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Trust transparency as a means to combat money laundering: what should trustees know

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Concerns around money laundering and other illicit financial activities have been gaining traction over recent years, with authorities seemingly chasing a moving target. Entities such as trusts are considered to be susceptible to misuse for money laundering and for funnelling illicit funds into organised crime or terrorism.

The FATF is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The Financial Action Task Force (FATF) "**grey list**" is a way to publicly identify countries with strategic "**anti-money laundering and countering the financing of terror**" (AML/CTF) deficiencies.

It is now old news that when the FATF examined South Africa's AML/CTF safeguards, it was found wanting and duly grey listed, despite the attempts to implement new laws to meet the FATF's 40 Recommendations all countries are expected to adhere to. One of these Recommendations deals with the beneficial ownership for legal arrangements such as trusts.

Recommendation 25 looks at the "**Transparency and beneficial ownership of legal arrangements**" and says that an effective measure to reduce the misuse of legal entities is to require that information regarding both the legal owner and the beneficial owner, the source of the assets and the entity's activities are readily available to the authorities.

The FATF's recommendation in relation to trusts provides that trustees must obtain and hold adequate, accurate, and current beneficial ownership information regarding the trust which should be kept as accurate and up to-date as possible. In response, the government has amended numerous pieces of legislation including the Trust Property Control Act, No 57 of 1988 (TPC Act).

A trustee must-

1. *establish and record the beneficial ownership of the trust;*
2. *keep a record of the prescribed information relating to the beneficial owners of the trust;*
3. *lodge a register of the prescribed information on the beneficial owners of the trust with the Master's Office;*
4. *ensure that the prescribed information is kept up to date; and*
5. *make the information contained in the register available to any person as prescribed.*

A trustee who fails to comply with these new obligations commits an offence and on conviction is liable to a fine not exceeding R10 million, or imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

As the compliance requirements for South African trusts starts to become more burdensome, family-run trusts should consider appointing professional trustees who actively monitor the evolving legislative landscape in order to ensure that the trustees never fall foul of their obligations.

The FAFT, trusts and transparency in South Africa

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