

(15 March 2024 - to date)

TRUST PROPERTY CONTROL ACT 57 OF 1988

*(Government Notice 1177 in Government Gazette 11357 dated 17 June 1988. Commencement date:
31 March 1989 [Proc. No. R35, Gazette No. 11792])*

REGULATIONS UNDER THE TRUST PROPERTY CONTROL ACT, 1988 (ACT No. 57 OF 1988)

*Government Notice R1540 in Government Gazette 15061 dated 13 August 1993. Commencement date:
13 August 1993.*

As amended by:

*Government Notice R1056 in Government Gazette 32690 dated 5 November 2009. Commencement date:
5 November 2009.*

*Government Notice 1162 in Government Gazette 41224 dated 3 November 2017. Commencement date:
1 January 2018.*

*Government Notice R3240 in Government Gazette 48351 dated 31 March 2023. Commencement date:
1 April 2023. [A duplication of this notice was published under GNR 3232 in Government Gazette 48343
dated 31 March 2023]*

*Government Notice R4510 in Government Gazette 50296 dated 15 March 2024. Commencement date:
15 March 2024.*

The Minister of Justice has, under section 24 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), made the regulations in the Schedule.

SCHEDULE

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Prepared by:

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1. Definitions

In these regulations "the Act" means the Trust Property Control Act, 1988 (Act No. 57 of 1988), and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned thereto.

2. Fees payable at lodgement of trust instrument

The fee which is payable to the Master in terms of section 4 of the Act at the lodgement of a trust instrument shall be R250, 00 in respect of each trust instrument, which shall be payable in the manner as determined administratively by the Director-General: Justice and Constitutional Development and proof of such payment shall be submitted to the Master together with the trust instrument which shall be retained by the Master.

(Regulation 2 substituted by regulation 2 of Government Notice R1056 in Government Gazette 32690 dated 5 November 2009)

(Regulation 2 substituted by regulation 2 of Government Notice 1162 in Government Gazette 41224 dated 3 November 2017, with effect from 1 January 2018 and shall apply to trusts registered on or after 1 January 2018)

3. Fees payable for the making and certifying of copies of documents

(1) The fee which is payable to the Master in terms of section 18 of the Act for –

- (a) a copy of any document under his or her control relating to trust property shall be R25,00 per document pack; and
- (b) a certified copy of any document under his or her control relating to trust property shall be R50,00 per document pack of certified copies,

which shall be payable in the manner as determined administratively by the Director-General: Justice and Constitutional Development and proof of such payment shall be submitted to the Master together with the written request of, or rendering by, the Master of the service in question.

(2) For an electronic copy of any document preserved in the office of a Master, when it is made in such office, and if it is available, no fee is payable.

(3) For purposes of subparagraph (1), "document pack" means any document, irrespective of the number of pages, which constitutes a complete document which can be read on its own.

(Regulation 3 substituted by regulation 2 of Government Notice R1056 in Government Gazette 32690 dated 5 November 2009)

(Regulation 3 substituted by regulation 2 of Government Notice 1162 in Government Gazette 41224 dated 3 November 2017, with effect from 1 January 2018 and shall apply to trusts registered on or after 1 January 2018)

3A. Establishment and maintenance of public register of persons disqualified from serving as trustees

- (1) The public register that the Master is required to establish and maintain in terms of section 6(1H)(a) of the Act must provide for—
 - (a) the recording of the—
 - (i) full names of the disqualified person;
 - (ii) date on which the person became disqualified in terms of section 6(1A)(d) or (e) of the Act; and
 - (iii) the court case number relating to the relevant court order contemplated in section 6(1H)(a) of the Act;
 - (b) adequate measures against loss of information as a result of damage to or failure of the medium on which the information is kept; and
 - (c) adequate security measures for the protection of the information contained in the register.
- (2) The register referred to subregulation (1), must be made available to the public—
 - (a) electronically; or
 - (b) at any Master's Office during office hours.
- (3) The Master must update the register referred in subregulation (1) as soon as the Master receives a copy of the order contemplated in section 6(1F) of the Act.
- (4) A person who is no longer disqualified from being authorised to serve as a trustee must submit a written notice thereof and proof that the grounds for their disqualification no longer exists to the Master.
- (5) The Master must remove the particulars of the person referred to in subregulation (4) from the register if the Master is satisfied that the grounds for their disqualification no longer exists.

(Regulation 3A inserted by regulation 2 of GNR 3240 dated 31 March 2023)

3B. Recording of details of accountable institutions by trustee

A trustee must record the following details of an accountable institution contemplated in section 11(1)(e) of the Act:

- (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 nature of the business relationship that was entered into.

(Regulation 3B inserted by regulation 2 of GNR 3240 dated 31 March 2023)

3C. Beneficial ownership information to be recorded by trustee

- (1) A trustee must keep a record of the following information relating to each identified beneficial owner of the trust, in the register contemplated in section 11A(1) of the Act:
 - (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) Where a beneficial owner is a minor a trustee must also keep a record of the information referred to in subregulation (1) in respect of the minor's legal guardian.
- (3) A trustee must keep a certified or verified copy of an official identity document or passport of each identified beneficial owner of the trust, and the information recorded in terms of subregulation (1)(a) to (d) must appear the same way as it appears on the certified or verified copy of the identity document or passport.

(Regulation 3C inserted by regulation 2 of GNR 3240 dated 31 March 2023)

3D. The Master's register on beneficial ownership of trust

- (1) The register of the beneficial owners of a trust that the Master is required to keep in terms of section 11A(2) of the Act must, subject to the provisions of subregulation.(2), be an electronic register, and the register must be kept in such a manner that provides for—
- (a) access to registered users through a username and a password;
 - (b) adequate measures against loss of information as a result of damage to or failure of the medium on which the information is kept;
 - (c) adequate security measures for the protection of the information contained in the register;
 - (d) a trustee to lodge, on the electronic register, the information of each beneficial owner that the trustee is keeping in terms of section 11(A)(1)(a) of the Act;
 - (e) a trustee to update the information that the trustee has lodged on the electronic register;

- (f) a trustee to upload documents;
 - (g) a trustee to only have access to the information that the trustee has lodged and the documents that the trustee has uploaded on the electronic register;
 - (h) a trustee to sign off electronically on the information the trustee has lodged; and
 - (i) access by the entities and authorities referred to in regulation 3E(1) to the information contained in the register.
- (2) The Master must, in the event that the establishment of the electronic system is not completed when section 11A(2) of the Act commences, provide for an interim electronic medium—
- (a) with adequate security measures;
 - (b) through which a trustee may lodge the information of each beneficial owner that the trustee is keeping in terms of section 11A(1)(a) of the Act; and
 - (c) which will enable the migration of the beneficial ownership information to the system contemplated in regulation 3E(1).
- (3) A trustee who is unable to lodge beneficial ownership with the Master electronically may visit any Master's Office for assistance in this regard.

(Regulation 3D inserted by regulation 2 of GNR 3240 dated 31 March 2023)

3E. Access to information contained in beneficial ownership register

- (1) The Master and a trustee must make the information contained in the beneficial ownership register that the Master and a trustee keep in terms of section 11A of the Act available to—
- (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);
(Regulation 3E(1)(j) amended by regulation 2(a) of GNR 4510 dated 15 March 2024)
 - (jA) the South African Police Service;
(Regulation 3E(1)(jA) inserted by regulation 2(b) of GNR 4510 dated 15 March 2024)
 - (jB) an investigating authority in the Republic; and
(Regulation 3E(1)(jB) inserted by regulation 2(b) of GNR 4510 dated 15 March 2024)
 - (k) a person who is entitled to receive such information in terms of other national legislation.
- (2) The entities and authorities referred to in subregulation (1) must—
- (a) in writing, request access to the information contained in the register, from the Chief Master;
 - (b) provide proof to the satisfaction of the Chief Master that they qualify in terms of subregulation (1) to be granted access to the information contained in the register; and
 - (c) designate officials who will have access to the beneficial ownership register kept by the Master.
- (3) The Master must, upon receipt of the details of officials so designated provide the officials with access to the information contained in the register.
- (4) Should a person no longer be a designated official contemplated in subregulation (2)(c) the relevant entity or authority must provide the Chief Master with a written notice thereof.
- (5) The Master must revoke access to information contained in the register by a person in respect of whom the Chief Master has received a written notice referred to in subregulation (4).
(Regulation 3E inserted by regulation 2 of GNR 3240 dated 31 March 2023)

4. Repeal

Prepared by:

Government Notice No. R. 609 of 31 March 1989, as amended by Government Notice No. R. 1920 of 17 August 1990, is hereby repealed.