supervisory risk-assessment tools to identify higher risk DNFBPs as a basis for risk-based supervision;	May 2024
	b) conducting inspections on a risk-sensitive basis of high-risk DNFBPs; and	September 2024
	c) conduct training and awareness programmes on their AML/CFT obligations, particularly with regards to filing and submitting STRs filed in line with risks.	September 2024
	3. South Africa should strengthen the AML/CFT supervisory capacity (human and financial resources) of FSCA and FIC.	May 2024
	4. South Africa should demonstrate that all AML/CFT supervisors apply and monitor implementation of follow-up remedial actions and that effective, proportionate and dissuasive sanctions are being applied	January 2025

National Treasury issued media statement “Greylisting: Positive Progress in Addressing Technical Compliance Deficiencies in South Africa’s Anti-Money Laundering System” on 29 November 2023 - Action Plan and the timelines for completion adopted by the FATF when greylisting South Africa in February 2023:

IO5	1. South Africa should demonstrate that competent authorities have timely access to adequate, accurate and up to date beneficial ownership information of legal persons and arrangements.	September 2024
	2. South Africa should apply remedial actions and/or dissuasive and proportionate sanctions for violations of the transparency obligations applicable to legal persons.	January 2025
IO6	1. The SAPS should demonstrate a sustained increase in requests for financial intelligence for investigations.	May 2024
IO7	1. South Africa should demonstrate a sustained increase in investigations and prosecutions of serious and complex money laundering, in particular involving professional money laundering networks/enablers and third-party ML in line with its risk profile.	January 2025
IO8	1. South Africa should enhance its identification, seizure and confiscation of proceeds and instrumentalities of a wider range of predicate crimes, in line with its risk profile.	September 2024

Making you not want to do something/
discourage

Action for this year - legislation

- ✧ Government expects to address all the deficiencies identified by the FATF by early 2025.
- ✧ This includes the remaining 5 deficiencies in technical compliance as well as all 11 areas of efficiency in implementing legislation.
- ✧ One year to demonstrate compliance.

WHAT DO WE HAVE TO DO?

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 subsection 10(2) (Section 10 – Trust account) - 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 subsection 11(1)(e) (Section 11 – Registration and identification of trust property) – record 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 to 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 to 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 to the TPCA)

ONLY 1 OF 3 FINE STOPPERS:
BENEFICIAL OWNERSHIP

“Beneficial owner” definitions

FIC Act	TPCA	SARS
<p>(a) a natural person who directly or indirectly</p> <p>(i) ultimately owns or exercises effective control of</p> <p>(aa) a client of an accountable institution; or</p> <p>(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</p> <p>(ii) exercises control of a client of an accountable institution on whose behalf a transaction is being conducted; and</p> <p>(b) includes</p> <p>...</p> <p>(iii) in respect of a trust, each natural person contemplated in section 21B(4)(c), (d) and (e)</p>	<p>(a) a natural person who directly or indirectly ultimately owns the relevant trust property;</p> <p>(b) a natural person who exercises effective control of the administration of the trust arrangements that are established pursuant to a trust instrument</p>	<p>Only defined in relation to dividend tax (Section 64D); not in relation to trusts:</p> <p>The person entitled to the benefits of the dividend attaching to a share.</p> <p>But SARS added beneficial owner fields required for trust tax registration and new trust tax returns.</p>

“Beneficial owner” definitions (cont.)

FIC Act - section 21B(4)(c), (d) and (e)	TPCA
<p>in respect of the founders of the trust, establish the identity of—</p> <ul style="list-style-type: none"> (i) 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 	<ul style="list-style-type: none"> (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

“Beneficial owner” definitions (cont.)

FIC Act - section 21B(4)(c), (d) and (e)	TPCA
<p>(d) in respect of the trustees of the trust, establish the identity of—</p> <p>(i) each trustee;</p> <p>(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</p> <p>(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</p>	<p>(d)(i) each trustee of the trust; or</p> <p>(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</p>

“Beneficial owner” definitions (cont.)

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

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

(i) the identity of each **beneficiary** referred to **by name in the trust 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; and

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

TPCA

(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.



Therefore not submit?

(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).

Checklist for 2024

- ✧ Real-time record keeping! Real-time reporting
- ✧ Have you “verified” the information?
- ✧ Make sure you have the Power of Attorney and resolution to submit info on Master’s portal in place

Make it part of your practice management
Assist your clients!

	BO	BO	UBO	UBO	REP/ GUARDIAN	REP/ GUARDIAN
Requirement	Regs	BO Register	Regs	BO Register	Regs	BO Register
Full names	x	x	x		x	x
Date of birth	x	x	x			
Nationality	x	x	x		x	x
ID/Passport	x	x	x		x	x
Citizenship	x		x			
Residential address	x	x	x			
Domicilium address	x	x	x			
Other means of contact	x		x			
If SA taxpayer, tax number	x		x			
Class/category of beneficial ownership	x	x	x			
Date on which became beneficial owner	x	x	x			
Where applicable, date on which ceased to be beneficial owner	x	x	x			
Email		x				x
Cell number		x				x
Postal address						x

What
about
curators?

SARS requirements for Beneficial Ownership info

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

Master's Portal

Declaration by Capturer:

The Capturer confirms that the Trustees are keeping in their records, certified ID copies of all beneficial owners of the trust.

The Capturer confirms that he/she is authorised to attend to and deal with this matter and verifies the authenticity of the information and documentation being submitted.

The Capturer confirms that confirms that the information submitted is true and correct. In the event that the information is not true and correct, the Masters of the High Court will not be held liable in any way whatsoever as a result of the misrepresentation.

FINE STOPPERS 2 AND 3:
TRUSTEES' INTERACTIONS WITH
ACCOUNTABLE INSTITUTIONS?


Trustees' interactions with Accountable institutions

- ✧ Become a FIC “expert” to identify who are accountable institutions
- ✧ New subsection 11(1)(e) (Section 11 – Registration and identification of trust property) – record details of accountable institutions which trustees use as agents to perform trustee functions and who provide any services to trustees
- ✧ New subsection 10(2) (Section 10 – Trust account) - 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
- ✧ Paperwork!!!!
 - ✧ Discipline - Engagement Letter, indemnify!
 - ✧ Resolution of board of trustees
 - ✧ Confirmation to accountable institution - in writing

Careful FIC can cross-check between what trustees do (as required by law) and what accountable institutions do (as required by law)

Therefore REALTIME! Do not leave to catch up every now and again!

Get a system to collect evidence and track trustee discipline!
































Transacting Entities - The Existing Demo Trust

TRANSACTIONING ENTITIES

CONNECTED PEOPLE

ACCOUNTABLE INSTITUTIONS

TRUST ORGANOGRAM

Name	Actions	Connections	Accountable Institutions	Click the  i
Accountant Demo (Pty) Ltd (Accountant) <small>Company - accountant</small>		 	 	Click the 
Beneficiary DemoTrust (Beneficiary) <small>Individual - beneficiary</small>			 	
Company Transacting (Third party) <small>Company - third-party</small>	  	 	 	
First National Bank (Third party) <small>Company - third-party</small>	  	 	 	
Founder DemoTrust (Beneficiary) <small>Individual - beneficiary</small>			 	

ARE YOU AN ACCOUNTABLE INSTITUTION?

Why are TCSPs targeted?

Given the unique nature of the services they offer, TCSPs are vulnerable to abuse by entities seeking to misuse corporate structures to facilitate the movement of illicit funds

Accountants: Bringing in the ‘gatekeepers’ into the FIC fold, as accountants are often viewed as providing access into the financial system by acting as intermediaries in terms of financial transactions. Specialised tax services such as tax opinions could be seen as “creation, operation or management”.

- ✧ Creation includes the registration or administrative processes with relevant government organisations for the client to commence with trading using the type of institution
- ✧ Operation of the company entails the assisting with the daily operations of the client
- ✧ Management would entail managing the company, for example being on the board of management and making management decisions regarding the company

NO BLANKET INCLUSION/EXCLUSION!

Why are TCSPs targeted? (cont.)

Guidance to Section 4(c) of the FIC Act:

PUBLIC COMPLIANCE COMMUNICATION No. 6A (PCC 6A) - guidance on trust and company service providers as item 2 in Schedule 1 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001)

Replaced old PCC 6

Objective: Provides clarity on item 2 of Schedule 1 + highlights vulnerabilities faced by TCSPs + provides risk indicators when determining ML (Money Laundering), TF (Terrorist Financing) and PF (Proliferation Financing) risks in clients

Authoritative in nature - Non-compliance where guidance have been provided - may result in enforcement action. If not followed guidance, then have to demonstrate that it complied with obligations under FIC Act in equivalent manner

Who are “accountable institutions” for FIC? – from 19 December 2022

Definition dealing with trust and company service providers (item 2 in Schedule 1) in the Financial Intelligence Centre Act

Based on activity – therefore includes different professions – financial institutions/legal professionals and accountants – only in respect of clients that fall within the TCSPs activities

FATF Recommendation 22 – Institutions regarded as designated non-financial businesses and professions (DNFBPs) – includes TCSPs; therefore to be regulated from an anti-money laundering, combating terrorist financing and proliferation financing perspective

6 June 2023 FIC presentation

- ✧ Invite topic: Registration, RBA & FICA obligations: Accountants
- ✧ Presentation topic: Registration, risk-based approach and compliance obligations of trust and company service providers
- ✧ PCC 6A (Draft):
 - ✧ ‘operation or management’ – accounting, auditing and tax services (tax returns, PAYE and VAT schedules on behalf of employers)

BUT IT CHANGED ON 18 AUGUST 2023! SO IGNORE!

Schedule 1, item 2 (TCSP)

Schedule 1, item 2(a)(i) (aa), (bb) and (cc) EXCLUDES:

- ✧ Recording/capturing/book-keeping
- ✧ Administrative submissions for legislative purposes; e.g. tax returns
- ✧ Activities not amounting to decision-making within client's business activities
- ✧ Activities that do not steer, impact or influence client's business operations
- ✧ Statutory functions - liquidation of entity/business rescue - not "operations" or "management"

Schedule 1, item 2 (TCSP) - Trusts

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 (trusts created between parties (inter vivos); includes trusts both established locally (i.e. in South Africa) and foreign trusts (i.e. trusts established outside of South Africa)) 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)

The following trusts are excluded from the TCSP definition, as read with Section 1 of the FIC Act:

- ✧ Trusts created by a testamentary disposition
- ✧ Trusts created by a court order
- ✧ Trusts created for person under curatorship
- ✧ Trusts created by the trustees of a retirement fund in respect of benefits payable to the beneficiaries of that retirement fund

PCCA 6A Schedule 1, item 2 (TCSP) - Registrations

- ✧ Register either as company service provider, trust service provider, or both
- ✧ Nothing to do with profession – activity based
- ✧ Obligations of registration and other FIC Act requirements applies to accountable institution, not individually to each professional employee – no separate registration
- ✧ Dual registration – if performing TCSP functions and registered under other items (Draft PCC 5D)

You qualify as “accountable institution”, now what?

- ✧ Registration with the FIC
- ✧ Submitting regulatory reports to the FIC, including cash threshold reports and suspicious and unusual transaction reports
- ✧ Implementing a risk-based approach to customer due diligence including customer identification and verification
- ✧ Develop, document, maintain and implement a risk management and compliance programme (RMCP)
- ✧ Obligation to keep certain records
- ✧ Evaluation of all clients information to identify designated persons or entities that are listed on the targeted financial sanctions (TFS) list in terms of Section 26A of the FIC Act or the TFS list as published in terms of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 2004
- ✧ Determine whether clients are foreign prominent public officials or domestic prominent influential persons
- ✧ Implement a compliance function and appoint a person responsible for compliance
- ✧ Train employees on how to comply with the FIC Act

Promulgated and effective 19 December 2022

- ✧ No formal transitional provisions communicated, but the FIC stated in a media release that in the first 18 months from the date of commencement of the amendments - FIC and supervisory bodies will focus on entrenching the FIC Act risk and compliance provisions and implementation for new “accountable institutions”
- ✧ Supervisory bodies to conduct inspections and, where warranted, issue remedial administrative sanctions (risk-based approach) - correct identified areas of non-compliance
- ✧ New sectors, including TCSPs – no financial penalties for non-compliance with the FIC Act during the transitional 18-month period

FIC Reporting

Reports that can be submitted

Suspicious and
unusual transaction
report (STR)

- **Section 29**
 - Suspicious and unusual transaction report (STR)
 - Suspicious or unusual activity report (SAR)
 - Terrorist financing activity report (TFAR)
 - Terrorist financing transaction report (TFTR)

Cash threshold report
(CTR)

- **Section 28**
 - Cash threshold report (CTR)

Terrorist property
report (TPR)

- **Section 28A**
 - Terrorist property report (TPR)
 - Accountable institutions only

SARS's initiatives



IT3(t)

Beneficial ownership

Real-time

SARS one of entities/authorities who have access to Master files

SARS - “Trust Filing Season: Form and System Changes to be Introduced from 23 June 2023”

- ✧ **Managing tax compliance matters**
 - ✧ Trustees reminded that trusts are included in the definition of a “person” in terms of the Income Tax Act
 - ✧ Representative taxpayer (trustee/s) has a responsibility to register all trusts for income tax purposes - includes “dormant trusts”

- ✧ **All trusts to submit tax returns annually during return filing period**

Imperative that all representative taxpayers of trusts (trustees) ensure compliance in this regard - including dormant trusts!

“Trust Filing Season: Form and System Changes to be Introduced from 23 June 2023” (cont.)

- ✧ Information on donors/funders of the trust:
 - ✧ Additional questions added to the Income Tax Return Wizard to determine if amounts were deemed to have accrued to a donor/funder in terms of Section 7 during the relevant year of assessment.
 - ✧ Donors or funders (where deeming provisions of Section 7 apply) must declare trust income and capital gains attributed to them. A proper trust administration/accounting system will be required to keep track of this very complicated calculation.
- ✧ Beneficial Ownership Declaration - beneficial owners and those who may gain financially from the proceeds of the trust need to be reported.
- ✧ Tax practitioners and trustees must take note that updated “beneficial ownership” information is also to be provided to the Master on an ongoing basis.
- ✧ Feb vs real-time

“Trust Filing Season: Form and System Changes to be Introduced from 23 June 2023” (cont.)

- ✧ Some important changes to the Income Tax Return for Trusts (ITR12T), with effect from 23 June 2023(cont)
- ✧ A new requirement to upload mandatory supporting documents with the tax return
 - ✧ All mandatory supporting documents must be uploaded and submitted with the trust tax return, including the trust instrument, annual financial statements and resolutions/minutes of trustee meetings. The requirements will vary according to the **trust type**.
 - ✧ Requires legally required documents to be complete, accurate and kept up to date in a real-time fashion. To perform this function manually, possibly relying on others to provide you with same will be a time-consuming, costly, risky approach.

“Trust Filing Season: Form and System Changes to be Introduced from 23 June 2023” (cont.)

✧ **Beneficiaries of the trust**

- ✧ Beneficiaries of a trust must declare income that was vested in them by the trust during the year of assessment in their respective income tax returns.
- ✧ This information will have to balance back to the new IT3(t)’s which trustees have to annually submit to SARS, based on distributions made to beneficiaries.
- ✧ The IT3(t)’s will have to be submitted before the trust tax returns are due - September each year.
- ✧ Provisional tax - trust/beneficiary/funder???

Government Gazette - 30 June 2023

RETURNS OF INFORMATION TO BE SUBMITTED BY THIRD PARTIES IN TERMS OF SECTION 26 OF THE TAX ADMINISTRATION ACT, 2011 (ACT NO. 28 OF 2011)

The following persons are required to submit a return as specified in paragraph 3:

A “trust” as defined in section 1 of the Income Tax Act, that is a “resident” as defined in that section, or a non-resident that is required to submit an annual income tax return,

Where two or more members of the public invest money, or other assets together - unit trusts, mutual funds, etc

excluding—

- ✧ a Collective Investment Scheme as defined in the Collective Investment Schemes Control Act, 2002, a “portfolio of a collective investment scheme” and any “portfolio of a hedge fund collective investment scheme”
- ✧ an Employment Share Incentive Scheme Trust

Dividends?/CG?

Government Gazette - 30 June 2023 (cont.)

Column 1: Person mentioned in paragraph	Column 2: Information concerning	Column 3: Form
2.15	Any amount vested in a beneficiary: <ul style="list-style-type: none"> • Income (nett of Expenditure) • Capital gains • Capital amounts 	IT3(t); or Data compiled in accordance with SARS' Business Requirement Specification: IT3 Data Submission

Purpose: distributions;
not risk info requested
in tax return

Government Gazette - 30 June 2023

RETURNS OF INFORMATION TO BE SUBMITTED BY THIRD PARTIES IN TERMS OF SECTION 26 OF THE TAX ADMINISTRATION ACT, 2011 (ACT NO. 28 OF 2011)

Due date for submitting a third party return:

- ✧ In respect of persons listed in paragraph 2.15:
 - ✧ The returns mentioned in the above Table, containing all prescribed information in respect of the period from 1 March to the end of February, must be submitted by 31 May of each year. [Now Now September 2024 - SARS communication 10 November 2023]

Manner of submitting a third party return:

- ✧ Declarations in respect of third party returns must be submitted electronically using the designated SARS electronic filing service.

Alternative arrangements with SARS:

- ✧ SARS may agree that a person, who is required to submit a return in accordance with this Schedule, may submit a return in respect of a different period, upon an alternative date and in an alternative manner, as the case may be.

15 September 2023 - “Enhancements to Trust Beneficial Ownership Information”

SARS’ aim is to record all beneficial owners of registered Trusts in order to comply with Financial Action Task Force (FATF) requirements.

Information must be submitted via e-Filing, including:

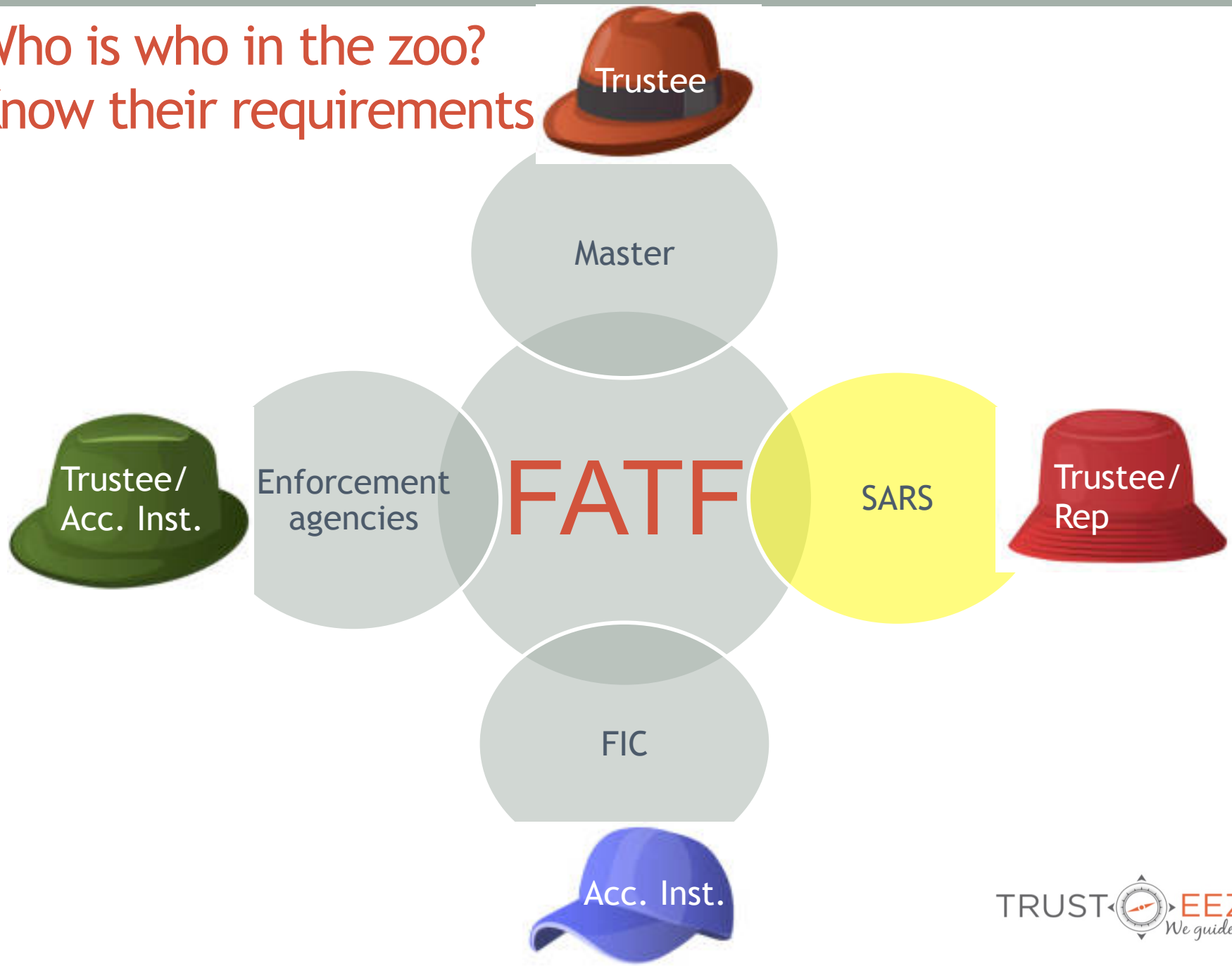
- ✧ Organogram, illustrative, or schematic diagram depicting effective control of Trust. Where Beneficial Ownership is in the form of other legal arrangements or legal entities, this should be provided in separate attachment.
- ✧ An Excel spreadsheet containing above information; or
- ✧ Such other document(s), which will elaborate on Beneficial Ownership in relation to Trust.

When capturing the beneficial ownership information, it is mandatory for the current year’s return that at least one document be submitted that relates to beneficial ownership information.

All minutes, excluding those dealing with internal trustee governance arrangements and/or administrative matters, must be submitted.

Who is who in the zoo?

Know their requirements



Thank you!

Linkedin -

<https://www.linkedin.com/company/trusteeze-pty-ltd>

www.trusteeze.co.za

For a free demo of our platform -

<https://lnkd.in/e4jvz2F3>

phia@trusteeze.co.za

<https://trusteeze.profileme.app/phia.vanderspuy>

