INVITATION FOR PUBLIC COMMENTS ON THE REGULATION OF TRUSTS BILL, 2026

1. INVITATION

1.1 The Department of Justice and Constitutional Development ("the Department") invites interested parties to submit written comments on the Regulation of Trusts Bill, 2026 ("the Bill").

1.2 The Bill is available on the website of the Department at: https://www.justice.gov.za/legislation/invitations/invites.htm

2. COMMENTS

2.1 Comments must be submitted not later than **Friday, 11 September 2026**, marked for the attention of **Ms V Letswalo**, and–

(a) if they are forwarded by post, be addressed to–
The Department of Justice and Constitutional Development
Private Bag X81, Pretoria, 0001
(Floor 14, Office No. 36);

(b) if they are delivered by hand, be delivered at–
The Department of Justice and Constitutional Development, Momentum Centre, 329 Pretorius Street, Pretoria
(Floor 14, Office No. 36); and

(c) if they are delivered by email, be emailed to VLetswalo@justice.gov.za

2.2 For more information, please contact Ms V Letswalo on **012 406 4760 / 078 457 6420.**

REPUBLIC OF SOUTH AFRICA

REGULATION OF TRUSTS BILL, 2026

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. ………….. of …………. 2026) (The English text is the official text of the Bill)

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B___2026]

BILL

To provide for the application of the Act; the creation and administration of trusts; the jurisdiction of the Master; authorisation of trustees by the Master; disqualification to act as trustee; powers and duties of trustees; resignation and removal of trustees; variation and termination of trusts; compliance notices and administrative fines, offences and penalties; repeal the Trust Property Control Act, 1988 (Act No. 57 of 1988); and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts as follows: —

ARRANGEMENT OF SECTIONS

CHAPTER 1

DEFINITIONS AND APPLICATION

CHAPTER 2

CREATION OF TRUST

CHAPTER 3

ADMINISTRATION OF TRUST

CHAPTER 4

POWERS AND DUTIES OF TRUSTEE

CHAPTER 5

RESIGNATION AND REMOVAL OF TRUSTEE

CHAPTER 6

VARIATION AND TERMINATION OF TRUST

CHAPTER 7

GENERAL PROVISIONS

CHAPTER 1

DEFINITIONS AND APPLICATION

Definitions

1. In this Act, unless the context indicates otherwise—

"accountable institution" means accountable institution as defined in the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

"Administration of Estates Act" means the Administration of Estates Act, 1965 (Act No. 66 of 1965);

"bank" means a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990);

"beneficial owner" in respect of a trust, means—

(a) a natural person who directly or indirectly ultimately owns the relevant trust property;

(b) a natural person who exercises effective control of the administration of the trust arrangements that are established pursuant to a trust instrument;

(c) (i) each founder of the trust; or

(ii) if a founder of the trust is a juristic 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 juristic person or partnership or the relevant trust property or trust arrangements pursuant to that trust instrument;

(d) (i) each trustee of the trust; or

(ii) if a trustee of the trust is a juristic 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 juristic person or partnership; and

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

(ii) each beneficiary that is identifiable, despite not being referred to by name in the trust instrument or other founding instrument in terms of which the trust is created; or

(iii) if a beneficiary—

(aa) referred to by name in the trust instrument or other founding instrument in terms of which the trust is created; or

(bb) that is identifiable despite not being referred to by name in the trust instrument or other founding instrument in terms of which the trust is created,

is a juristic person, 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 juristic person or partnership or the relevant trust property or trust arrangements pursuant to that trust instrument;

"beneficiary" means a person who has received, or who will or may receive a benefit under a trust, and includes a discretionary beneficiary;

"Chief Master" means a person appointed in terms of section 2 of the Administration of Estates Act;

"Close Corporations Act" means the Close Corporations Act, 1984 (Act No. 69 of 1984);

"Companies Act" means the Companies Act, 2008 (Act No. 71 of 2008);

"court" means the High Court, and, in relation to any offence under this Act or section 34(8), includes any Magistrates' Court of the Republic of South Africa having jurisdiction in the matter;

"Director-General" means the Director-General of the Department of Justice and Constitutional Development;

"discretionary beneficiary" means a person who may benefit under a trust at the discretion of a trustee;

"document" means any record of information in a physical or an electronic form;

“Electronic Communications and Transactions Act” means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

“Financial Intelligence Centre” means the Financial Intelligence Centre established by section 2 of the Financial Intelligence Centre Act;

“Financial Intelligence Centre Act” means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

“financial institution” means a financial institution as defined in the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

“founder” means a person who, with the intention of creating a trust, makes over or bequeaths property to a—

(a) trustee, in whole or in part, to be administered or disposed of for the benefit of a person or class of persons designated in a trust instrument or for the achievement of an object stated in a trust instrument; or

(b) person or class of persons designated in a trust instrument, which property is placed under the control of a trustee, to be administered or disposed of for the benefit of the person or class of persons designated in the trust instrument or for the achievement of an object stated in the trust instrument,

and includes a donor and a settlor;

“independent trustee” means a person who—

(a) is not related to the founder of the trust or to any other trustee;

(*b*) accepts office as a trustee in order to ensure that the trust is administered properly and in accordance with the trust instrument; and

(*c*) has no personal interest in the trust property, and is able to exercise independent judgment in overseeing the administration of the trust;

“juristic person” means an entity that has a separate legal personality, and does not include a natural person, trust or partnership;

“Master” means the Master as defined in the Administration of Estates Act;

“Mental Health Care Act” means the Mental Health Care Act, 2002 (Act No. 17 of 2002);

“Minister” means the Cabinet member responsible for the administration of justice;

“mutual bank” means a bank registered in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993);

‘‘prescribed’’ means prescribed by regulation made under section 32;

“Protection of Personal Information Act” means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

“sign” means affixing or appending a signature, including an electronic signature and an advanced electronic signature as defined in the Electronic Communications and Transactions Act and signed has a corresponding meaning;

‘‘this Act’’ includes regulations;

“trust" means an arrangement through which property of one person is, by virtue of a trust instrument, made over or bequeathed to—

(a) another person, a trustee, in whole or in part, to be administered or disposed of according to the provisions of a trust instrument for the benefit of a person or class of persons designated in the trust instrument or for the achievement of an object stated in the trust instrument; or

(b) the beneficiaries designated in the trust instrument, which property is placed under the control of another person, a trustee, to be administered or disposed of according to the provisions of the trust instrument for the benefit of a person or class of persons designated in the trust instrument or for the achievement of an object stated in the trust instrument;

“trustee” means a natural person or a juristic person, who is authorised by the Master to act as a trustee in terms of the provisions of this Act;

"trust instrument" means a written arrangement, a court order or a valid Will according to which a trust is created;

"trust property" means property which is to be administered or disposed of by a trustee according to the provisions of a trust instrument; and

"Will", when used in the context of testamentary writing, means a Will as defined in the Wills Act, 1953 (Act No. 7 of 1953).

Related persons

2. For purposes of this Act, a person is related to another person if they are—

(a) married, or live together in a relationship similar to a marriage; or

(b) separated by not more than two degrees of natural or adopted consanguinity or affinity.

Application of Act

3. (1) A trust may not be created in terms of this Act to protect funds awarded as damages in motor vehicle accident, medical negligence or other related matters to a—

(a) child; or

(b) person whom the court believes may be unable to manage the funds,

unless—

(i) a *curator ad litem* was appointed for the child or such person during the court proceedings in question, and the *curator* has submitted a report to the court, recommending a trust as an appropriate mechanism to protect the funds;

(ii) the court is satisfied that—

(aa) a trust is an appropriate mechanism to protect the funds;

(bb) the interests of the child or the person are adequately protected in the draft trust instrument; and

(cc) the draft trust instrument does not contain provisions that may be detrimental to the child or the person; and

(iii) the draft trust instrument makes provision for the remuneration of the trustee, and the court is satisfied that the factors referred to in section 24(3) were taken into consideration in the determination of the remuneration.

(2) A trust may not be created in terms of this Act to administer property received by any community from the State in terms of an agreement or in terms of any law.

CHAPTER 2
CREATION OF TRUST

Requirements for creating trust

4. (1) A trust is created when a founder clearly and with reasonable certainty—

(a) indicates, in a trust instrument, an intention to create a trust;

(b) identifies the trust property;

(c) identifies the beneficiaries or classes of beneficiaries or the object of the trust; and

(d) appoints a trustee, or provides for the appointment of a trustee.

(2) The object of a trust must be lawful.

(3) A sole trustee of a trust may not be the sole beneficiary of the trust.

(4) If, on application by an interested person or in any proceedings in which a trust is involved, a court finds that any of the requirements in subsections (1), (2) or (3) are not complied with, the court—

(a) must declare the trust to be invalid from—

(i) its inception; or

(ii) the date on which non-compliance with the requirement in question begun; and

(b) may make any further order that the court considers appropriate to give effect to a declaration contemplated in paragraph *(a).*

(5) In the case of a trust created in terms of a court order, the court order—

(a) constitutes the trust instrument; and

(b) is regarded as fulfilling the functions of the founder for the purposes of subsection (1)*(a)* to *(d)*.

CHAPTER 3

ADMINISTRATION OF TRUST

Jurisdiction of Master

5. (1) Jurisdiction of the Master over the administration of trust property lies—

(a) in respect of trust property which is to be administered or disposed of in terms of a Will, with the Master in whose office the relevant deceased estate has been registered;

(b) in respect of a trust created in terms of a court order, with the Master in whose area of jurisdiction the court order was granted; or

(c) subject to subsection (2), with the Master who has jurisdiction in the area where the greater or the greatest portion of the trust property is or is expected to be situated, at the time when the trust instrument is lodged with the Master.

(2) A Master who has exercised jurisdiction continues to have jurisdiction despite any change in the situation of the greater or the greatest portion of the trust property.

(3) A Master who would otherwise not have jurisdiction in respect of trust property may,—

(a) on written application by any person who has an interest in the trust property; and

(b) with the consent of the Master who has such jurisdiction,

assume jurisdiction in respect of that trust property.

(4) Subject to subsection (6), an act performed by a Master in the *bona fide* belief that the Master has jurisdiction is not invalid solely because it should have been performed by another Master.

(5) If more than one Master exercised jurisdiction in respect of the same trust property in the *bona fide* belief that they have jurisdiction, that property must, without prejudice to the validity of any act already performed by or under the authority of any other Master, and subject to subsection (6), as soon as it becomes

known to the Masters concerned, be administered or disposed of under the supervision of the Master who first exercised such jurisdiction.

(6) Any authorisation of a trustee in terms of section 8 or section 11, or an appointment of a trustee in terms of section 10, made by a Master other than the Master who first exercised jurisdiction in respect of the trust property concerned, must thereupon be cancelled by that Master.

Lodgement of trust instrument

6. (1) A trustee must, except where the Master is already in possession of the trust instrument, upon payment of the prescribed fee, lodge with the Master the trust instrument, or an electronic copy thereof, in terms of which trust property is to be administered or disposed of by the trustee.

(2) A person appointed as trustee may not, in the capacity of trustee, assume control of the trust property before the trust instrument has been lodged with the Master and the prescribed fee has been paid

(3) When a trust instrument which has been lodged with the Master is varied the trustee must, upon payment of the prescribed fee, lodge the amendment thereof with the Master.

(4) A trustee may lodge an amendment to a trust instrument in terms of subsection (3) only if the trustee has lodged the prescribed information relating to the beneficial owners of the trust with the Master, as contemplated in section 23, and such information is up to date.

(4) A trustee may not exercise any powers or perform any duties deriving from an amendment to a trust instrument before the amendment is lodged with

the Master in terms of subsection (3), and the Master has acknowledged the lodgement thereof.

(5) Actions performed by a trustee in contravention of subsection (4) are invalid.

(6) A trustee is liable in their personal capacity for any direct or indirect loss suffered by the trust as a result of the trustee's contravention of subsection (4).

Notification of address and contact details

7. (1) When a trustee—

(*a*) lodges a trust instrument in terms of section 6;

(*b*) is appointed in terms of a trust instrument or section 10; or

(*c*) is authorised by the Master in terms of section 11,

the trustee must furnish the Master with—

(i) a physical address in the Republic for service of notices and processes on the trustee; and

(ii) contact details through which the Master may communicate with the trustee in respect of the administration of the trust, which contact details must include an electronic mail address.

(2) A trustee must notify the Master in writing when there is a change in the physical address or contact details provided to the Master, within 14 days of such change.

(3) A trustee who was authorised by the Master to act as a trustee before the commencement of this Act must, except where the Master has already been furnished with the information in question, furnish the Master with the physical address

and contact details contemplated in subsection (1), within one month after the commencement of this Act.

Authorisation of trustee and provision of security

8. (1) Any person who is appointed as a trustee in terms of a trust instrument, a court order or section 10, or who is a foreign trustee as contemplated in section 11, may act in the capacity of a trustee only if authorised in writing by the Master.

(2) The Master may not grant authority to a trustee unless the trustee has—

(a) furnished security to the satisfaction of the Master for the proper discharge of their duties as a trustee; or

(b) been exempted from furnishing security—

(i) by a court order;

(ii) by the Master, in terms of subsection (3)*(a)*; or

(iii) in terms of the provisions of the trust instrument, subject to subsection (3)*(d).*

(3) If the Master is of the opinion that there are sound reasons to do so, the Master may, at any stage, where the furnishing of security by a trustee is not required in terms of a court order,—

(a) dispense with security by a trustee, whether or not security is required in terms of the provisions of the trust instrument;

(b) reduce or cancel security furnished by a trustee;

(c) require a trustee to furnish additional security; or

(d) require a trustee who has been exempted from furnishing security in terms of the provisions of a trust instrument to furnish security.

(4) Before exercising the powers referred to in subsection (3)*(c)* or (3)*(d)*, the Master must—

(a) give the trustee written notice of the intention and the reasons for the proposed requirement; and

(b) afford the trustee a period of 30 days to make written representations, which the Master must consider before making a final decision.

(5) Where a trustee is required to furnish security, the Master may, pending such furnishing, authorise the trustee in writing to perform specified acts in respect of the trust property.

(6) Where authorisation to act as a trustee is given to a juristic person in terms of this section, the authorisation must be issued in the name of a natural person who represents the juristic person, for whose actions the juristic person, as trustee, is liable. The substitution of such representative by another natural person must be authorised by the Master by issuing a substitute letter of authorisation.

Disqualification to act as trustee

9. (1) A person is disqualified from being authorised to act as a trustee if the person—

(a) is an unrehabilitated insolvent;

(b) has been prohibited by a court to be a director of a company, or has been declared by a court to be delinquent in terms of section 162 of the Companies Act, or section 47 of the Close Corporations Act;

(c) is prohibited in terms of any law to be a director of a company;

(d) has been removed from an office of trust on the grounds of misconduct involving dishonesty;

(e) has been removed from the office of trustee in terms of section 26(1) or (2)*(f)* for failure to comply with section 23(1);

(f) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the amount prescribed in terms of section 69 of the Companies Act, for theft, fraud, forgery, perjury or an offence—

(i) involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities as defined in section 1(1) of the Financial Intelligence Centre Act;

(ii) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69(2) or (5) of the Companies Act; or

(iii) under this Act, the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, the Competition Act, 1998 (Act No. 89 of 1998), the Financial Intelligence Centre Act, the Financial Markets Act, 2012 (Act No. 19 of 2012), Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011);

(g) is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against

whom member states of the United Nations must take the actions specified in the resolution; or

(h) is an unemancipated child, or is under a similar legal disability.

(2) A disqualification in terms of subsection (1)*(d)* or *(f)* ends at the later of—

(a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or

(b) one or more extensions as determined by a court on application made in terms of subsection (4).

(3) A disqualification in terms of subsection (1)*(g)* ends when the Security Council of the United Nations takes a decision to no longer apply that resolution to a person contemplated in that subsection.

(4) At any time before the expiry of a person’s disqualification in terms of subsection (1)*(d)* or *(f)*—

(a) the Master or any interested person may apply to a court for an extension contemplated in subsection (2)*(b)*; and

(b) the court may extend the period of disqualification for no more than five years at a time, if the court is satisfied that an extension is necessary to protect the public, having regard to the conduct of the disqualified person up to the time of the application.

(5) A court may, on application by an interested person and on good cause shown, exempt a person from the application of any disqualification referred to in subsection (1)*(a)*, *(c)*, *(d)* or *(f)*, if the court is satisfied that the exemption will not adversely affect the administration of the trust property or the interests of the beneficiaries.

(6) The registrar or clerk of the Magistrate’s Court must, upon—

(a) the issue of a sequestration order;

(b) the issue of an order for the removal of a person from any office of trust on the grounds of misconduct involving dishonesty;

(c) a conviction for an offence referred to in subsection (1)*(f)*; or

(d) the extension of the period of disqualification as contemplated in subsection (4)*(b)*,

send a copy of the relevant order or particulars of the conviction, as the case may be, to the Chief Master.

(7) The Master must notify, in the prescribed manner, each trust in respect of which the person to whom the order or conviction relates is a trustee, of the order or the conviction.

(8) *(a)* The Chief Master must establish and maintain in the prescribed manner a public register of persons who are disqualified from being authorised to act as a trustee, in terms of an order of a court pursuant to this Act or any other law.

(b) A person whose disqualification from being authorised to act as a trustee has come to an end as contemplated in subsection (2) must notify the Chief Master thereof.

(c) The requirements of the register referred to in paragraph *(a)* must be prescribed after consultation with the Cabinet member responsible for finance and the Financial Intelligence Centre.

Appointment of trustee, co-trustee or independent trustee by Master

10. (1) Where the office of trustee cannot be filled or becomes vacant, and the number of trustees is, as a result thereof, reduced below the number prescribed in the trust instrument, the Master must, upon becoming aware of the vacancy and in the absence of any provision in the trust instrument governing the filling of such vacancy, appoint a trustee, after consulting the trustees and beneficiaries with a vested right in the trust property.

(2) Where all the trustees of a trust have vacated office, the founder of the trust must nominate a person for appointment as trustee by the Master. If the founder is deceased or is otherwise unable to make such nomination, the beneficiaries with a vested right in the trust property must nominate a person for appointment by the Master.

(3) The Master may, where necessary for the proper administration of a trust, and despite any provision of the trust instrument to the contrary, appoint one or more persons as co-trustees of a trustee.

(4) The Master may, subject to subsection (5), if the Master considers it necessary to ensure the separation of control and enjoyment of trust property, and despite any provision of the trust instrument to the contrary, appoint any person who the Master considers appropriate as an independent trustee if,—

(a) all the trustees are beneficiaries of the trust;

(b) all the trustees are related to one another; and

(c) the trust carries on business or trading activities with third parties, that give rise to obligations to such third parties.

(5) Before appointing an independent trustee in terms of subsection (4), the Master must consult the trustees and beneficiaries with a vested right in the trust property.

Foreign trustees

11. Where a person appointed as a trustee outside the Republic administers or disposes of trust property within the Republic, the provisions of this Act apply to that person in respect of such trust property, and the person may act in the capacity of trustee only if authorised in writing by the Master in terms of section 8.

Request by Master for trustee to account

12. (1) A trustee must, at the written request of the Master—

(a) account to the Master, to the Master's satisfaction and in accordance with the Master's requirements, ragarding the trustee's administration and disposal of the trust property;

(b) deliver to the Master any document relating to the trustee's administration or disposal of the trust property; and

(c) to the best of the trustee's ability, answer honestly and truthfully any question put to the trustee by the Master in connection with the administration and disposal of the trust property.

(2) The Master may, after considering a trustee's account or if a trustee fails to provide such an account, cause an investigation to be carried out by a fit and proper person appointed by the Master into the trustee's administration and disposal of trust property.

(3) If a trustee fails to comply with a written request in terms of subsection (1), the Master may cause an investigation to be carried out by a fit and proper person appointed by the Master—

(a) of the Master's own accord;

(b) at the request of the founder of the trust;

(c) at the request of a beneficiary with a vested right in the trust;

(d) at the request of a trustee of the trust; or

(e) at the request of any party with a vested interest in the trust property.

(4) The costs of an investigation referred to in subsections (2) and (3) must, subject to subsection (5), be paid out of the income from the trust property, and if such income is insufficient, out of the trust property.

(5) The Master may direct that the costs of the investigation be paid by—

(a) a trustee of the trust, if the findings of the investigation indicate that the trustee failed to discharge their fiduciary duty; or

(b) a person who requested the investigation in terms of subsection (3) *(b)* to *(e)*, if it is found that the trustee discharged their fiduciary duty properly.

(6) The Master may, before an investigation is conducted, require any person who requests an investigation in terms of subsection (3) *(b)* to *(e)* to give security, in an amount that the Master considers reasonable, for the payment of the costs of the investigation.

(7) If it appears from an investigation carried out in terms of this section that there are reasonable grounds for suspecting that an offence has been committed, the person who carried out the investigation must submit a report of that suspicion to the Provincial Section Head of the Commercial Branch of the South African Police Service.

Money laundering and terrorist financing risk assessment

13 (1) The Chief Master must cause a risk assessment to be carried out in order to identify and assess the domestic and international money laundering and terrorist financing risks to which trusts are exposed.

(2) The Chief Master must ensure that the outcomes of the risk assessment conducted in terms of subsection (1) are recorded in a written report, and that the findings contained in that report are used to develop and record money laundering and terrorist financing risk profiles for each category of trusts to which this Act applies.

(3) The Chief Master must ensure that the risk assessment is reviewed—

(a) every three years; and

(b) notwithstanding paragraph *(a)*, following any significant event or development that may materially affect the risks to which trusts are exposed, including—

(i) significant external events that change the nature of the money-laundering or terrorist-financing risks;

(ii) emerging money-laundering or terrorist-financing risks;

(iii) findings resulting from measures taken by other supervisory authorities or competent authorities;

(iv) material changes in the way in which the trusts sector operates; or

(v) significant changes in the applicable legislative or regulatory environment.

(4) If a review of the risk assessment conducted in terms of subsection (3) indicates that the money laundering or terrorist financing risks to which any category of trusts is exposed have materially changed, the Chief Master must ensure that the risk profiles developed in terms of subsection (2) for that category of trusts are reviewed and updated to the extent necessary to reflect those changes.

(5) The Minister may, on the basis of a risk assessment or a review conducted in terms of this section, and after consultation with the Cabinet Member responsible for finance and the Financial Intelligence Centre, determine trusts or

categories of trusts that present low money laundering or terrorist financing risks, and in respect of which a trustee is exempt from complying with the provisions of section 23.

(6) The Minister may grant the exemption subject to any conditions the Minister considers appropriate, having regard to the intent and purpose of the provisions of section 23, and the overall impact that the exemption would have on the integrity of, and compliance with, the Republic's anti-money laundering and combating terrorism funding regulatory regime.

(7) The Minister may revoke or vary an exemption granted to a category of trusts or a trust on the basis of the outcomes of a review of the risk assessment, or failure by a trust to comply with conditions of an exemption granted in terms of this section.

CHAPTER 4
POWERS AND DUTIES OF TRUSTEE

General powers of trustee

14. A trustee has, subject to the provisions of the trust instrument, the powers of an absolute owner that are necessary to administer and dispose of the trust property, and to achieve the objects of the trust.

Care, diligence and skill required of trustee

15. (1) A trustee must, in the performance of their duties and the exercise of their powers, act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another person, having regard to—

(a) any special knowledge or experience that the trustee has or that the trustee holds out as having; and

(b) any special knowledge or experience that is reasonable to expect of a person acting in the course of a specific business or profession, if a person is acting as a trustee in the course of that specific business or profession.

(2) Any provision contained in a trust instrument is void to the extent that it has the effect of exempting a trustee from or indemnifying a trustee against liability for breach of trust where the trustee fails to show the degree of care, diligence and skill contemplated in subsection (1).

Investment by trustee

16. (1) A trustee may, when exercising any power to invest trust property, invest the property in any form of property or security in which a prudent investor might invest.

(2) Without limiting the factors that a trustee may take into account when exercising the power to invest trust property, a trustee must, to the extent appropriate in the circumstances of the trust, have regard to the—

(a) objectives of the trust and the needs and circumstances of the beneficiaries;

(b) desirability of diversifying trust investments;

(c) nature of and the risk associated with existing trust investments and the nature of other trust property;

(d) need to maintain the real value of the capital or income of the trust;

(e) risk of capital depreciation;

(f) potential for capital appreciation;

(g) likely income returns and the timing of income returns;

(h) length of the term of the proposed investment;

(i) probable duration of the trust;

(j) liquidity and marketability of the proposed investment during, and on the expiry of the term of the proposed investment;

(k) aggregate value of the trust property;

(l) effect of the proposed investment in relation to the tax liability of the trust;

(m) likelihood of inflation affecting the value of the proposed investment or other trust property;

(n) costs of making the proposed investment, including commissions, fees and charges payable; and

(o) trustee's overall investment strategy.

(3) Nothing in this section permits a trustee to invest in investments that are expressly prohibited by the trust instrument, or in a manner that is inconsistent with the provisions of the trust instrument.

Engagements with accountable institutions by trustee

17. (1) A trustee must—

(a) disclose to any accountable institution with which the trustee engages in that capacity that the trustee acts as a trustee; and

(b) inform the accountable institution that the transaction or business relationship in question relates to trust property.

(2) A trustee must record the prescribed details relating to any accountable institution—

(a) which the trustee uses as an agent to perform any of the trustee's functions relating to trust property, or

(b) from which the trustee obtains any services in connection with the trustee's functions relating to trust property.

(3) The details referred to in subsection (2) must be prescribed after consultation with the Cabinet member responsible for finance and the Financial Intelligence Centre.

Trust account

18. Whenever a person receives money in their capacity as trustee, they must deposit the money into in a separate trust account, opened in the name of the trust at a bank or a mutual bank.

Registration and identification of trust property

19. (1) Trust property is not part of the personal estate of a trustee except to the extent that the trustee is entitled to the trust property as the trust beneficiary.

(2) A trustee must, subject to the provisions of—

(a) the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001) and section 40 of the Administration of Estates Act; and

(b) the trust instrument to the extent that those provisions are not inconsistent with this section,—

(i) indicate clearly in the trustee's bookkeeping the property which the trustee holds in their capacity as a trustee;

(ii) if applicable, register trust property or keep it registered in such manner as to make it clear from the registration that it is trust property;

(iii) make a trust account or trust investment at a financial institution identifiable as a trust account or trust investment; and

(iv) in the case of trust property other than property referred to in paragraphs *(b)* or *(c)*, make such property identifiable as trust property in the best possible manner.

Annual financial statements

20. (1) A trustee must cause annual financial statements of the trust to be prepared each year.

(2) Where the trust instrument requires the preparation of annual financial statements a trustee must cause the annual financial statements to be prepared in accordance with the provisions of the trust instrument.

(3) Where, at the date of commencement of this Act, annual financial statements of a trust were being prepared, whether or not in terms of the trust instrument, the trustee must continue to cause annual financial statements to be prepared for each subsequent financial year.

(4) Where, at the date of commencement of this Act, annual financial statements of a trust were not being prepared, the first annual financial statements must be prepared within six months after the commencement date of this Act.

(5) Except where the trust instrument requires the preparation of annual financial statements, a trust is exempt from preparing annual financial

statements for a financial year if the aggregate inflows and outflows of trust property during that financial year do not exceed the thresholds determined by the Minister by notice in the *Gazette*.

(6) A trustee must, at the written request of the Master, submit financial statements to the Master within one month from the date of the request, or within such further period as the Master may allow.

Annual return

21 (1) A trustee must, in the prescribed manner, and upon payment of the prescribed fee, file an annual return containing prescribed information within six months after the anniversary of the date on which the first trustee of the trust was authorised by the Master to act.

(2) Where a trust is in existence at the commencement of this Act, the first annual return must be filed within six months after the commencement of this Act, and thereafter each annual return must be filed within six months after the anniversary of the date of filing of the previous annual return.

Keeping of trust documents

22. A trustee must, for the duration of the trusteeship, and for a period of five years from the date on which the trustee ceased to be a trustee, keep documents relating to the trust, including—

(a) the trust instrument and any other document that contains the provisions of the trust;

(b) records of the initial donation made to the trust by the founder and property that the founder made over to the trust or placed under the control of the trustee when the trust was created;

(c) any variations made to the trust instrument or the trust;

(d) records of the trust property that identify the assets, liabilities, income, and expenses of the trust;

(e) any records of trustee resolutions made during the trustee's trusteeship;

(f) any written contracts entered into during the trustee's trusteeship;

(g) any accounting records and financial statements prepared during the trustee's trusteeship;

(h) documents of appointment, removal, and discharge of trustees;

(i) any document which serves as proof of the investment, safe custody, control, administration, alienation or distribution of trust property; and

(j) any documents referred to in paragraphs *(a)* to *(i)* that were kept by a former trustee during that person's trusteeship and that were passed on to the trustee.

Beneficial ownership registers

23. (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 relating to the beneficial owners and beneficial ownership of the trust with the Master's Office;

(d) update the beneficial ownership record referred to in paragraph *(a)* and the prescribed information referred to in paragraph *(b)* within 10 days of any change,

and lodge such change with the Master's Office within 10 days after the change occurs.

(2) The Master must keep a register in the prescribed manner containing prescribed information about the beneficial ownership of trusts.

(3) A trustee must make the information contained in the register referred to in subsection (1)*(c)*, and the Master must make the information in the register referred to in subsection (2), available to any prescribed persons.

(4) The Master must keep the beneficial ownership information of a trust in terms of subsection (2) for a period of five years from the date on which the Master was informed of the termination of the trust in terms of section 28.

(5) A trustee must keep the record of information relating to the beneficial owners of the trust in terms of subsection (1)*(b)* for a period of five years from the date on which the trust is terminated.

(6) The information and matters that are required to be prescribed in terms of this section must be prescribed after consultation with the Cabinet member responsible for finance and the Financial Intelligence Centre.

Remuneration of trustee

24. (1) A trustee is entitled to remuneration for services rendered, as provided for in the trust instrument.

(2) Where the trust instrument does not make provision for the remuneration, a trustee is entitled to reasonable remuneration.

(3) Parties to a trust must take into consideration when a trustee's remuneration is determined in terms of subsection (2)—

(a) the size and the nature of the trust property;

(b) the time likely to be spent by the trustee in the administration and disposal of the trust property;

(c) the skill required to administer the trust property;

(d) the difficulty of the tasks required of the trustee; and

(e) comparable charges for similar services.

(4) Where a dispute arises regarding a trustee's remuneration, and the trust instrument does not provide for dispute resolution, the parties must resolve the dispute through mediation conducted by a qualified mediator, accredited by a recognised mediation organisation within the Republic.

(5) A party to the dispute may institute legal proceedings only if—

(a) a mediator has issued a report certifying that the mediation was unsuccessful; or

(b) urgent relief from a court is required.

(6) The cost of the mediation must be paid out of the income of the trust.

CHAPTER 5

RESIGNATION AND REMOVAL OF TRUSTEE

Resignation by trustee

25. (1) A trustee may resign by giving a signed written notice of resignation, in the prescribed manner, to the Master, other trustees and beneficiaries with a vested right in the trust property, that are known to the trustee.

(2) The Master must, in writing, acknowledge receipt of the resignation upon receipt of the following resignation documents:

(a) A signed written notice of resignation; and

(b) proof that the other trustees and beneficiaries with a vested right that are known to the trustee have been informed of the resignation.

(3) The Master must use the contact details provided by the resigning trustee in terms of section 7, to send the written acknowledgement of receipt of the resignation documents.

(4) A trustee's resignation becomes effective when the trustee receives the Master's written acknowledgement of the trustee's resignation documents.

(5) The provisions of the Electronic Communications and Transactions Act that provide for receipt of a data message by an addressee are applicable where the Master's written acknowledgement of receipt of resignation documents is sent to a trustee by electronic mail.

(6) Where a trust instrument provides for resignation by trustee, a trustee must, in addition to the provisions of this section, comply with the provisions of the trust instrument.

(7) A person may, after resigning, be held liable for their failure to discharge their fiduciary duty as trustee during their period of trusteeship.

Removal of trustee

26. (1) A trustee may, on application by the Master or any person having an interest in the trust property, be removed from office of trustee by a court if the court is of the opinion that such removal is in the interest of the trust and its beneficiaries.

(2) A trustee may be removed from office of trustee by the Master if—

(a) the trustee becomes disqualified to be authorised to act as a trustee in terms of section 9;

(b) the trustee fails to give security or additional security, as the case may be, to the satisfaction of the Master within two months after having been requested to do so by the Master, or within such further period that is allowed by the Master;

(c) the trustee's estate is—

(i) sequestrated;

(ii) liquidated;

(iii) placed under business rescue in terms of the Companies Act; or

(iv) placed under administration in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);

(d) the trustee is placed under debt review in terms of the National Credit Act, 2005 (Act No. 34 of 2005);

(e) the trustee has been declared by a competent court to be mentally ill or incapable of managing their own affairs or if the trustee is, by virtue of the Mental Health Care Act, detained as a patient in an institution or as a State patient; or

(f) the trustee fails to perform satisfactorily any duty imposed upon the trustee by or under this Act or to comply with the requirements of this Act or any lawful request of the Master.

(3) If a trustee who has been authorised to act in terms of section 8 is removed from office or resigns, the trustee or remaining trustees, must return the written authority to the Master without delay.

(4) A person may, after being removed from the office of trustee, be held liable for their failure to discharge their fiduciary duty as trustee.

CHAPTER 6

VARIATION, AND TERMINATION AND DEREGISTRATION OF TRUST

Power of court to vary trust provisions

27. If a trust instrument contains any provision which brings about consequences which, in the opinion of a court, the founder of a trust did not contemplate or foresee, and which—

(a) hampers the achievement of the objects of the trust;

(b) prejudices the interests of the beneficiaries; or

(c) is in conflict with public interest,

the court may, on application by a trustee or any person who in the opinion of the court has interest in the trust property, delete or vary any such provision, or make in respect thereof any order which the court deems just, including an order for the substitution of trust property for other property, or an order terminating the trust.

Termination of trust

28. (1) A trustee must, in writing, inform the Master when the trust terminates, and the Master must record the termination of the trust in the prescribed manner, and remove the trust's name from the trusts register.

(2) A trust terminates as of the date its name is removed from the trusts register.

CHAPTER 7

GENERAL PROVISIONS

Failure by trustee to account or perform duties

29. If a trustee fails to comply with a request by the Master in terms of section 12 or to perform any duty imposed upon the trustee by the trust instrument or by law, the Master or any person having an interest in the trust property may apply to a court for an order directing the trustee to comply with such request or to perform such duty.

Reporting of irregularities

30. (1) If an irregularity in connection with the administration of a trust comes to the notice of a person who audits the accounts of a trust, such a person must, if in their opinion the irregularity is material, report it in writing to the trustee, and 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, that person must—

(a) report the irregularity in writing to the Master; and

(b) deal with the irregularity in terms of the provisions of the Auditing Profession Act, 2005 (Act No. 26 of 2005).

(2) The Master may call upon the trustee to account in terms of section 12(1).

Access to information held in terms of Act

31. (1) Information held by the Master or a trustee in terms of this Act may be accessed in terms of the provisions of the Promotion of Access to Information Act, 2002 (Act No. 2 of 2000).

(2) The processing of personal information in terms of this Act must be done in accordance with the provisions of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

Regulations, directives and guidelines

32. (1) The Minister must make regulations to prescribe—

(a) fees payable in terms of this Act;

(b) the establishment and maintenance of a public register of persons who are disqualified from being authorised to act as a trustee, as contemplated in section 9(8);

(c) details of accountable institutions that a trustee must record in terms of section 17(2);

(d) thresholds for the aggregate inflows and outflows of trust property contemplated in section 20(5);

(e) manner and form of filing an annual return;

(f) the information relating to beneficial owners of a trust that a trustee must keep a record of in terms of section 23(1);

(g) the register of beneficial ownership of trusts that the Master must keep in terms of in section 23(2);

(h) categories of persons to whom the Master and a trustee must make information contained in the beneficial ownership registers available, as contemplated in section 23(3);

(i) the manner of issuing a compliance notice contemplated in section 33(1);

(j) the manner of imposing an administrative fine contemplated in section 34(1);

(k) the procedure, form and time periods for lodging and determining an appeal to the Director-General contemplated in section 34(5) and (6);

(l) the recovery of unpaid administrative fines through a debt collection agency in terms of section 34(9); and

(m) the maximum amounts of administrative fines contemplated in section 34(11), including different maximum amounts for different categories of non-compliance as contemplated in section 34(12);

(2) The Minister may make regulations to prescribe—

(a) the forms that must be used at the Master's Office;

(b) documents required in connection with the registration and administration of a trust;

(c) the manner of submitting information to the Master;

(d) the manner of lodging documents with the Master;

(e) the keeping of records by the Master;

(f) the manner of initiating and conducting investigations in terms of the Act;

(g) the manner in which fees payable in terms of this Act must be paid; and

(h) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(3) The Chief Master may issue directives or guidelines, for the purposes of facilitating compliance with and giving effect to the provisions of this Act, which may include instructions to trustees or officials in the Master's Office.

Compliance notices

33. (1) The Master may issue a compliance notice in the prescribed manner to a trustee who has failed to—

(a) provide the Master with a physical address and contact details in terms of section 7;

(b) comply with a request made by the Master in terms of section 12;

(c) submit annual financial statements to the Master in terms of section 20;

(d) file an annual return in terms of section 21; or

(e) comply with an obligation placed on the trustee by section 23.

(2) A compliance notice issued in terms of this section must—

(a) contain the name and address of the trustee;

(b) refer to the provisions of this Act that have not been complied with;

(c) provide details of the nature and extent of the non-compliance;

(d) indicate the steps that are required to be taken to comply with the provisions;

(e) specify the period within which the steps referred to in paragraph *(d)* must be taken; and

(f) inform the trustee that failure to comply with the notice within the prescribed period may result in the imposition of an administrative fine.

Administrative fines

34. (1) If a trustee fails to comply with a compliance notice issued in terms of section 33, the Master may impose an administrative fine on the trustee in the prescribed manner.

(2) A notice of an administrative fine must—

(a) provide reasons for the imposition of the fine;

(b) set out the amount of the fine, which may not exceed the prescribed maximum amount applicable to the non-compliance in question;

(c) state the date by which the fine must be paid;

(d) inform the trustee of the right to appeal in terms of subsection (5); and

(e) inform the trustee that failure to—

(i) pay the administrative fine within the date stated in the notice; or

(ii) lodge an appeal within the prescribed period,

may constitute an offence in the circumstances contemplated in section 35.

(3) When determining the amount of an administrative fine, the Master must take into account—

(a) activities carried out by the trust that may place the trust at the risk of being used for money-laundering and terrorism financing;

(b) whether any person prescribed in terms of section 23(3) has required to access beneficial ownership information of the trust held by the Master;

(c) whether the trustee has previously been issued with a compliance notice in terms of section 33;

(d) whether the trustee has previously been issued with an administrative fine in terms of this section;

(e) whether the trustee has a previous conviction for failure to comply with any provision of this Act; and

(f) any other relevant factor, including mitigating factors.

(4) An administrative fine imposed in terms of this section must be paid into the National Revenue Fund referred to in section 213 of the Constitution.

(5) A trustee on whom an administrative fine has been imposed may, within 30 days of receipt of the notice referred to in subsection (2), appeal in the prescribed manner, to the Director-General.

(6) The Director-General may—

(a) confirm the administrative fine;

(b) reduce the amount of the administrative fine; or

(c) set aside the administrative fine.

(7) The decision of the Director-General is final and must be communicated to the trustee and the Master, in the prescribed manner.

(8) If a trustee fails to pay an administrative fine that has not been set aside on appeal, the Master may file with the clerk or registrar of any competent court a statement certified by the Master as correct, setting out the amount of the administrative fine payable by the trustee, and such statement has the effect of a civil judgment lawfully given in that court in favour of the Master for a liquid debt in the amount specified in the statement.

(9) The Master may, instead of or in addition to the recovery contemplated in subsection (8), authorise the recovery of an unpaid administrative fine by a debt collection agency, in the prescribed manner and subject to any conditions prescribed.

(10) An administrative fine imposed on a trustee in terms of this section—

(a) does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and

(b) must be paid personally by the trustee and may not be recovered from the trust property.

(11) The Minister must prescribe the maximum amounts of administrative fines that may be imposed for failures to comply with compliance notices issued in terms of section 33.

(12) The Minister may prescribe different maximum amounts of administrative fines for different categories of non-compliance, taking into account the nature and seriousness of the obligation concerned.

Offences and penalties

35. (1) A trustee who exercises any powers or perform any duties in contravention of section 6(4) commits an offence and is liable on conviction to a fine or to imprisonment not exceeding a period of five years, or to both a fine and imprisonment.

(2) A person who administers controls or disposes of trust property in accordance with a trust instrument without having been issued with letter of authority by Master in terms of section 8 commits an offence and is liable on conviction to a fine or to imprisonment not exceeding a period of five years, or to both such fine and imprisonment.

(3) A trustee who fails to comply with an obligation referred to in section 17(1) or 17(2) commits an offence and is liable on conviction to a fine not exceeding R10 million, or imprisonment not exceeding a period of five years, or to both such fine and imprisonment.

(4) A trustee who fails to comply with the provisions of sections 18 and 19(2) commits an offence and is liable on conviction to a fine not exceeding R10 million, or to imprisonment not exceeding a period of five years, or to both such fine and imprisonment.

(5) A trustee who fails to comply with the provisions of section 22 commits an offence and is liable on conviction to a fine or to imprisonment not exceeding a period of five years, or to both such fine and imprisonment.

(6) A trustee who intentionally—

(a) keeps or records incorrect beneficial-ownership information;

(b) lodges incorrect beneficial-ownership information with the Master; or

(c) provides incorrect beneficial-ownership information to a person who is entitled to such information in terms of this Act,

is guilty of an offence and is liable on conviction to a fine not exceeding R10 million, or to imprisonment not exceeding a period of five years, or to both such fine and imprisonment.

(7) A person who provides a trustee with false information for the purposes of section 23 is guilty of an offence and is liable on conviction to a fine not exceeding R10 million, or to imprisonment not exceeding a period of five years, or to both such fine and imprisonment.

(8) Where an administrative fine imposed in terms of section 34 relates to a failure to submit or maintain beneficial ownership information as required by this Act, a trustee who fails to—

(a) pay the administrative fine; or

(b) lodge an appeal within the prescribed period, is guilty of an offence and is liable on conviction to a fine not exceeding R10 million, or to imprisonment not exceeding a period of five years, or to both such fine and imprisonment.

Magistrate's Court jurisdiction to impose penalties

36. Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty provided for in section 35.

Repeal of law

37. The Trust Property Control Act, 1988 (Act No. 57 of 1988) is hereby repealed.

Savings and transitional provisions

38. (1) *(a)* Anything done under a provision of the law repealed by section 37 and which could have been done under a provision of this Act, is regarded as having been done under the later provision.

(b) The Regulations made in terms of the Trust Property Control Act, 1988 (Act No. 57 of 1988), remain in force until repealed or amended.

(2) Trusts that were created before the commencement of this Act to administer property referred to in section 3(2) continue to exist until they are dealt with in terms of the relevant legislation.

Short title and commencement

39. This Act is called the Regulation of Trusts Act, 2026 and comes into operation on a date determined by the President by proclamation in the *Gazette*.