

BILL

To regulate the control and administration of trusts; regulate trust services providers and to provide for matters connected therewith; by imposing duties on trustees, accountants and auditors; by specifying matters that would disqualify a person from being appointed or continuing to act as trustee; by providing for the removal of a trustee who becomes disqualified to continue to act as a trustee; by specifying information that must be kept by trustees in relation to basic information and beneficial ownership information in relation to trusts; by requiring the Master to maintain a register containing information relating to basic information and beneficial ownership information of trusts, and providing for access to information regarding beneficial ownership; and by specifying offences; and to provide for incidental matters

(Introduced by the Minister of Justice)

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Definitions

1. In this Act, unless the context indicates otherwise

“Administration of Estates Act” means Administration of Estates Act, 1965 (Act 66 of 1965),

“accountable institution” means a person or institution referred to in Schedule 1 of the Financial Intelligence Act, Act 13 of 2012;

“banking institution” means an institution authorised under the Banking Institutions Act, 1998, Act 2 of 1998 to conduct banking business;

“beneficiary” means a person, whether natural or legal person or discretionary beneficiary, entitled to benefit under a trust, or in whose favour a power to distribute trust property may be exercised and may include the settlor or founder or trustee in the concerned trust;

“beneficial owner” has the meaning as defined in section 1 (1) of the Financial Intelligence Act, (Act No 13 of 2012)¹ and

(a) for purposes of this Act, in respect of a trust, includes, but is not limited to, all parties to a trust, a natural person who directly or indirectly ultimately owns the relevant trust property or exercises effective control of the administration of the trust, including –

- (i) each settlor or founder of the trust;
- (ii) if a settlor or founder of the trust is a legal person or another trust, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or trust;
- (iii) each trustee of the trust or any other administrator thereof;
- (iv) if a trustee of the trust is a legal person or trustee of another trust, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or trust;
- (v) each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created; or any individual directly or indirectly benefitting from the trust;
- (vi) if a beneficiary referred to by name in the trust deed is a legal person or a person acting on behalf of another trust or in pursuance of the provisions of

¹ “beneficial owner” means -

- (a) a natural person who owns or effectively controls a client, including the natural person on whose behalf a transaction is conducted; or
- (b) a natural person who exercises effective control over a legal person or trust, and a natural person is deemed to own or effectively control a client when the person -
 - (i) owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, 20% or more of the shares or voting rights of the entity;
 - (ii) together with a connected person owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, 20% or more of the shares or voting rights of the entity;
 - (iii) despite a less than 20% shareholding or voting rights, receives a large percentage of the person’s declared dividends; or
 - (iv) otherwise exercises control over the management of the person in his or her capacity as executive officer, non-executive director, independent nonexecutive director, director, manager or partner.

a trust agreement, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person, or trust; and

- (vii) each protector of the trust; (if any)
- (viii) a person who, through the ability to control the votes of the trustees or to appoint the trustees, or to appoint or change the beneficiaries of the trust, exercises effective control of the trust;
- (ix) any other natural person(s) exercising ultimate effective control over a trust, or benefiting from a trust (including through a legal person or arrangement, or through a nominee arrangement)

“breach of trust” means a breach of any duty imposed on a trustee by this Act or by the terms of the trust deed;

“building society” means an institution created in terms of the Building Societies Act, 1986 (Act 2 of 1986);

“business relationship” means an arrangement between a client and an accountable or reporting institution in terms of the Financial Intelligence Act, (Act No 13 of 2012) for the purpose of concluding transactions on a regular basis;

“body corporate” means a company, corporation or association incorporated in terms of the laws of the Republic of Namibia;

“Close Corporations Act” means the Close Corporations Act, 1988 (Act 26 of 1988);

“Companies Act” means the Companies Act, 2004 (Act 28 of 2004);

“corporate trustee” means a body corporate appointed or acting as trustee;

“court” means the High Court of Namibia, and in relation to any offence under this Act, includes a magistrate’s court having jurisdiction in respect of that offence;

“discretionary beneficiary” means any person unborn, any person, ascertained or not who may become entitled, directly or indirectly, to a benefit or interest under a trust at the discretion of the trustee or under power of appointment but who does not have a fixed, vested or contingent interest in the trust property; (this can be at a future date or on the happening of a future event) it can be a person of any specified description or a member of any specified class;

“financial crime” means –

- (a) an offence that involves theft, fraud or dishonesty under this Act; or
- (b) an offence that involves theft, fraud or dishonesty under any other legislation enforceable in Namibia, inclusive of, but not limited to, the Financial Intelligence Act and Prevention of Organised Crime Act, 2004, (Act 29 of 2004).

“foreign trust” means a trust created or governed by foreign law which seeks to administer or dispose trust property located in Namibia;

“foreign trustee” means a person appointed as a trustee by or in accordance with the trust instrument of a foreign trust where such person administers or disposes trust property located in Namibia;

“Master” in relation to this Act means the Master of the High Court, appointed in terms of section 2 of the Administration of Estates Act, 1965 (Act 66 of 1965)

“Minister” means the Minister responsible for justice;

“minor” means any person who has not attained the age of 18;

“person” means any natural person or a legal person;

“prescribed” means prescribed in the regulations

“property or trust property” includes movable and immovable property, and rights and interests in the property whether vested, contingent or future;

“register” means the register of trusts, trustees, and trust service providers established and maintained under section 3;

“regulations” means regulations made under this Act

“settlor” means a person who provides or donates property or makes a testamentary disposition on trust or to a trust with the intention to establish a trust and “founder or donor” shall have the same meaning;

“This Act” includes the regulations made under it;

“trust” means an arrangement through which the ownership in property of one person is by virtue of a trust instrument made over or bequeathed -

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

but does not include the case where the property of another is to be administered by any person as a trustee, executor, tutor or curator in terms of the provisions of Administration of Estates Act, or any other written law;

“trustee” means any person, including the founder, donor or settlor of a trust who acts as trustee by virtue of an authorisation under section 6 and includes any person whose appointment as trustee is already in force at the commencement of the Act;

“trust instrument” means a written agreement or a testamentary writing or a court order according to which a trust was created;

“trust service provider” means a person, other than a person or business listed under Schedule I of the Financial Intelligence Act, that as part of his or her business, provides any of the following services to a third party —

- (a) Facilitating or sourcing contributions for the creation, operation or management of a trust or legal arrangement;
- (b) acting as a formation agent for trusts;
- (c) providing a registered office, business address or accommodation, correspondence or administrative address for a trust; or
- (d) acting as (or arranging for another person to act as) a trustee of a trust or performing the equivalent function for another form or legal arrangement.

Application of the Act

2. This Act shall apply to all trusts including those that were administered in terms of the Trust Monies Protection Act, 1934 (Act 34 of 1934).

Keeping a register for trusts, trustees and trusts service provider

3. (1) Subject to the provisions of this Act, the Master must register all trusts, trustees and trusts service providers.
- (2) The Master must establish and maintain a basic information register for trusts, trustees and trust service providers
- (3) The basic information register shall contain all information as prescribed.
- (4) The register for trusts, trustees and trust service providers shall be kept at the office of the Master.
- (5) (a) Any person may request to inspect the register during office hours upon payment of such fees as may be prescribed.
- (b) The Master shall afford direct and rapid access to the register to competent authorities and accountable institutions .
- (6) The Master must—
 - (a) keep the register in such form as may be prescribed;
 - (b) remove from the register any trust which is terminated by the court under section 15; and
 - (c) remove from the register, the name of a trustee who dies, resigns from office or is removed from office; and
 - (d) remove from the register, a trust service provider whose registration has lapsed or has been cancelled.

Prohibition on operating a Trust or acting as a trust service provider

4. A person may not -
 - a. operate as a trustee unless the concerned trust has been registered with the Master;
 - b. operate as a trust service provider without such person having been registered as a trust service provider with the Master;

Lodgement of trust instruments

5. (1) Except where the Master is already in possession of the trust instrument or an amendment to the trust instrument and **a trust certificate has been issued**, all trustees whose appointment comes into force after the commencement of this Act shall -
 - (a) before he or she assumes control of the trust property; and
 - (b) upon payment of a prescribed fee,

lodge with the Master the trust instrument in terms of which the trust property is to be administered or disposed of by him or her, or a copy thereof certified as a true copy by a notary or other person approved by the Master **for a trust certificate to be issued**.

- (2) A trust instrument lodged with the Master shall —
 - (a) identify the trust property bequeathed and all beneficial owners of the trust including the beneficiary/ies, settlor(s), founding trustee(s), and any other natural person exercising ultimate effective control over the trust;
 - (b) indicate whether the trustee shall provide security or is exempted thereof; and
 - (c) in the case of a sub-trust of a foreign trust created to administer trust property situated in Namibia, contain an addendum of the trust instrument used to create the foreign trust.

- (3) For purposes of identifying a beneficiary, a trustee must ensure that the trust instrument identifies a beneficiary by —
 - (a) full name;
 - (b) physical address;
 - (c) a valid email address;
 - (d) nationality;
 - (e) date and country of birth; and
 - (f) identification number or, in the case of a non-citizen, a passport number.
- (4) Notwithstanding subsection (3), a trustee may identify a beneficiary by reference to —
 - (a) class;
 - (b) a relationship to another person, whether or not such person is alive at the time of the creation of a trust; or
 - (c) members of a class that is to be determined under the terms of the trust.
- (5) Where a trust instrument which has been lodged with the Master is varied, the trustee must lodge the amendment or a copy thereof so certified immediately with the Master.
- (6) Any further applicable information and supporting documentation in relation to the identification of a beneficiary, under subsection (3) above, requested by the Master, must be provided to the Master.

Notification of address

6. Any any person whose appointment as trustee came into effect before the commencement of this Act and any person whose appointment as trustee comes into effect after the commencement of this Act must-
 - (a) furnish the Master with an address for the service upon him or her of notices and process within 14 days;

- (b) furnish the Master with an address for where records required under this Act are kept; and
- (c) in case of change of address, within 14 days furnish the Master with the new address in the prescribed manner;

Authorisation of trustee and security

7. (1) Any person who is appointed as trustee in terms of a trust instrument, section 9 or a court order, shall act in that capacity only if authorised thereto in writing by the Master, **by issuance with a trust certificate.**
- (2) The Master shall not grant authority to the trustee in terms of this section unless the trustee has-
- (a) furnished security to the satisfaction of the Master for the due and faithful performance of his or her duties as trustee; or
 - (b) been exempted from furnishing security by a court order or by the Master under subsection (3) (a) or, subject to the provisions of subsection (3) (d), or in terms of a trust instrument:

Provided that where the furnishing of security is required, the Master may, pending the furnishing of security, authorise the trustee in writing to perform specified acts with regard to the trust property; and

- (c) provide the following details —
 - (i) full name, nationalities, date of birth, gender and residential address of the individual(s) who are beneficial owners; and
 - (ii) the relationship of the trustee to the beneficial owners.

- (3) The Master may, if in his or her discretion decide-
- (a) whether or not security is required by the trust instrument, dispense with security by a trustee;
 - (b) to reduce or cancel any security furnished;
 - (c) to order a trustee to furnish additional security; or
 - (d) to order a trustee who has been exempted from furnishing security in terms of a trust instrument to furnish security.
- (4) If any authorisation is given in terms of this section to a trustee which is a corporation, such authorisation shall, subject to the provisions of the trust instrument, be given in the name of a nominee of the corporation for whose actions as trustee the corporation is liable, and any substitution for such nominee of some other person shall be endorsed on the said authorisation.

Disqualified from being authorised to act as trustee

8. (1) A person is disqualified from being authorized as a trustee if the person—
- (a) is an unrehabilitated insolvent;
 - (b) has been disqualified to be a director of a company, in terms of section 225 of the Companies Act, 2004 (Act No. 28 of 2004), has been disqualified from taking part in the management of the corporation in terms of section 47 of the Close Corporations Act, 1988 (Act No. 26 of 1988);
 - (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 convicted, in Namibia or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence—

- (i) involving money laundering, terrorist financing or proliferation financing activities as defined in section 1(1) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012);
 - (ii) under this Act, the Companies Act, 2004, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1988, the Financial Intelligence Act, 2012, the Financial Institutions Markets Act, 2021 (Act No. 02 of 2021), Prevention of Organised Crime Act, 2004 (Act 29 of 2004) and the Prevention and Combatting of Terrorist and Proliferation Act, 2014 (Act No. 04 of 2014); or
 - (f) is an unemancipated minor, or is under a similar legal disability.
- (2) A disqualification in terms of subsection 7 (1) (d) or (e) 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 from time to time, on application by the Master in terms of subsection (7 (3)).
- (3) At any time before the expiry of a person’s disqualification in terms of subsection 7 (1)(d) or (e)—
- (a) the Master may apply to a court for an extension contemplated in subsection 7(2)(b) if he or she 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; and
 - (b) Which application for may not be for longer than five years at a time;
- (4) A court may exempt a person from the application of any provision of subsection 7 (1) (a), (c), (d) or (e).
- (5) The Registrar of the High 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; or
 - (c) a conviction for an offence referred to in subsection 7 (1)(e), send a copy of the relevant order or particulars of the conviction, as the case may be, to the Master.
- (6) The Master must notify each trust which has as a trustee to whom the order or conviction relates, of the order or conviction.
- (7) (a) The Master must establish and maintain in the prescribed manner a public register of persons who are disqualified from serving as a trustee, in terms of an order of a court pursuant to this Act or any other law.
- (b) The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister.

Appointment of trustee and co-trustee by Master

9. (1) If the office of trustee cannot be filled or becomes vacant, the Master shall, in the absence of any provision in the trust instrument, after consultation with interested parties as he or she may deem necessary, appoint any person as trustee.
- (2) When the Master considers it desirable, he or she may, notwithstanding the provisions of the trust instrument, appoint as co-trustee any serving trustee or any other person he or she deems fit.
- (3) Subject to the terms of the trust instrument, a trustee appointed under this section has the same functions, and may act in all respects, as if he had been originally appointed as trustee.

- (4) On the appointment of a new or co-trustee, the trust property shall be deemed to vest in him jointly with his co-trustee, if any, without any conveyance or assignment

Foreign Trustees

10. (1) Where a foreign trustee has to administer or dispose of trust property in Namibia, the provisions of this Act shall apply to such trustee in respect of such trust property; and
 - (2) the Master may authorise such trustee under section 7 to act as trustee in respect of that property provided that the foreign trustee shall create a sub-trust to be registered in Namibia in accordance with section 3 and any other provisions of this Act;

Fiduciary duties of trustee

11. (1) A trustee must in the performance of his or her duties and the exercise of his or her powers act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another.
 - (2) Notwithstanding the generality of subsection (1), a trustee must —
 - (a) know the terms of the trust;
 - (b) act in accordance with the terms of the trust;
 - (c) act honestly and in good faith;
 - (d) hold or deal with trust property and act for the benefit of the beneficiaries or to further the permitted purpose of the trust;
 - (e) exercise the trustee's powers for a proper purpose;

- (f) not exercise a power of a trustee directly or indirectly for the trustee's own benefit;
 - (g) consider regularly whether he or she should be exercising any of the powers conferred on him or her in relation to the trust;
 - (h) avoid a conflict between his or her interests and the interests of any of the beneficiaries of the trust;
 - (i) treat all beneficiaries in line with the terms of the trust instrument;
 - (j) not make a profit from the trusteeship; and
 - (k) not take a reward any reward for acting as a trustee except under the trustee's legitimate expenses and disbursements due and payable to the trustee under section 27.
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- (3) A trustee must keep trust property separate from his or her own property and separately identifiable from any other property of which he or she is the trustee.
 - (4) The trustees must prepare or cause the annual financial statements of the trust to be prepared and submitted to the Master within 3 months of the financial year end of the trust.
 - (5) The trustees must prepare or cause the annual tax returns of the trust to be prepared and submitted to the Receiver of Revenue within 3 months of the financial year end of the trust and submit a return to the Master even if the trust is dormant.
 - (6) Any provision contained in a trust instrument shall be void in so far as it would have the effect of exempting a trustee from or indemnifying him or her against liability for breach of trust where he or she fails to show the degree of care, diligence and skill as required in subsection (1).

Duty or obligation of an accountant or auditor to perform certain duties

- 12. (1) An accountant or auditor must in the performance of his or her duties -

- (a) be registered with an accredited body in Namibia and such registration should not have lapsed;
 - (b) not act in conflict with a trust on which he or she is appointed as accountant or auditor by acting as trustee on same trust, this is inclusive of employees of the accountant or auditor;
 - (c) submit accurate financial statements and documents in his or her possession timeously to the Master upon request.
 - (d) inform the Master should the trustees fail to finalize the financial statements within six months after the end of the trust's financial year.
 - (e) inform the Master if the Trust is not administered in accordance with the provisions of this Act terms and conditions of the trust instrument.
 - (f) inform the Master if the trustees fail to keep proper records and resolutions.
 - (g) inform the Master if the trustees fail to register the trust with the Receiver of Revenue or submit annual tax returns.
 - (h) inform the Master if he or she resigns as Auditor/Accountant of the Trust and provide the name of the new Auditor/Accountant if available;
 - (i) inform the Master of the reason for resignation and provide the Master with all financial statements and supporting documents in his or her possession.
- (2) Failure by an accountant or auditor to comply with subsection (1) will result in –
- (a) being barred from acting as an Auditor/Accountant for any new or existing Trusts; or
 - (b) a complaint to be lodged with the Accreditation body; or
 - (c) be liable to an administrative fine as may be imposed by the Master, as prescribed

Trust Account

13. (1) Whenever a person receives money in his or her capacity as trustee, he or she must deposit such money in a separate trust account at a bank or building society.

- (2) A trustee must disclose his or her position as trustee to any accountable institution with which the trustee engages in that capacity, and must make it known to the accountable institution that the relevant transaction or business relationship relates to trust property.

Registration and identification of trust property and the creation of Trust Beneficial Ownership Register

14. (1) Subject to the provisions of the Banking Institutions Act, Building Societies Act, Namibia Financial Institutions Supervisory Authority Act 3 Of 2001, section 40 of the Administration of Estates Act, and the provisions of the trust instrument concerned, a trustee must -
 - (a) indicate clearly in his or her bookkeeping the trust property which he or she holds in his or her capacity as trustee;
 - (b) register trust property or keep it registered in such manner as to make it clear from the registration that it is the trust property;
 - (c) make any account or investment at a financial institution identifiable as a trust account or trust investment; and
 - (d) in the case of the trust property other than property referred to in paragraphs (b) and (c), make such property identifiable as the trust property in the best possible manner.
 - (e) record the prescribed details relating to accountable institutions which the trustee uses as agents to perform any of the trustee's functions relating to trust property, and from which the trustee obtains any services in respect of the trustee's functions relating to trust property;
- (2) In so far as the registration or identification of trust property being administered by a trustee at the commencement of this Act does not comply with the requirements of subsection (1), the trustee shall within a period of 12 months after the said commencement take such steps or cause such steps to be taken as

may be necessary to bring the registration or identification of such trust property into conformity with the said requirements.

- (3) Upon application in terms of subsection (2) to bring the registration of trust property into line with the provisions of subsection (1), the officer in charge of a deeds registry where such trust property is registered, shall free of charge take such steps as may be necessary to effect the required registration.
- (4) A trustee must –
 - (a) establish and record the beneficial ownership of the trust at registration 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; ensure that the prescribed information referred to in paragraphs (a) to (c) is accurate, verified, kept up to date, and
 - (d) communicate any change in beneficial ownership to the Master within 10 days
 - (e) communicate any verification of information to the Master, within 10 days of such verification
- (5) The Master must keep a register in the prescribed form containing prescribed information about the beneficial ownership of trusts, including all parties to the trust (including the beneficiary, settlor or founder, trustees, the protector, if any) and any other natural person exercising ultimate effective control over the trust.
- (6) The Master shall take steps to verify the information contained in the register in subsection (5) to ensure the accuracy of information kept.
- (7) A trustee and the Master must respectively and upon request, make available to, accountable institutions, competent authorities and any person with a legitimate

interest , the information contained in the register referred to in subsection (4)(c), and the information in the register referred to in subsection (5).

- (8) The Master shall afford direct and rapid access to the register to competent authorities and accountable institutions.

Separate position of trust property

15. The trust property shall not form part of the personal estate of the trustee except in so far as he or she as the trust beneficiary is entitled to the trust property.

Power of the court to vary provisions

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

- (a) hampers the achievement of the objects of the settlor or founder;
- (b) prejudices the interests of beneficiaries; or
- (c) is in conflict with the public interest,

the court may, on application by the trustee or any person who in the opinion of the court has a sufficient 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 whereby particular trust property is substituted for particular other property, or an order terminating the trust.

Amendment of trust instrument

17. Whenever a trust beneficiary under tutorship or curatorship becomes entitled to a benefit in terms of a trust instrument, the tutor or curator of such a beneficiary may

on behalf of the beneficiary agree to the amendment of the provisions of a trust instrument, provided such amendment is to the benefit of the beneficiary.

Duty of Auditor to report irregularities

18. (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 the person must report it in writing to the trustee, and if such irregularity is not rectified to the satisfaction of such person within ten(10) working days from the date upon which it was reported to the trustee, that person shall report it in writing to the Master.

Keeping of records

19. (1) Every trustee must keep accurate and up to date information and record of —
- (a) the settlor or founder and the settlor or founder's identity documents;
 - (b) all transactions and any matter relating to —
 - (i) the trust,
 - (ii) specified acts performed by the trustee as a result of an authorisation under section 7 including details of the authorisation where it is given by a nominee of a corporation,
 - (iii) trust property including the registration and identification details of the trust property required under section 14, and
 - (iv) trust accounts including trust investments as required under section 14 (1) (c);
 - (c) beneficiaries and the beneficiaries' identity documents;
 - (d) beneficial owners and the beneficial owner's identity documents;
 - (e) any business relationship with any financial institution and the nature of that relationship;

- (f) all trustees including co-trustees appointed under **section 9** and if relevant, any former trustees and their relationship with beneficiaries;
- (g) any other beneficial owner of the trust;
- (h) any variation or deletion of a provision of a trust instrument by the court under **section 16** and details of the effect on trust property;
- (i) any amendment of a trust instrument under **section 17**;
- (j) any reports of irregularities and how the trustee dealt with those irregularities; and
- (k) all expenses and disbursements paid to the trustee under **section 28**
- (l) **all trust service providers to the trust.**

- (2) Every trustee must communicate any change in the information provided under subsection (1) hereof to the Master within 10 days.

Master's call upon trustee to account

- 20. (1) A trustee must, at a written request of the Master, account to the Master's satisfaction and in accordance with the Master's requirements for the trustee's administration and disposal of trust property and shall, at the written request of the Master, deliver to the Master any book, record, audited account or document relating to the trustee's administration or disposal of the trust property and shall to the best of his or her ability answer honestly and truthfully any question put to him or her by the Master in connection with the administration and disposal of the trust property.
- (2) The Master may, if he or she deems it necessary, cause an investigation to be carried out by some fit and proper person appointed by the Master into the trustee's administration and disposal of trust property.
- (3) The Master shall make such order as he or she deems fit in connection with the costs of an investigation referred to in subsection (2).

Master's request for information

21. (1) In addition to the written requests referred to under section 20 for the trustee to account for his or her administration and disposal of trust property, the Master may at any time request a trustee to provide information or documents connected with the activities of the trust which the Master considers necessary for the purposes of exercising his or her functions under this Act.
- (2) A request under this section must specify —
- (a) the information or documents required;
 - (b) that the request is made in accordance with this section;
 - (c) the purpose for which the information or documents are required; and
 - (d) the time by which the information or documents are to be provided.
- (3) The Master may subpoena a trustee who fails to comply with provision of subsection (1) and may be subjected to an enquiry under oath.

Custody of documents after termination of trust

22. (1) A trustee must not without consent of the Master in a prescribed form and manner destroy any document which serves as proof of the investment, safe custody, control, administration, alienation or distribution of trust property before the expiry of a period of 10 years from the termination of a trust.
- (2) A trustee must keep the following documents -
- (a) the trust instrument and any other document that contains the terms of the trust;

- (b) any variations made to the documents under paragraph (a);
 - (c) any records of the trust property that identify the assets, liabilities, income and expenses of the trust and that are appropriate to the value and complexity of the trust property;
 - (d) any records of trustee decisions made during the trustee's trusteeship;
 - (e) any written contracts entered into during the trustee's trusteeship;
 - (f) any accounting records and financial statements prepared during the trustee's trusteeship;
 - (g) any documents of appointment or removal including any court orders appointing and removing trustees;
 - (h) any letter or memorandum of wishes from the founder/settlor;
 - (i) any document referred to in paragraphs (a) to (h) kept by a former trustee during his or her trusteeship and passed on to the current trustee; and
 - (j) any other document necessary for the administration of the trust.
- (3) Where there is more than one trustee of a trust, each trustee shall comply with the provisions of subsection (2).

Copies of documents

23. (1) Subject to the provisions of section 5 (2) of the Administration of Estates Act, regarding the documents in connection with the estate of a deceased person, the Master shall upon written request and payment of the prescribed fee furnish a certified copy of any document under his control relating to trust property to a trustee, his or her surety or his representative or any other person who in the opinion of the Master has sufficient interest in such document.
- (2) any request in terms of subsection (1) made in writing by a competent authority shall be provided free of charge.

Application for Court Order upon failure by trustee to account or perform duties

24. (1) If a trustee fails to comply with a request by the Master in terms of Section 20 or 21 or to perform any duty imposed upon the trustee by this Act, the trust instrument or by any other law, the Master or any person having an interest in the trust property may apply to the court for an order directing the trustee to comply with the Master's request or to perform the duty.

Removal of trustee

25. (1) A trustee may, on the application of the Master or any person having an interest in the trust property, at any time be removed from his or her office by the court if the court is satisfied that such removal will be in the interests of the trust and its beneficiaries.
- (2) Notwithstanding the provisions of subsection (1), trustees may be removed in accordance with the terms of the trust instrument.
- (3) The Master may at any time by notice and in the prescribed manner and form remove a trustee from office-
- (a) if the person becomes disqualified to be authorised as a trustee in terms of section 8; or
 - (b) if 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 a further period that is allowed by the Master; or
 - (c) if the trustee's estate is sequestrated or liquidated or placed under judicial management; or
 - (d) if 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 Act, 1973 (Act No. 18 of 1973), detained as a patient in an institution or as a State patient; or

(e) if 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.

(4) If a trustee authorised to act under section 7 (1) is removed from his or her office or resigns, he or she shall without delay return his or her Trust Certificate to the Master.

Resignation by trustee

26. A trustee may resign by giving notice in writing of 30 days to the Master, co-trustees and the ascertained beneficiaries who have legal capacity, or to the tutors or curators of the beneficiaries of the trust under tutorship or curatorship, whether or not the trust instrument provides for the trustee's resignation.

Death of trustee

27. (1) Where a power or function of a trustee is vested in or imposed on two or more trustees jointly and one of those trustees dies, the surviving trustees, if any, may exercise such powers or perform such functions until a new trustee is appointed by the Master in the place of the trustee who died, in accordance with the provisions of Section 9.

(2) If a sole trustee or the last surviving or continuing trustee dies, the Master shall, in consultation with the beneficiaries of the trust or with anyone who has a vested interest in the trust, determine the person who shall become the replacement trustee of the trust.

Remuneration of trustee

28. (1) A trustee shall in respect of the execution of his official duties be entitled to such remuneration as provided for in the trust instrument or, where no such provision is made, to a reasonable remuneration, which shall be provided for by agreement.
- (2) The remuneration shall not exceed the amount prescribed by the Minister in the Government Gazette.
- (3) A trustee may be entitled to be reimbursed out of the trust property for all expenses and liabilities properly incurred by him in connection with the trust

Access to Court

29. Any person who feels aggrieved by an authorisation, appointment or removal of a trustee from the register or by any decision, order or direction of the Master made or issued under this Act, may apply to the court for relief, and the court shall have the power to consider the merits of any such matter, take evidence and make any order it deems fit.

Establishment of Fund

30. (1) The Minister shall establish a Fund to be known as the Void Trust Fund to which all moneys and property collected under this Act shall be paid into.
- (2) **(This needs more provisions, in terms of Finance Act all fines payable go to receiver of revenue)**

Offences and Penalties

31. (1) Any person who —

- (a) operates as a trustee or trust service provider without registering with the Master.
- (b) fails to comply with Section 13(1) in that such person fails to deposit moneys received in his or her capacity as trustee, in a separate trust account at a bank or building society.
- (c) who operates a trust as a trustee or trust service provider without registering the trust with the Master, in contravention of Section 4 of this Act;
- (d) fails to register as a trustee in accordance with the provisions of this Act; or purports to act as a trustee without the authority of the Master required under Section ;

commits an offence and on conviction is liable to a fine or to imprisonment or to both such fine and such imprisonment, as prescribed, to a maximum amount of N\$10 million or 10 years imprisonment, or both such fine and imprisonment.

(2) Any trustee who —

- (a) fails to keep trust property separate from his or her own property and separately identifiable from any other property of which he or she is the trustee;
- (b) fails to prepare or cause the annual financial statements of the trust to be prepared and submitted to the Master within 3 months of the financial year end of the trust;
- (c) fails to prepare or cause the annual tax returns of the trust to be prepared and submitted to the Receiver of Revenue within 3 months of the financial year end of the trust and submit a return to the Master even if the trust is dormant.;
- (d) fails to comply with Section 13(2) in that he/she fails to disclose his/her position as trustee to any accountable institution with which he/she engages in that capacity, or fails to make it known to the accountable institution that the relevant transaction or business relationship relates to trust property.

- (e) fails to comply with an obligation under Section 14 of this Act regarding the Beneficial Ownership Register and related information;
- (f) Fails to update any change in the trust to the Master;
- (g) fails to keep records in accordance with Section 19 of this Act; or
- (h) fails to open a trust account;
- (i) fails to comply with an order made under section 22 directing him or her to keep the information and records required to be kept under section 19;
- (j) fails to comply with an order made under section 24 directing him or her to account for his or her administration and disposal of trust property as required under section 20;
- (k) refuses to provide information or documents to the Master under section 21 when required to do so by an order of the court made in terms of section 24;
- (l) gives information which is false or misleading; or
- (m) fails to perform or comply with any other requirement under this Act

A person who contravenes subsection (2), commits an offence and is on conviction liable to a fine not exceeding N\$ 10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.

- (3) An accountant or auditor who fails to report an irregularity in connection with the administration of a trust in terms of Section 18 of this Act commits an offence and is on conviction, liable to a fine not exceeding N\$ 10 million or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.
- (4) Any person who destroys or removes any record, register or document kept in accordance with this Act commits an offence.
- (5) Any person who contravenes this Act or any regulations or directives made under this Act commits an offence and is on conviction, liable to a fine not exceeding N\$ 10 million or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Administrative fines

32. (1) Notwithstanding the offences and penalties under Section 31, the Master may impose administrative fines as prescribed, to any person who fails to comply with any of the provisions of this Act, or any regulations and directives made under this Act, of an amount not exceeding N\$ 500 000.00.
- (2) Any person who negligently provides false or misleading information in the beneficial ownership register is liable to an administrative fine as prescribed, which fine shall not exceed N\$10 million.
- (3) A specified party that fails to keep records as required in terms of section 14 of this Act is liable to an administrative fine as prescribed, which fine shall not exceed N\$10 million.
- (4) An Accountant or Auditor who fails to comply with Section 12(1) of this Act shall be liable to an administrative penalty as may be imposed by the Master and as prescribed.

Regulations

33. (1) The Minister may, by notice in the Gazette, make regulations in relation to -
- (a) any matter which in terms of this Act is required or permitted to be prescribed by regulation;
- (b) the timelines for the exercise of powers and performance functions in terms of this Act;
- (c) the form and manner in which an application in terms of this Act must be made;
- (d) the form and manner in which comments or objections must be made;

- (e) the form and manner in which appeals in terms of this Act must be made; or
- (f) the fees, if any, to be charged in respect of any act, matter or thing required or permitted to be done under this Act.

(3) Regulations made under subsection (1) may prescribe penalties for any contravention of a regulations or failure to comply with a regulation, of a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Repeal of laws

34. The Trust Moneys Protection Act, 1934 (Act 34 of 1934) is repealed.

Transitional Provisions and Savings

35. (1) Notwithstanding the repeal effected under section 34, any instrument made under the repealed Act shall continue to have effect, as if made under this Act, to the extent that it is not inconsistent with this Act.
- (2) Any legal proceedings in respect of any offence committed or alleged to be committed under the repealed Act shall be carried out or prosecuted as if commenced under this Act.
- (3) Any decision or action taken or purported to have been taken or done by the Master under the provisions of the repealed Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been taken or done under the corresponding provisions of this Act.

Short title and commencement

36. This Act shall be called the Trust Administration Act, 2023 and commences on a date determined by the Minister by notice in the Gazette.