1. BACKGROUND

The Trust Property Control Act, 1988 (Act No. 58 of 1988) (“the Act”) was recently amended by the General Laws (Anti Money-Laundering and Combating Terrorism Financing) Amendment Act, 2022 (Act No. 22 of 2022) (“the Amendment Act”), in order to provide for, amongst others, the establishment and maintenance of registers of beneficial owners of trusts by trustees and the Master of the High Court and the recording of the details of accountable institutions by trustees.

The Minister of Justice and Correctional Services made regulations that were published in Government Gazette No 48351 Regulations on 31 March 2023 under Notice No. R. 3240 (“the Regulations”), in order to facilitate the implementation of the Amendment Act. The President of the Republic of South Africa proclaimed 1 April 2023 as the commencement date of sections 1 to 8 of the Amendment Act.

The purpose of the Amendment Act and these regulations is to, in part, address shortcomings in South Africa’s regulatory framework in addressing beneficial ownership transparency. South Africa is obliged, as a member of the Financial Action Task Force (FATF), to ensure that its regulatory environment is geared towards international standards in anti-money-laundering and combating financing of terrorism.

“Beneficial owner” means a natural person who directly or indirectly ultimately owns the relevant trust property, natural person who benefit from the trust property or a natural person who exercises effective control of the administration of the trust arrangements that are established pursuant to a trust instrument. These provisions are intended to ensure transparency with regard to ownership of trust property and to assist in the investigation of financial crimes.

2. OBLIGATIONS OF TRUSTEES IN TERMS OF THE AMENDMENT ACT

2.1 Obligation to Establish and Maintain Beneficial Ownership Registers

Section 11A of the Act requires trustees to establish, record and keep an up to date record of information relating of beneficial owners of trusts, as prescribed in regulation 3C.

A beneficial owner of a trust is always a natural person. Where a founder, a beneficiary or a trustee of a trust is a legal person, or a person acting on behalf of a partnership or in pursuance of provisions of a trust, then 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 is the beneficial owner of the trust in question and their details must be recorded in the beneficial ownership register of the trust in question. Natural persons who do not necessarily fall under the definition of a founder, a trustee or a beneficiary of a trust, but who directly or indirectly ultimately owns the relevant trust property, or who exercises effective control of the administration of the trust arrangements, are also beneficial owners and their details must also be recorded in the beneficial ownership register of the trust.

According to regulation 3C trustees must keep an up to date record of the following information in respect of each beneficiary:

(a) The full names;
(b) date of birth;
(c) nationality;
(d) an official identity document number or passport number, indicating the type of document and the country of issue;
(e) citizenship;
(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;
(j) the class or category of beneficial ownership under which the person falls;
(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.

2.2 **Obligation to lodge beneficial ownership registers with the Master of the High Court**

Trustees are required by section 11A of the Act to lodge the registers of the prescribed information of beneficial owners of trusts with the Master of the High Court. According to regulation 3D trustees are required to lodge beneficial ownership registers electronically on a platform that must be provided by the Master of the High Court.

Trustees must lodge the registers of the prescribed information of beneficial owners of trusts with the Master of the High Court through the following link:

https://docs.google.com/spreadsheets/d/1OvgktFgAQ0aNUWVonAsGFts_tfij9qiD/edit?usp=share_link&ouid=100725978845424652691&rtproto=true&sd=true
2.4 Obligation to give access to beneficial ownership information to law enforcement agencies

Trustees are required to make information contained in the beneficial ownership registers available to the following entities and authorities, which are listed in regulation 3E:

(a) The National Prosecuting Authority;
(b) the Independent Police Investigative Directorate;
(c) the State Security Agency;
(d) the Intelligence Division of the National Defence Force;
(e) a Special Investigating Unit;
(f) an investigative division in a national department listed in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), having a function by law to investigate unlawful activity within that national department or in another organ of state;
(g) the Public Protector;
(h) the South African Revenue Service;
(i) the Financial Intelligence Centre;
(j) an investigative division of the Auditor-General having the function by law to investigate material irregularities in accordance with the Public Audit Act, 2004 (Act No. 25 of 2004); and
(k) a person who is entitled to receive such information in terms of other national legislation.

2.3 Obligation to make certain disclosures to accountable institutions and to record details of accountable institutions

Section 10(2) of the Act requires trustees to disclose to accountable institutions that they engage with, as a trustee, that the relevant transaction or business relationship relates to trust property.

Section 11(1)(e) of the Act requires trustees to record the prescribed details of accountable institutions which trustees uses as agents to perform their functions or from which trustees obtains services.

Regulation 3B provides that trustees must record the following details of accountable institutions:

(a) The name of the accountable institution;
(b) if the accountable institution is a person other than a natural person, the registration details of such person;

(c) if the accountable institution is a natural person, the official identity document number or passport number of the natural person, indicating the type of document and the country of issue;

(d) if the trustee used or uses the accountable institution as an agent to perform the trustee’s functions, the nature of the functions;

(e) if the trustee obtained or obtains services from the accountable institution, the nature of services;

(f) if the trustee entered into a single transaction, as defined in the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), with the accountable institution, the date on which the single transaction was entered into and the nature of the single transaction; and

(g) if the trustee entered into a business relationship as defined in the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) with the accountable institution, the date on which the business relationship was entered into and the nature of the business relationship that was entered into.

3. **DATE OF COMMENCEMENT**

The amendment Act and the Regulations came into operation on the 1st of April 2023.

4. **PENALTIES FOR NON-COMPLIANCE**

A trustee commits an offence if they fail to—

(a) disclose to an accountable institution that they engage with in the capacity of a trustee that the relevant transaction or business relationship relates to trust property;

(b) record the details of accountable institution prescribed in regulation 3B;

(c) establish and record the beneficial ownership information of a trust prescribed in regulation 3C;

(d) keep an up to date record of the beneficial ownership information prescribed in regulation 3C; or

(e) lodge a register of the beneficial ownership information prescribed in regulation 3C with the Master of the High Court.

A trustee who is convicted of any of the offences referred to above will be liable to a fine of up to R10 million, or imprisonment for a period of up to five years, or to both such fine and imprisonment.