

TRUST ADMINISTRATION BILL

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Chief Legal Officer

Master of the High
Court



Ministry of Justice

Thank you
for your
comments
on the Bill

Due to time constraints not all comments could be finalized for today's consultation.

All comments and our replies or amendments will be distributed soon after incorporating today's input.

*Thank
You*

	INSTITUTION	PROVISION IN BILL	COMMENT/ DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/SOLUTION	RESPONSE FROM INITIATOR
1	CRONJE INC	The Bill	BEWIND TRUST and VESTED BENEFICIARIES	<p>The bill does not contain any reference to a vested beneficiary. Further, no provision has been made for a bewind trust. The concept of a vested beneficiary is a cornerstone of our trust law.</p> <p>We propose that the Bill is to be updated to make specific provision for a bewind trust and for vested beneficiaries.</p> <p>The definition of beneficiary is to be updated to specifically refer to vested beneficiary.</p>	<p>All trusts are included, the definition of trust is wide enough to cover all inter vivos trusts and testamentary trusts.</p> <p>Inter vivos trust includes (a) <u>discretionary trust</u> and (b) <u>bewind trust</u>.</p> <p>Difference between bewind and discretionary trust is that assets of bewind trust vests in the beneficiaries and a discretionary trust in the trustees.</p>
2	CRONJE INC	The Bill	CHARITABLE TRUSTS	The bill does not make provision for charitable trusts.	The proposed changes have been incorporated into the bill.
	Bank Windhoek Ltd/Capricorn Group	Section 1 – Definition “trust”	Should the definition not also include " Foreign Trusts "?	<p>Rationale: Any trust (Namibian or Foreign) that deals with property (as defined) in Namibia should be registered in Namibia.</p> <p>The current act is silent on whether foreign trusts must</p>	The proposed changes have been incorporated into the bill.

New definition of “trust”

- (a) Describes discretionary trust
- (b) Describes Bewind trust

- “trust” means a **non-profit trust**, or **foreign trust** or 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,

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3	CRONJE INC	The Bill	INACTIVE TRUSTS	<p>The bill does not make provision for inactive trusts that have previously been registered. We note that there appears to be various trusts that have been registered that have never entered into any transactions, but that have not been deregistered.</p> <p>We propose that an obligation is to be placed on all trustees to comply with the new Act within a specific window period of time after the commencement date [i.e., 12 months]</p> <p>We further propose that the authority of trustees to act in terms of existing letters of appointment are to be automatically revoked after the 12 month window period.</p> <p>This will require a specific sunset clause to be included in the Bill.</p> <p>We further propose that Section 7 (1) is to be amended to refer to ensure that the reference to a trust certificate specifically refers to a trust certificate in terms of this act. Given the intention of the Act and the seriousness of the penalties included, this amendment (the sunset clause) will ensure that the Act does not create unknowing criminal offences and it will ensure that serious action is taken to ensure compliance. The failure to properly address this issue will result in a number of normally good citizens committing offences without being aware of the offences.</p>	<p>These provisions should be crafted especially on deregistration.</p>

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4	CRONJE INC	The Bill S1- "Beneficial owner" definition; S14 (5)	PROTECTOR	<p>The Bill refers to a protector, however the roll, duties, rights and obligations of the protector is not set out in the therein.</p> <p>A protector is not a common law concept in Namibian law.</p> <p>I agree that the concept of a protector should be included in the law, however the roll must be clearly defined. The lack of clarity will lead to various disputes.</p>	The concept of a Protector is a foreign concept in our law and thus reference to it in the Bill has been deleted.
	Bank Windhoek Ltd/Capricorn Group	Section 1 – Definitions	The Bill refers to a protector, however the roll, duties, rights and obligations of the protector is not set out in the therein.		Reference to protector has been deleted.

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5	CRONJE INC	The Bill	LETTER OF WISHES	The bill does not include provision for a letter of wishes. Most modern trust laws contain provision for a letter of wishes. Is there a specific reason why this has been excluded?	Foreign concept in our law – thus excluded.
6	MRS. ADRIE VAN DER MERWE FISHER, QUARMBY & PFEIFER	Section 1 Definitions		“Close corporations Act and Companies Act” Act 26 of 1988 and Act 28 of 2004 are in process of being replaced by a new act (Refer to BIPA) I propose adding reference to <u>any act in replacement thereof</u> .	The proposed changes have been incorporated into the bill.
	Bank Windhoek Ltd/Capricorn Group	Section 1 Definitions “Close Corporations Act” means the Close Corporations Act, 1988 (Act 26 of 1988); “Companies Act” means the Companies Act, 2004 (Act 28 of 2004);	The definition does not provide for amendments made to the Act.	“Close Corporations Act” means the Close Corporations Act, 1988 (Act 26 of 1988), <u>as amended</u> ;	Chief drafter advised to remove <u>as amended</u> as any reference to any Act, that includes the amendments thereto

“Close Corporations Act” means the Close Corporations Act, 1988 (Act 26 of 1988); or any act in replacement thereof

“Companies Act” means the Companies Act, 2004 (Act 28 of 2004); or any act in replacement thereof

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7	FNB FIDUCIARY (PTY) LTD AND POINTBREAK TRUST AND ESTATES (PTY) LTD	Section 1 – definition of “discretionary beneficiary”	<p>“means any person unborn, ...”</p> <p>No need to explain the meaning of contingent interest as done with words in brackets. “(this can be at a future date or on the happening of a future event)”</p>	<ul style="list-style-type: none"> • Change order to words – “<u>means any unborn person...</u>” • Remove words in brackets 	The proposed changes have been incorporated into the bill.
	JULIA ENGELS CA (SA) CA (NAM) FPSA	“discretionary beneficiary”	<p>What does “<u>or under power of appointment</u>” mean?</p> <p>A discretionary beneficiary has a contingent interest in the trust property, they do however don’t have a fixed or vested interest.</p>	<p>Remove this part from the definition.</p> <p>Remove “<u>contingent interest</u>” in this sentence.</p>	To be discussed and considered

“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;

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8	FNB FIDUCIARY & POINTBREAK TRUST AND ESTATES	Section 1- definition of "trust service provider"		Insert – (e) <u>Registered in terms of Section 3 of this Act</u>	The proposed changes have been incorporated into the bill.
	CAM	Section 1 Definitions "trust service provider"	The definition is unclear in many respects and could be clarified further, for example, it specifies that any person who provides accommodation for the Trust shall be a Trust service provider.	Amend the clause to reflect clear instances where a person becomes a <u>"trust service provider"</u>	To be discussed and considered
9	NIPA	Definitions	Trust service provider (c) providing a registered office, business address or administrative address	This function is naturally flowing from duties fulfilled by the accountant/auditor of a trust. Do these duties make an accountant / auditor a Trust Service Provider?	Yes, if an accountant is acting as a Trust Service Provider.

“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.
- (e) registered in terms of Section 3 of this Act.

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10	NIPA	Definitions New	Propose to Material Irregularity	Propose to ... means any non-compliance with, or contravention of, legislation, fraud, theft or a breach of a fiduciary duty identified during a verification/review performed under this Act that resulted in or is likely to result in a material financial loss, the misuse or loss of a material trust resource or substantial harm to a trust negatively impacting the benefit of the beneficiaries.	The proposed changes have been incorporated into the bill.

“Material irregularity” means any non-compliance with, or contravention of, legislation, fraud, theft or breach of fiduciary duty identified during a verification or review performed under this Act that resulted in or is likely to result in a material financial loss, the misuse or loss of a material trust resource or substantial harm to a trust negatively impacting the benefit of the beneficiaries;

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11	NIPA	Definition New	Propose to <u>Trustee Representative</u>	Propose to ... Person (Trustee) at the time designated to act on behalf of the Trustees , by a written certificate furnished to the Master , who acts on behalf of all of the Trustees in respect of lodging of a trust instrument, furnishing of addresses / changes of information re: records to the Master and record keeping .	This can be an internal arrangements between the trustees but as far as the bill is concerned they all need to know they have duties to comply with. If they nominate a particular trustee to do that is up to them.
12	JULIA ENGELS CA (SA) CA (NAM) FPSA	General	<u>Extension of period for public consultation</u> and comments	Extension of period for public consultation and comments will ensure that all possible issues are identified to avoid mistakes and confusion. SA is in the process to review their entire Trust Property Control Act, and because much of the Namibia Bill is the same, it might benefit to await any comments and proposals for changes from their public consultations and comments process.	Noted but in order to comply, we have limited time for consultations.

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13	JULIA ENGELS CA (SA) CA (NAM) FPSA	Section 1 - Definitions "beneficial owner"	See also comments on section 14(4) and 7(2)(c) below. There is no legal definition of beneficial ownership under the Namibian law. However, based on case law, ownership can be described as an abstract legal relationship	Remove any part where there is reference to "ownership", definitely any reference to "ultimate ownership" beyond the immediate trust.	To be addressed once beneficial ownership definition is finalised in terms of FIA – our definition will be linked to that.
14	JULIA ENGELS CA (SA) CA (NAM) FPSA	Section 1 – Definitions "body corporate"	" <u>body corporate</u> " has a meaning of its own "Body Corporate" is not used anywhere else in the document except in definition.	Recommend to use "corporate body". Remove this definition if not applicable in this document.	Changed to juristic person
15	CAM	Section 1 Definitions "Body corporate"	Using the term " body corporate " is confusing as Namibian law prescribes for another form of body corporate known to ordinary persons, being, a mandatory legal entity made up of the registered unit owners that oversee the management and maintenance of communal areas within the scheme	Instead use the term Juristic Persons: "“juristic person” means a Company, Close Corporation or Association (registered or otherwise) which is incorporated in terms of the laws of the Republic of Namibia;”	The proposed amendment is incorporated.

“**juristic person**” means a company, corporation or association incorporated in terms of the laws of the Republic of Namibia;

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16	JULIA ENGELS CA (SA) CA (NAM) FPSA	Section 1 – definitions “ 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;	This definition is not clear. Is this also about a trustee who is a Namibia resident, but trustee of foreign trust? Or only foreigner being trustee of foreign trust?	Clarity this in the definition.	It is a trustee appointed in a trust registered in a foreign jurisdiction. Must be read with definition of foreign trust. Foreign trust must be registered in Namibia – See section 10. It is not a new trust but based on the existing trust registered in a foreign jurisdiction. “sub-trust” is removed.

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

Section 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 such person shall act in that capacity only if authorized thereto in writing by the Master to act as trustee in respect of that property.

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17	JULIA ENGELS CA (SA) CA (NAM) FPSA	"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;	The word "settlor" will cause confusion.	Change to definition of: "founder or donor" 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 "settlor" shall have the same meaning;	We agree, the proposed amendment will be incorporated. Founder or settlor is the donor.

"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" shall have the same meaning;

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18	JULIA ENGELS CA (SA) CA (NAM) FPSA	"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;	Must be: "by virtue of an authorisation under section 7".	Change the 6 to 7.	The proposed changes have been incorporated into the bill.
19	JULIA ENGELS CA (SA) CA (NAM) FPSA	"trust instrument" means a written agreement or a testamentary writing or a court order according to which a trust was created;	"Trust Deed" is the more common term used.	Add: and "Trust Deed" shall have the same meaning.	We agree, the proposed amendment will be incorporated.

"trust instrument" means a written agreement or a testamentary writing or a court order according to which a trust was created and "trust deed" shall have the same meaning;

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20	JULIA ENGELS CA (SA) CA (NAM) FPSA	"corporate trustee" means a body corporate appointed or acting as trustee;	As explained with definition of "body corporate". "Body Corporate" is not used anywhere else in the document except in definition.	Recommend to use "corporate body" instead of "body corporate." Remove this definition if not applicable/used in this document.	We agree, definition of corporate trustee has been deleted.
21	JULIA ENGELS CA (SA) CA (NAM) FPSA	Definition of "financial crime"	Relevant if it's only in definition?	Remove this definition if not applicable/ used in this document.	To be deleted
	Bank Windhoek Ltd/Capricorn Group	Section 1 Definitions "financial crime" means – a. (a) an offence that involves theft, fraud or dishonesty under this Act; or b. (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).	Would this be limited to Namibian legislation? What about if found guilty of an offence in e.g. USA or UK? Should they not also be included?	a. (b) an offence that involves theft, fraud or dishonesty, committed in any jurisdiction.	To be deleted

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22	CAM	Section 3 Subject to the provisions of this Act, the <u>Master must register all trusts, trustees and trusts service providers.</u>	The clause places an excessive and wide obligation on the Master if this is extended to trust service providers as such submission may be voluminous and variable	Suggestion: <u>Remove the requirement that the Master must also keep a trust service provider register.</u>	Thank you for thinking about the Master's staff. The Master needs to keep a register to comply.
23	Bank Windhoek Ltd/Capricorn Group	Section 3 - Keeping a register for trusts, trustees and trusts service provider (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.	No definition of what "basic information" entails. Will create uncertainty in terms of compliance. Something to consider - to what degree to you <u>disclose personal information to the public</u> ? Would these include residential addresses, telephone numbers and ID's? Would this infringe on the person's right to privacy. Consider limiting the public information to e.g. Name and nationality Risks- Identity theft and fraud	Define term " <u>basic information</u> "	Prescribed in regulations or directives as to what basic information will include. Consultation will take place on basic information and what may be disclosed. Most information will NOT be available to general public. It will only be Investigating authorities that will have access to all information.

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24	CAM	<p>Section 3 (1) (5)</p> <p>5) (a) Any person may request to inspect the register during office hours upon payment of such fees as may be prescribed.</p> <p>(b) The Master shall afford direct and rapid access to the register to competent authorities and accountable institutions.</p>	<p>The clause fails to specify with certainty and provide for accountability that the register will be available upon request.</p> <p>The clause also fails to specify what "rapid access" or "competent authorities" entails which leads to lack of certainty and transparency.</p>	<p>The proposed amendment as follows:</p> <p>"(5) (a) Any person may immediately, and upon request and payment of any fees as may be prescribed from time to time, inspect the register during office hours;</p> <p>(b) Should the register be unavailable for any reason, whatsoever, upon any request received by any employee at any offices of the Master of the High Court of Namibia, then the Master shall make the register available to such person within 2 (two) business days of such request, and;</p> <p>(b) The Master shall afford direct and rapid access to the register to competent authorities and accountable institutions."</p> <p>The proposal is also to either remove the current subsection (b), alternatively to provide definitions for the terms: "rapid access" and "competent authorities".</p>	<p>The register will be automated and will be available at all times</p>

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25	CAM	Section 3 (1) (6) (d) 1. (d) remove from the register, a trust service provider whose registration has lapsed or has been cancelled.	The current Bill fails to define a trust service provider with sufficient clarity or provide for the process through which a trust service provider is to register, maintain its registration, or de-register as a service provider. This lack of clarity and transparency may lead to excessive conflicts and/or disputes with/against the Master.	The Bill should provide for the particular process through which registration, maintenance and de-registration of a trust service provider shall be done; Or Any requirements for the keeping of the trust service provider register, alternatively registration, maintenance and de-registration of a trust service provider should be deleted.	To be discussed and considered
26	Luke Schroder Engling, Stritter & Partners	Section 3 (5) Any person may request to inspect the register during office hours upon payment of such fees as may be prescribed .			To be discussed and considered
43	JULIA ENGELS CA (SA) CA (NAM) FPSA	Section 3 (5) (a) Any person may request to inspect the register during office hours upon payment of such fees as may be prescribed.	To give access to "any person" is too wide. What about <u>Protection of Personal Information</u> ? The right to privacy is a right to be free from intrusion or publicity of information or matters of a personal nature. It is central to the protection of human dignity and forms the cornerstone of any democratic society	Only 5(b) should remain; or Replace "Any person" with "Interested parties with sufficient interest".	To be discussed and considered

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29	Luke Schroder Engling, Stritter & Partners	Section 3 (6)		<p>Insert "<u>immediately</u>" before remove</p> <p>If you do not wish to state immediately a timeframe by when the Master must amend the register ought to be inserted here.</p>	To be discussed and considered
30	NIPA	Section 3 (6)	(b) ...under section 15	Should read under section 16	the proposed amendment has been incorporated
31	Bank Windhoek Ltd/Capricorn Group	<p>Section 4. A person may not –</p> <p>a. operate as a trustee unless the concerned trust has been registered with the Master;</p> <p>b. operate as a trust service provider without such person having been registered as a trust service provider with the Master;</p>	<p>"Concerned Trust" not defined - should it not read "trust"</p> <p>Consider a clause dealing with the registration of trust services provider. What criteria is involved to qualify as a trust service provider, is there a regulatory body to which they must belong, forms to be completed to apply, time periods for approval, yearly renewals? etc</p>	<p>a. operate as a trustee unless the concerned trust has been registered with the Master;</p> <p>Guidance to the registration of Tax Practitioners in South Africa can be used as guideline. Section 240 of the Tax Administration Act, 2011</p>	To be discussed and considered

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32	Mr. Andreas Vaatz	AD PARAGRAPH 4 Section 4		In this section, the proposed law requires that a person may not <u>operate as a trustee</u> unless the trust has been registered, but it is submitted that in order to <u>register the trust</u> , you require the trustee to be entitled to act as trustee' thus also to operate as trustee for the purpose of fulfilling all the requirements set out in this new law.	Noted
33	MRS. ADRIE VAN DER MERWE FISHER, QUARMBY & PFEIFER	Section 4	"operate on a trust" seems to be in conflict with clause 7		Look at it – need further discussion

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36	MRS. ADRIE VAN DER MERWE FISHER, QUARMBY & PFEIFER	Section 5 (3)	A trust instrument does not usually include details of addresses, nationality and place of birth for beneficiaries. A trustee cannot ensure that these details are included in the Deed of Trust. A trustee has no authority to amend a deed outside of the powers granted in the constituting deed of trust.		Amended
37	MRS. ADRIE VAN DER MERWE FISHER, QUARMBY & PFEIFER	Section 5 (6)	These details should be provided in separate documents.		We added <u>as prescribed</u> – can be in a separate document

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39	NIPA	Sec 5 (1)	..all trustees whose appointment...shall lodge the trust instrument ..by a notary or other person approved by the Master	The Trustee Representative (in comparison to the public officer of a company) shall lodge...(else there may be 2 or 3 lodgements of the same instrument)or a Commissioner of Oaths	See above on Trustee Representative issue Commissioner of oaths added to the section
40	NIPA	Section 5 (2)	Add (d) reference to where a bank account shall be opened, and at which tax office the tax registration shall take place	Trustees should be aware that there ought to be a bank account and after that an income tax registration for the trust, even if it is dormant	The proposed amendment has been incorporated into the Bill Trusts are also not automatically exempted from registering with NAMRA as a tax payer
41	NIPA	Section 5 (5)	..is varied, the trustee must lodge..	Propose the Trustee Representative must lodge...	See above on Trustee Representative issue

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42	FNB FIDUCIARY (PTY) LTD AND POINTBREAK TRUST AND ESTATES (PTY) LTD	Section 5 (3)	Beneficiaries, founders and trustees can be corporates and thus the Trust Instrument may also contain information that would enable the identification of these corporate beneficiaries, trustees or founders.	Insert a provision to ensure that Trust instruments provide information that would enable the identification of these corporate beneficiaries, trustees or founders. Add – and founder under	A very good proposal – need to craft this provision
44	JULIA ENGELS CA (SA) CA (NAM) FPSA	Section 5(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.	The following Information cannot be part or a requirement in the trust instrument, because it is either unnecessary or the type of information that change regularly: (a) physical address; (b) email address; (c) nationality; (d) date and country of birth; and (e) a passport number.	Remove these requirements of identification as part of section 5(3).	Section 5 (3) has significantly changed

1.(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 a commissioner of oaths.

(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;
- c) indicate in its object what type of trust it is;
- d) indicate the name and address of a registered accountant or auditor;
- e) indicate the name and branch where the bank account will be opened;
- f) indicate at which tax office the tax registration shall take place;
- g) in the case 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
- h) In a case of a beneficiary being a foreign trust, the instrument of the foreign trust must be attached.

5(3) For purposes of identifying a beneficiary, identifies a beneficiary by —

(a) full name;

(b) date and country of birth; or

(c) identification number or, in the case of a non-citizen their identity document.

(d) in case of a legal person, the registration number;

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45	JULIA ENGELS CA (SA) CA (NAM) FPSA	<p>Section 6</p> <p>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-</p> <p>(a) furnish the Master with an address for the service upon him or her of notices and process within 14 days;</p> <p>(b) furnish the Master with an address for where records required under this Act are kept; and</p> <p>(c) in case of change of address, within 14 days furnish the Master with the new address in the prescribed manner;</p>	<p>It will be a very cumbersome process and information overload if all persons who are trustees in Namibia should furnish addresses.</p> <p>The Master is supposed to have the information of current trustees and the disclosure requirements of section 14 will also take care of past information.</p> <p>The period of 14 days is too onerous.</p>	<p>Change to:</p> <p>Any person whose appointment as trustee came into effect after the commencement of this Act must-</p> <p>(a) furnish the Master with an address for the service upon him or her of notices and process within 30 days;</p> <p>(b) furnish the Master with an address for where records required under this Act are kept; and</p> <p>(c) in case of change of address, within 30 days furnish the Master with the new address in the prescribed manner</p>	<p>We have incorporated the proposal</p> <p>With regard to the proposal to increase the number of days from 14 to 30.</p> <p>We added definition of "day" this will mean court day</p>

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46	NIPA	Section 6	Any trustee must furnish the Master with an address...	Propose that a Trustee Representative must furnish all trustees' addresses/ changes and information re: records to the Master within 14 days	See input on the Trustee Representative issue and the days issues above.
47	MRS. ADRIE VAN DER MERWE FISHER, QUARMBY & PFEIFER	Section 6 (a)	<p>"within 14 days" An appointee after date of commencement of the act will have provided his/her details in the application forms (Acceptance of Trust).</p> <p>The clause should require every Trustees in office who has not yet provided the details <u>within a stipulated period after commencement of the Act</u>. 14 days is far too short. It will have to be publicised widely first. I propose 3 months.</p> <p>The act should provide that the Master may serve process or notice to a Trustee by publishing in a newspaper or Gazette or electronic media, if the Trustee has not provided the said addresses</p>	<p>The clause should require every Trustees in office who has not yet provided the details <u>within a stipulated period after commencement of the Act</u>. 14 days is far too short. It will have to be publicised widely first. I propose 3 months.</p> <p>The act should provide that the Master may serve process or notice to a Trustee by publishing in a newspaper or Gazette or electronic media, if the Trustee has not provided the said addresses</p>	To be discussed and incorporated

	INSTITUTION	PROVISION IN BILL	COMMENT/DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/ SOLUTION	RESPONSE FROM INITIATOR
48	MRS. ADRIE VAN DER MERWE FISHER, QUARMBY & PFEIFER	<p>Section 7</p> <p>Section 7(1)</p> <p>Section 7 (2)(c)</p> <p>Section 7 (4)</p>	<p>“Trust Certificate” should rather refer to Authorisation Certificate or Appointment or Letters of Trusteeship.</p> <p>This clause should have an exception: <u>unless he/she has to act for urgent preservation of the trust assets.</u></p> <p>When a new trustee is appointed in substitution of existing trustees, he/she should not be required to provide the details of all beneficiaries again as stipulated in 7(c)(i) before he/she can be appointed.</p> <p>Will a substitution of nominee be “endorsed” or will a new Certificate be issued?</p>		<p>Changing Trust certificate will cause confusion.</p> <p>Comment incorporated - we change the wording to read. “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 issued with an amended trust certificate.</p>

	INSTITUTION	PROVISION IN BILL	COMMENT/DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/SOLUTION	RESPONSE FROM INITIATOR
49	JULIA ENGELS CA (SA) CA (NAM) FPSA	<p>Section 7(2)(c) (2)</p> <p>The Master shall not grant authority to the trustee in terms of this section unless the trustee has-</p> <p>(c) provide the following details —</p> <p>(i) full name, nationalities, date of birth, gender and residential address of the individual(s) who are beneficial owners; and</p> <p>(ii) the relationship of the trustee to the beneficial owners.</p>	<p>See also comments on definition of “beneficial owner”.</p> <p>This part cannot be expected from a trustee.</p> <p>Until ownership is vested in beneficiaries as per the trust instrument, there are no beneficial owners in a trust, and there might never be, as, before acceptance, there is no vinculum iuris* between the beneficiary and the settlor or the trustee(s) (* "a bond of law," whereby one party becomes or is bound to another to do something according to law.), or where assets will never vest as per the trust instrument, just to be administered for the benefit of the beneficiaries.</p>	<p>Remove this section 7(2)(c) in total, it seems to be a duplication of section 14(4); or</p> <p>Replace “beneficial owners” with “all parties to a trust”.</p>	<p>Compare with Section 14 (4) and see whether it is a duplication.</p> <p>We cannot remove beneficial ownership if we have to comply with FATF.</p>

	INSTITUTION	PROVISION IN BILL	COMMENT /DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/SOLUTION	RESPONSE FROM INITIATOR
50	Mr. Andreas Vaatz	AD PARAGRAPH 7 Section 7		I am concerned about the requirement that a person appointed as trustee may only act after he has received a trust certificate from the Master' This can mean' if the Master or its staff, has a number of requirements, which may take time to fulfil or which may be impossible to fulfil or in respect of which the Master may not be entitled to make such requirement, may all lead to an extraordinary delay in the person who has been appointed to look after the' perhaps extremely valuable assets making up the trust assets, to be able to take the necessary step to protect or deal with these assets or as regards financial aspects, open an account and pay the money found in the trust into the account' because obviously the next step that will happen, is that every bank will insist that an account of a trust may only be opened when the trustee has a valid trust certificate.	We take note of the comment. The creation of a trust does not happen overnight and Trust certificates generally do not take long to be issued provided all requirements are lodged upon registration. A trustee can only open a trust account once a TC has been issued. This is the practise currently.

	INSTITUTION	PROVISION IN BILL	COMMENT/DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/SOLUTION	RESPONSE FROM INITIATOR
51	MRS. ADRIE VAN DER MERWE FISHER, QUARMBY & PFEIFER	Section 8 (e)	Should simply read " has been convicted in Namibia or elsewhere for theft, fraud, forgery, perjury or another form of dishonesty or an offence (i) "Involving money laundering..... Under this act"		Proposal has been incorporated.

"has been convicted, in Namibia or elsewhere, for theft, fraud, forgery, perjury or another form of dishonesty or an offence"

53	MRS. ADRIE VAN DER MERWE FISHER, QUARMBY & PFEIFER	Section 8 (2)	The disqualification should not automatically end after 5 years. The trustee should have to apply to court and file the application with the Master. (for objection). The Act should also provide for qualification and disqualification of trust service providers.		Good proposal of the application to court. Discuss and incorporate. Qualifications and registration of a trust service provider will be discussed. We agree with the proposal.
54	JULIA ENGELS CA (SA) CA (NAM) FPSA	Section 8(1)(2), (3) and (5)	Section 8(1)(2), (3) and (5) refers to subsection 7 (1) (d) or (e)	Must refer subsection 8 (1) (d) or (e)	The proposed changes have been incorporated into the bill.

	INSTITUTION	PROVISION IN BILL	COMMENT/DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/SOLUTION	RESPONSE FROM INITIATOR
55	NIPA	Sec 8 (1) (e)	All Acts mentioned	Propose to include the Income Tax Act and VAT Act	The proposed changes have been incorporated into the bill.
56	NIPA	Sec 8(2)(3)(4)(5)	Reference to subsection 7(1) (d) (e)	All should read subsection 8 (1)	The proposed changes have been incorporated into the bill.
57	CAM	Section 9(1) and (2) Appoint any person as trustee	Consider removing the word "any"	9(1) appoint a suitable person as trustee 9(2) appoint as co-trustee any serving trustee or a suitable person he or she deems fit	The proposed changes have been incorporated into the bill.

Section 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 a **suitable** 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 a **suitable** person he or she deems fit. ”

	INSTITUTION	PROVISION IN BILL	COMMENT/DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/SOLUTION	RESPONSE FROM INITIATOR
	Bank Windhoek Ltd/Capricorn Group	<p>Section 11 - Fiduciary duties of trustee</p> <p>(2) Notwithstanding the generality of subsection (1), a trustee must —</p> <p>(j) not make a profit from the trusteeship; and</p>	<p>Require clarity on profit as the trustees are entitled to remuneration in terms of the Act.</p> <p>A corporate trustee will charge fees for acting as a trustee. The current Bill provides for remuneration of a trustee. Would remuneration not be regarded as "Profit".</p>	<p>Must clarify what a profit indirectly/directly means and provide for instance where the trustee can be exempted.</p>	<p>Section 11 (2) (j) must be read with (k) - amended</p>
	Bank Windhoek Ltd/Capricorn Group	<p>Section 11 –</p> <p>Fiduciary duties of trustee</p> <p>(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.</p>	<p>Reference to section 27 should be to section 28</p>	<p>Amend section 27 to section 28</p>	<p>Corrected</p>

	INSTITUTION	PROVISION IN BILL	COMMENT/DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/ SOLUTION	RESPONSE FROM INITIATOR
61	CAM	Section 11 - Fiduciary duties of trustee (2) Notwithstanding the generality of subsection (1), a trustee must — (f) not exercise a power of a trustee directly or indirectly for the trustee's own benefit	The interpretation thereof may cause clarity issues. It does not consider the position where the trustee will also benefit from any decision made or power exercised where he/she is also a trust beneficiary. In such circumstances it will be impossible to avoid a direct /indirect benefit to the trustee by him/her exercising almost any	Solutions: <u>allow for a specific trustee exemption, specifically where trustees are also beneficiaries,</u>	TO BE DISCUSSED AND CONSIDERED
62	CAM	Section 11 (3)	Possible point of consideration – amending the subclause to specifically describe situations where the trustee holds or owns property on behalf of the trust, situations in respect of <i>Bewind trusts</i> where the trustee only effectively controls the property owned/possessed/held by the beneficiary, and the situation where the trustee holds/owns the trust property for his own account in respect of his interest or award as trust beneficiary.	Proposed amendment subclause/portion of subclause: " any trustees shall keep and maintain an account of all the trust assets, notwithstanding how the assets are registered, held or kept, and at no time shall the Trustees be deemed to acquire such assets, vested right or interest in the Trust fund for themselves or their personal account, except where such Trustee is also a beneficiary of the Trust and such assets, vested right or interest has been allocated or awarded to him/her by the trustees."	TO BE DISCUSSED AND CONSIDERED

	INSTITUTION	PROVISION IN BILL	COMMENT/DESCRIPTION OF ISSUE	PROPOSED AMENDMENT /SOLUTION	RESPONSE FROM INITIATOR
	MRS. ADRIE VAN DER MERWE FISHER, QUARMBY & PFEIFER	11(2)(j) (2)(k) 11(3) 11(4)& 12(1)(d)	I propose: not make <u>undue</u> profit from the trusteeship. I propose: “except <u>under the trustee’s legitimate remuneration and re-imbusement</u> of expenses and disbursements”. I propose that the Act or regulations provide expressly for registration of deeds in the Deeds Registry in the name of the <u>Trust with the trust number</u> , although assets actually vest in the Trustees from time to time. 3 months is much too short. 9 months is more reasonable as many trusts hold shares in companies where the company financial statements are completed 6 months after end of financial year.		Undue profit was incorporated in the Bill Section 11 (2)(k) was amended to incorporate this. Look at Section 15 – incorporated this. 7 months period is incorporated
	Evolve	11(4) and 12(1)(d)	This is impractical and excessive – the availability financial investment information and the volume work to finalise in time cannot meet this requirement	Also include clause for application to extension of time with good reason.	Extension included in 11(5)

	INSTITUTION	PROVISION IN BILL	COMMENT/DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/ SOLUTION	RESPONSE FROM INITIATOR
64	Bank Windhoek Ltd/Capricorn Group	Section 11 (6) (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	Possible point of consideration - obtaining of indemnity insurance by the trust for the trustees? The current companies act does not allow for it, but the proposed new Companies Act will provide for it. SA Companies Act legislation also provides for insurance cover.		TO BE DISCUSSED AND CONSIDERED
	JULIA ENGELS CA (SA) CA (NAM) FPSA	Section 11(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.	The period of 3 months is too onerous. To submit a tax return and provisional tax returns to the Master even if the trust is dormant are too onerous and unnecessary, especially if that trust is never to be something else than dormant.	Change period to 6 or more months. <u>Define "dormant"</u> and change the requirement that tax registration will only be compulsory if the trust is not "dormant". A requirement can be added to confirm the dormant status of the trust on an annual basis and in the /event of change the Master must be notified within a prescribed period with the proof of tax registration.	Dormant has the ordinary meaning, inactive trust

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 —
 - (j) not make a profit from the trusteeship for the trustee's own benefit; and
 - (k) not take a reward except under the trustee's legitimate remuneration and reimbursements of expenses and disbursements as provided for under section 28.
- (3) Trustees must act jointly in the performance of their duties.
- (4) The trustees must prepare or cause the annual financial statements of the trust to be prepared by the accountant or audited by the auditor and submit it to the Master after not later than **seven (7) months** of the financial year end of the trust; unless extension has been granted by the Master. (Process to be drafted in regulation).
- (5) The trustees must prepare or cause the annual tax returns of the trust to be prepared and submitted to the Namibia Revenue Agency not later than **seven (7) months** of the financial year end of the trust and submit **a tax assessment** to the Master even if the trust is dormant; unless extension has been granted by the Master. (Process to be drafted in regulation)
- (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).

	INSTITUTION	PROVISION IN BILL	COMMENT/DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/SOLUTION	RESPONSE FROM INITIATOR
	JULIA ENGELS CA (SA) CA (NAM) FPSA	Section 14(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).	A trustee cannot be expected to entertain random requests for information such as the prescribed. What is a “person with a legitimate interest”? Such a person must also have a legitimate reason for requesting the information. Also, same comments as for section 1 “beneficial owner” and section 7(2)(c) and section 14(4) above are applicable.	Replace legitimate with sufficient, which is defined in common law.	To be discussed and considered A trustee will not entertain random request, they must provide to the master and master provides to AI and RI and competent authority.
	Mr. Andreas Vaatz	AD PARAGRAPH 14(4) Section 14 (4)	It may not be known to the trustees who the beneficial owners are, because trusts may refer as beneficiaries to a class of people whose membership is not known or varies from time to time		Trustees must disclose this at registration or once a change has been made. See the definition of BO in FIA

	INSTITUTION	PROVISION IN BILL	COMMENT/DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/SOLUTION	RESPONSE FROM INITIATOR
	Mr. Andreas Vaatz	AD PARAGRAPH 13 -TRUST ACCOUNT Section 13	Situations may arise where a trust is created by way of a trust instrument and a person is appointed as trustee and immediately substantial funds become payable to the trustee as trustee of the trust from the sale of a house or an inheritance received by the donor, <u>which would require the trustee immediately to open a bank account</u> in the name of the trust in order to be able to pay these funds into such bank account, thus there should not be any delay in appointing the trustee, nor should it be a requirement, that he can only open an account once he has received the trust certificate referred to in Paragraph 7 One could provide that he is not allowed to withdraw money invested on behalf of the trust until he has received the certificate		Without a TC a trustee is unable to open a bank account, let alone withdraw money.
	FNB FIDUCIARY (PTY) LTD AND POINTBREAK TRUST AND ESTATES (PTY) LTD	Section 13	Reference to <u>Trust Account</u> could be confusing as these are usually bank or investment accounts with a financial institution registered by BoN or Namfisa		Will discuss the terminology

	INSTITUTION	PROVISION IN BILL	COMMENT/ DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/ SOLUTION	RESPONSE FROM INITIATOR
	FNB FIDUCIARY (PTY) LTD AND POINTBREAK TRUST AND ESTATES (PTY) LTD	Section 13(1) and 14(1)(c)	<p>Section 13(1) refers to monies receiving needing to be deposited in a "<u>separate trust account at a bank or building society</u>) whereas 14(1)(c) provides for "any account or investment at a financial institution identifiable as a trust account or trust investment" contradict each other.</p> <p>Section 13(1) may also create an unreasonable burden on for example Pension Fund Dependent's Trusts due to the high cost of bank account administration fees. opening segregated Unit Trust accounts and for a corporate trustee to make use of a daily reconciled suspense account is a more cost effective manner of administration</p>	Amend section 13(1) to correspond and include instruments mentioned in 14(1)(c)	We will consider and harmonise
	Cronje INC	Section 14	<p>OWNERSHIP REGISTER</p> <p>The Bill in Section 14 appears to <u>lose track of the common law principle that a trust does not have legal personality</u>. If the intention is to give a trust legal personality, then this intention should be clearly stated in the law. It appears as if the object of Section 14 is to ensure that trust property is to be registered in the name of the trust itself. The wording as drafted fails to address the fundamental reasons why trust property is not currently held in the name of a trust. Should the intention be to give legal personality to a trust, then this must be stated</p>		<p>For transparency better to register in the name of trust with the trust registration number.</p> <p>See Section 15 (2) it reads as follows: <i>The Registrar of Deeds is authorised to register immovable property in name of the trust with its trust registration number without conferring legal personality on a trust,</i></p>

	INSTITUTION	PROVISION IN BILL	COMMENT/ DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/ SOLUTION	RESPONSE FROM INITIATOR
	MRS. ADRIE VAN DER MERWE FISHER, QUARMBY & PFEIFER	Section 16		I propose that the Court also has the powers as follows: "if a trust instrument contains any provision <u>or omits any provision</u> , which brings about consequences which, in the opinion of the court, the settlor or founder of a trust did not contemplate or foresee.	Comments incorporated in the Bill

Power of the court to vary provisions

16. If a trust instrument contains any provision or omits 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.

	INSTITUTION	PROVISION IN BILL	COMMENT/ DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/ SOLUTION	RESPONSE FROM INITIATOR
	Mr. Hellmut Ludwig	Section 17	Provided that such amendment is to the benefit of the beneficiary	Rather state "provided such amendment is not to the detriment of the beneficiary", because a proposed amendment might not have a clear benefit (but also no disadvantage) and would thus be prohibited under the current reading.	To be discussed and considered
	MRS. ADRIE VAN DER MERWE FISHER, QUARMBY & PFEIFER	Section 18		The clause should refer to "audit" done by an auditor and also <u>drawing of accounts</u> by a registered accountant	To be discussed and considered
	NIPA	Sec 18 (1) and Sec 31 (3)	If an irregularity ...comes to the person who audits the accounts...after 10 working days	Propose: If a material irregularity comes to the notice of the accountant or auditor of the trust ... after 30 working days See also sec 31 (3)	Period was extended to 14 court days

	INSTITUTION	PROVISION IN BILL	COMMENT/ DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/ SOLUTION	RESPONSE FROM INITIATOR
	NIPA	Sec 19 (1) and (2)	Every trustee must:	The Master will be overloaded with submissions of the same information if every trustee supply information.... propose the Trustee Representative must:	Dealt with above
	MRS. ADRIE VAN DER MERWE FISHER, QUARMBY & PFEIFER	Section 19 (1) & 22 (2)		The obligations should be that the <u>trustees jointly keep these records</u> , not each trustee individually	Dealt with above and submissions will be online, so that arrangement can be made between the trustees but each trustee must know that this duty is placed on them
	Mr. Hellmut Ludwiger	Section 19(2)	Report any change in information provided under subsection (1) within 10 days	Subsection (1) includes (b) "all transactions", (e) "any business relation with any financial institution" and (k) "all expenses and disbursements paid to the trustee. It would be highly impracticable to report the above within 10 days. Suggest adding: "except for subsections (b), (e) and (k), which must be reported as part of the annual financial statements."	To be discussed and considered
	Cronje INC	Section 19 & 22	RECORD KEEPING	We propose that section 19 and Section 22 is to specifically allow for records to be kept by means of electronic means.	10 years reduced to 5 years Discuss and consider in what format the records must be kept

	INSTITUTION	PROVISION IN BILL	COMMENT/ DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/ SOLUTION	RESPONSE FROM INITIATOR
	Cronje INC	Sections 20, 21 & 23	CONFIDENTIALITY TO THE MASTER	<p>Section 20 and 21 of the Bill provides broad powers to the Master. The <u>Bill however does not contain a confidentiality obligation on the staff employed by the Master.</u> The constitutionality of these provisions in the light of the constitutional right to privacy is doubtful.</p> <p>We propose that the disclosure of the documents stated in Section 21 is only to <u>be allowed after an order that is issued by a judge in chambers.</u> For these extraordinary powers to be constitutional, there needs to be judicial oversight.</p> <p>Section 23 read with Section 21 are open for abuse and will at some point in time lead to the unconstitutional infringement of rights. Section 23 cannot be retained in its current form without amendments to sections 20 and 21.</p>	<p>Public service Act and rules</p> <p>Need elaboration</p> <p>To be discussed and considered</p>
	JULIA ENGELS CA (SA) CA (NAM) FPSA	Section 25(4) If a trustee authorised to act under section 7 (1) is removed from his or her office or resigns	Not clear for me, is the trust certificate per trust or trustee?		<p>Section 25 (4) has been amended to read as follows:</p> <p>- If a trustee authorised to act under section 7 (1) is removed from his or her office or resigns, the trust certificate shall without delay be returned to the Master.</p>

	INSTITUTION	PROVISION IN BILL	COMMENT/ DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/ SOLUTION	RESPONSE FROM INITIATOR
	JULIA ENGELS CA (SA) CA (NAM) FPSA	Section 26	<p>It is not clear when the resignation is effective.</p> <p>After 30 days, after Master's acknowledgement of receipt of resignation, after Master has appointed another trustee to act in his/her stead or automatically off?</p> <p>It must be stated (or is it assumed?) that a trustee, upon his/her resignation, is not absolved from any liability incurred while he/she was a trustee.</p> <p>Also restrict power and only allow functions that will allow remaining trustees to maintain and conserve assets during the period pending trustee appointment.</p>	<p>Insert indication of effective date e.g. the Court suggested in the Meijer case that proof of the resignation letter being provided to the Master in writing, coupled with acknowledgement of receipt by the Master's office, would suffice. Resignation of a trustee should in practice then take effect upon handing their resignation to the Master, with the Master's acknowledgement of same.</p>	<p>Section 26(2) added and it reads as follows:</p> <p>Notwithstanding subsection 1 a resignation shall only be effective if such resignation is not contrary to the provisions of the trust instrument and Master has issued an amended trust certificate.</p>

	INSTITUTION	PROVISION IN BILL	COMMENT/ DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/ SOLUTION	RESPONSE FROM INITIATOR
	JULIA ENGELS CA (SA) CA (NAM) FPSA	Section 27 (1)	It will be dangerous to allow ultimate power and functions to remaining trustees until all trustee positions are filled. <u>Rather restrict power</u> and only allow functions that will allow him/her to maintain and conserve assets during the period pending trustee appointment.		Section 27 (1) was amended
	MRS. ADRIE VAN DER MERWE FISHER, QUARMBY & PFEIFER	Section 27 (1)		<u>Period should be capped.</u>	To be discussed and considered

Section 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 to allow him or her to maintain and conserve assets during period pending the appointment of a new trustee by the Master in the place of the trustee who died, in accordance with the provisions of Section 9.”

INSTITUTION	PROVISION IN BILL	COMMENT/ DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/ SOLUTION	RESPONSE FROM INITIATOR
Bank Windhoek Ltd/Capricorn Group	Section 28 – Remuneration of trustee	The Ministers regulation of this should incorporate feedback from various types of trusts and stakeholders. Subsection 2 should be limited to circumstances where the trust instrument does not provide for fees payable.	The regulation of this by the Minister should be workshopped	Noted Subsection has been deleted
NIPA	Sec 28 (1) (2)	.. provided for by agreement	By whom shall it be agreed? Is there a current fee structure Gazetted ?	By agreement was deleted There is no current fee structure.
FNB FIDUCIARY POINTBREAK	28(1) and (2)	Ensure there is due notice of this Gazetted remuneration		Noted
Calculus Financial Solutions CC	Section 28 (1)	What is a reasonable remuneration for a Trustee		Reasonable has been deleted
Mr. Andreas Vaatz	AD PARAGRAPH 28: REMUNERATION OF TRUSTEES	Perhaps one should also put in a clause that the remuneration may not without the authority of the Master first having been obtained' exceed a certain percentage, because it is known that some institutions administering funds for other people, do charge exceptionally high remuneration based on the value of the assets administered' The <u>beneficiaries should be entitled to approach the Master to review the remuneration charged by a trustee.</u>	<i>"unless otherwise agreed to by the beneficiaries the trustees shall be remunerated at the percentage on the value of the trust assets normally charged by banks or administrators who administer cash or other portfolios for other people, for example 0,2% of the value of the assets and 3'5% on the value of the annual income"</i>	To be discussed and considered

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 remuneration which shall not exceed the amount prescribed.

(2) A trustee may be entitled to be reimbursed out of the trust property for all expenses and liabilities incurred by him or her with the written approval of other trustees in connection with the administration of the trust.

	INSTITUTION	PROVISION IN BILL	COMMENT/ DESCRIPTION OF ISSUE	PROPOSED AMENDMENT/ SOLUTION	RESPONSE FROM INITIATOR
	Bank Windhoek Ltd/Capricorn Group	Section 30 (1)	Section 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.	More information should be provides as to when the money will be moved, in what circumstances etc?	Section 30 has been deleted
	Bank Windhoek Ltd/Capricorn Group	Section 32 Administrative fines	For this section to be constitutional, an oversight function is to be included in the act. The provisions of this section are to be specifically made subject to judicial oversight.		Fines will still be discussed further and distributed for comments.

Thank you for
your support!

