



Don't leave yourself or your clients in the lurch!!

Trustee's duties have just become more **ONEROUS**

General Laws (Anti-Money Laundering and Combatting Terrorism Financing) **Amendment Act, 2023**

Background

On 1 October 2021, the Financial Action Task Force (FATF) published its Report on South African Anti-money Laundering and Counter Terrorist Financing Measures. FATF routinely conducts these evaluations to determine the extent of a country's technical compliance with global anti-money laundering and counter-terrorist financing laws (AML/CFT).

The South African Report concluded that South Africa is partially compliant with 17 of the FATF technical Recommendations, and totally non-compliant with three of them, painting a dire picture of the country's ability to ensure safeguards in accordance with international standards for AML/CFT.

This led to some frenetic activity by Financial Intelligence Centre (FIC) and accordingly the above amendment was enacted, which will come into force on 1 April 2023, with an eye to South Africa avoiding becoming [PARIAH STATE](#) and being [GREYLISTED](#).

Non-Compliance

A trustee who fails to comply with the above obligations will have committed an offence and on conviction can be liable to a fine not exceeding R10 million, or imprisonment not exceeding five years, or both.

Master to keep list of persons who are disqualified to act as trustees

It is well established that a trustee may only act in that capacity once the Master's Office has issued Letters of Authority on which that trustee's details appear.

In an amendment to clause 6 of the Act, it now stipulates who are ineligible to serve as trustee of a trust. Persons disqualified from appointment as trustees will include an unrehabilitated insolvent, someone who is prohibited from being a director of a company, a person who has been removed from an office of trust on the grounds of misconduct involving dishonesty, a person who has been convicted for fraud, theft, forgery, misrepresentation or dishonesty under the Companies Act.

The Master must establish and maintain a public register of persons who are disqualified from serving as a trustee in terms of an order of court or any other law. (Section 6(1F) now obliges the Court Registrar to send copies of certain orders handed down to the Master, for purposes of this list.)



Let BEXs and its associates assist you and/or your client with complying with the new provisions of the **Anti-Money Laundering and Combatting Terrorism Financing Act** and **avoid a fine and possibly be disqualified as a Trustee**

Changes include¹

Trust Property Records

Section 11 of the Act lists how a trustee must go about to keep a register of trust property. In the amendments and additions to section 11, it is now required of trustees to also record the precise details relating to the accountable institutions that are used as agents to perform any of the trustee's functions relating to trust property and from which the trustee obtains services.

The details to be recorded has not been finalised, but in draft regulations to the TPCA the Minister of Finance and the Financial Intelligence Centre has suggested the following details that must be captured:

- The name of the accountable institution;
- if the accountable institution is a person other than a natural person, the registration number of such person;
- if the accountable institution is a natural person, the official identification document number of the natural person, indicating the type of document and the country of issue;
- if the trustee used or uses the accountable institution to perform the trustee's functions, the nature of the functions;
- if the trustee obtained or obtains services from the accountable institution, the nature of services;
- if the trustee entered into a single transaction with the accountable institution, the date on which the transaction was entered into; and

¹ STBB Property Law Update

- if the trustee entered into a business relationship as defined in the Financial Intelligence Centre Act ... with the accountable institution, the date on which the business relationship was entered into.”

Beneficial Ownership²

For anti-money laundering investigations, it is recognised worldwide that fraudsters use entity structures as hiding places for themselves, their activities and their unlawful gains. Therefore there is increasingly deeper investigations into structures of certain entities so as to determine the identity of the living person(s) therein that is/are the beneficial owner(s).

These will now also apply to trusts. **A definition of “beneficial owner” has been imported into the Act** and includes a natural person who directly or indirectly ultimately owns the relevant trust property or who exercises effective control of the administration of the trust, [Read more here](#)

Beneficial Owner Record and Publicity³

Trustees must further keep up-to-date records of the beneficial ownership of the trust and lodge a register of prescribed information on the beneficial owners with the Master. The trustees (and the Master) must make the information contained in the register available to any person after consultation with the Minister of Finance and the Financial Intelligence Centre. The list must be submitted to the Master’s Office. (Currently, the Master’s Office only retains records of the identities of founders, trustees and named beneficiaries.)

The regulations will in due course prescribe what information must be included in this list. The draft regulations suggested that the details will include, for each beneficial owner, full names, date of birth, nationality, official identity number, residential address, address for service of notices, means of contact, the reasons why the person is a beneficial owner, the date upon which he or she became a beneficial owner and, where applicable, the date upon which he or she ceased to be a beneficial owner. In addition the trustee must keep a certified copy of the official identification document of each beneficial owner that must correspond to the details above.

In addition the information contained in the register must be available to various government institutions involved in the intelligence and policing arena, including the public protector, SARS, the NPA and the like.

IN SHORT

Your Trust, or your clients Trust must comply with amongst other provisions, these new provisions as from 1 April 2023

POSSIBLE LEGAL CHALLENGE

THE ACT

² STBB Property Law Update

³ STBB Property Law Update