

TRUST PROPERTY CONTROL (AMENDMENT) ACT, 2025

No. 2



of 2025

ARRANGEMENT OF SECTIONS

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An Act to amend the Trust Property Control Act.

Date of Assent: 24.01.2025

Date of Commencement: 24.01.2025

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Trust Property Control (Amendment) Act, 2025 and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Trust Property Control Act (hereinafter referred to as “the Act”) is amended in section 2 by —

Amendment of section 2 of Cap. 31:05

(a) inserting in their correct alphabetical order, the following new definitions —

- (i) “accounting records” means a record that —
 - (aa) correctly explain all transactions of the trust;
 - (bb) enable the financial position of the trust to be determined with reasonable accuracy at any time; and
 - (cc) allow financial statements to be prepared;

- (ii) “control” means a power, whether exercisable alone or jointly with another person or with the consent of another person under the trust instrument or by law, to —
 - (aa) dispose of or invest, other than as an investment manager, trust property;
 - (bb) direct, make or approve trust distributions;
 - (cc) vary or terminate the trust;
 - (dd) add or remove a person as a beneficiary or to or from a class of beneficiaries; or
 - (ee) appoint or remove trustees;
 - (iii) “legal arrangement” means a relationship established pursuant to a contract between two or more parties that does not result in the emergence of a legal person,
 - (iv) “similar legal arrangements” means a legal arrangement with a similar structure or performs a similar function to a trust and is developed in other legal systems other than the common law,
 - (v) “specified party” has the same meaning as assigned under the Financial Intelligence Act,
 - (vi) “trust” means a legal arrangement through which the ownership in property of one person is by virtue of a trust instrument made over or bequeathed —
 - (aa) 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
 - (bb) 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 any other written law; and
 - (vii) “ultimate effective control” has the same meaning as assigned to it under the Financial Intelligence Act;
- (b) substituting for the definition of —
- (i) “beneficiary”, the following new definition —
“beneficiary” means a person who is or may become entitled to a benefit of any legal arrangement,
 - (ii) “non-profit trust”, the following new definition —

“non-profit trust” means a trust established for the purpose of promoting charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of works for public benefit including, but not limited to —

- (aa) the prevention or relief of poverty;
- (bb) the advancement of education;
- (cc) the advancement of religion;
- (dd) the advancement of health or the saving of lives;
- (ee) the advancement of citizenship or community development;
- (ff) the advancement of arts, culture, heritage or science;
- (gg) the advancement of sport;
- (hh) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- (ii) the advancement of environmental protection or improvement;
- (jj) the relief of those in need because of youth, age, ill-health, disability, financial hardship or another disadvantage;
- (kk) the advancement of animal welfare;
- (ll) the promotion of the efficiency of the armed forces of Botswana or of the efficiency of the police, fire and rescue services or ambulance services; or
- (mm) any other purpose that may reasonably be regarded as similar to, or within the spirit of the above-mentioned purposes,

(ii) **“protector”**, the following new definition —

“protector” means a legal or natural person, other than a trustee, empowered by the trust instrument to oversee trustees` actions and to consider whether such actions are in the interest of the beneficiaries and may exercise such powers by —

- (aa) approving the trustee`s decision;
- (bb) revoking a trustee`s decision;
- (cc) removing a trustee;
- (dd) appointing a new trustee; or
- (ee) changing the jurisdiction of the trust, and

(iii) **“settlor”**, the following new definition —

“settlor” means a person who transfers ownership of assets to a trustee, beneficiary or any person holding similar position in a legal arrangement, by means of an instrument; and

- (c) substituting for the definition of “trust service provider” the following new definition —
“trust service provider” means a person other than an attorney, accountant or company secretary that, as part of his or her business, provides any of the following services to a third party —
- (a) acting as a formation agent for a trust;
 - (b) providing a registered office, business address or accommodation, correspondence or administrative address for a trust;
 - (c) acting as, or arranging for another person to act as a trustee of a trust; or
 - (d) providing administrative services to a beneficial owner of a trust;”.

Amendment
of section 4 of
the Act

3. Section 4 of the Act is amended by —

- (a) inserting immediately after subsection (5) (d), the following new paragraphs —
“(e) refuse to register a trust if its name is similar to that of another trust;
- (f) refuse to register a trust if the trust instrument does not meet the requirements of the Act; or
 - (g) refuse to register a trust if the founding trustees do not comply with the registration requirements of the Act.”;
- (b) substituting for subsection (6) the following new subsection —
“(6) The Master shall, on a risk-based approach after entering the particulars of the trust in the register under subsections (2) and (5), verify the beneficial owner information submitted in terms of section 5 using —
- (a) information held by specified parties and other competent authorities;
 - (b) conducting inspections; and
 - (c) any other means as the Master may determine.”;
- (c) substituting for subsection (7) the following new subsection —
“(7) A person who makes or causes to be made an unauthorised entry, alteration or deletion from the register commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding ten years, or to both.”; and
- (d) deleting subsection (8).

Insertion of
section 4A
in the Act

4. The Act is amended by inserting immediately after section 4, the following new section —

- “Trust service provider 4A. (1) A person shall not operate as a trust service provider without registering with the Master.
- (2) A natural person who wishes to register as a trust service provider shall —
- (a) be fit and proper; and
 - (b) have a minimum of a certificate in —

- (i) law,
- (ii) accounting,
- (iii) business administration,
- (iv) business management,
- (v) business science,
- (vi) economics,
- (vii) banking,
- (viii) investments,
- (ix) actuarial science,
- (x) finance,
- (xi) financial planning,
- (xii) estate planning, or
- (xiii) administration of estates and trusts.

(3) A juristic person who wishes to register as a trust service provider shall —

- (a) be incorporated in Botswana under the Companies Act; Cap. 42:01
- (b) have a registered office in Botswana; and
- (c) appoint a natural person who meets the criteria at subsection (2) to act as nominee to carry out services of a trust service provider, on its behalf.

(4) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P 500 000 or to imprisonment for a term not exceeding 10 years, or to both.

(5) The Master may impose administrative penalties of an amount not exceeding that specified in subsection (4) where a person contravenes subsection (1).

(6) The Minister may make Regulations for the registration of trust service providers, trusts and trustees.”.

5. Section 5 of the Act is amended by —

- (a) substituting for subsection (2), the following new subsection —
 - “(2) A trust instrument lodged with the Master shall —
 - (a) state the type of trust established by the trust instrument;
 - (b) indicate the purpose of the trust;
 - (c) identify the trust property bequeathed and the beneficial owner of the trust including the settlor, trustee, protector, if any, each beneficiary, or where applicable, the class of beneficiaries and objects of a power and any other natural person exercising ultimate effective control over the trust;
 - (d) indicate whether the trustee shall provide security or is exempted therefrom; and
 - (e) in the case of a sub-trust of a foreign trust created to administer trust property situated in Botswana, contain a notarized copy of the trust instrument used to create the foreign trust.”;
- (b) substituting for subsection (3), the following new subsection —

Amendment
of section 5 of
the Act

“(3) For purposes of identifying a beneficiary, a trustee shall ensure that the trust instrument identifies a beneficiary by name and identification number or a passport number in the case of a non-citizen.”;

(c) substituting for subsection (5), the following new subsection —
“(5) Where a trust instrument which has been lodged with the Master is varied, or any information required to be in a trust instrument in terms of subsection (2) is varied or any information contained in the registration forms filed with the Master changes, the trustee shall lodge the amendment or a copy thereof so certified with the Master or file with the Master an updated registration form, within 10 days of the variation or change occurring.”;

(d) inserting immediately after subsection (5) the following new subsections —

“(6) Any trust instrument of an *inter vivos* trust which is not lodged with the Master in accordance with subsection (1) within 30 days of being executed, shall be null and void.

(7) The ownership of a trust property of an *inter vivos* trust deemed to be null and void in accordance with subsection (6) shall revert to the settlor or donor thereof.

(8) The trustees’ actions without authorisation from the Master shall be null and void save for performing functions that will allow a trustee to be authorised by the Master and to maintain and conserve trust property pending authorisation by the Master.”.

Substitution of
section 7 of the
Act

6. The Act is amended by substituting for section 7, the following new section —

“Authorisation
of trustee and
security 7. (1) A person may only act as a trustee if duly authorised so by the Master and if that person is a person —

(a) nominated as a trustee in terms of a trust instrument and accepts such nomination;

(b) appointed as trustee in terms of a court order; or

(c) appointed as a trustee in terms of this Act.”.

(2) A person nominated or appointed in accordance with subsection (1) shall apply for the Master’s authorisation to act as a trustee in accordance with the prescribed form and his or her application shall include —

(a) the full name, nationality, age, gender and residential address of the individual who is a beneficial owner; and

(b) the relationship of the trustee to the beneficial owners.

(3) Where the applicant under subsection (2) is a juristic person, the Master shall issue the authorisation in the name of an individual —

(a) that qualifies in terms of this Act to be appointed as a trustee; and

- (b) nominated by the juristic person to act as a trustee on behalf of that juristic person, and the juristic person is responsible and liable for the actions of such trustee, and where the juristic person replaces that individual, the juristic person shall, in terms of this section apply for authorisation for such individual to act as trustee in respect of the trust property concerned.
- (4) The Master shall not grant authority to the trustee in terms of this section unless the trustee has —
- (a) demonstrated to be fit and proper;
 - (b) furnished security to the satisfaction of the Master for the due and faithful performance of his or her duties as trustee; or
 - (c) been exempt from furnishing security by a court order or by the Master under subsection (5) or, subject to the provisions of subsection (5) (d), in terms of a trust instrument.
- (5) The Master may, if in his or her opinion there are sound reasons to do so —
- (a) whether or not security is required by the trust instrument, dispense with security by a trustee;
 - (b) reduce or cancel any security furnished;
 - (c) order a trustee to furnish additional security; or
 - (d) order a trustee who has been exempt from furnishing security in terms of a trust instrument to furnish security.”.

7. The Act is amended by substituting for section 9 the following new section —

“Foreign trustees

9. (1) Where a foreign trustee has to administer or dispose of trust property in Botswana, the provisions of this Act shall apply to such trustees in respect of such trust property and the Master may authorise such trustee under section 7 to act as trustee in respect of that property;

Provided that the foreign trustee —

- (i) shall create a sub-trust to be registered in Botswana in accordance with section 4 and any other provision of this Act,
- (ii) shall appoint a resident trustee to co-administer and dispose of the trust property that is located in Botswana, and
- (iii) provides security in accordance with the provisions of this Act.

“(2) The provisions of subsection (1) shall apply with the necessary changes to a person who holds an equivalent position in a similar legal arrangement.”.

8. The Act is amended by inserting immediately after section 10, the following new section —

Amendment of section 9 of the Act

Insertion of section 10A in the Act

	<p>“Disclosure of status</p> <p>10A. A trustee shall disclose his or her position as trustee to any specified party with which the trustee engages in that capacity, and shall inform the specified party that the relevant transaction or business relationship relates to trust property.”.</p>
Amendment of section 18 of the Act	<p>9. Section 18 of the Act is amended by inserting immediately after subsection (3), the following new subsection —</p> <p>“(4) Notwithstanding the provisions of this section, a trustee shall, on annual basis account in the prescribed form, to the Master for the trustees administration and disposal of trust property.”.</p>
Insertion of section 19A in the Act	<p>10. The Act is amended by inserting immediately after section 19, the following new section —</p> <p>“Master’s directives</p> <p>19A. (1) The Master may, by Notice in the <i>Gazette</i>, issue a directive to all trustees and trust service providers dealing with the application of this Act.</p> <p>(2) The Master shall, before issuing a directive under subsection (1), publish, in the <i>Gazette</i> a draft of the directive and invite submissions within five days of publication of the draft and shall consider the submissions.”.</p>
Insertion of section 19B in the Act	<p>11. The Act is amended by inserting immediately after section 19A, the following new section —</p> <p>“Information sharing</p> <p>19B. The Master may cooperate and exchange information with foreign counterparts on basic and beneficial ownership information and risk assessment for trusts and similar legal arrangements.”.</p>
Amendment of section 23 of the Act	<p>12. Section 23 (3) is amended by inserting immediately after paragraph (e), the following new paragraph —</p> <p>“(f) the trustee upon review by the Master fails the fit and proper test.”.</p>
Amendment of section 24 of the Act	<p>13. The Act is amended by substituting for section 24, the following new section —</p> <p>“Resignation by trustee</p> <p>24. (1) A trustee may resign by notice in writing to the Master and the ascertained beneficiary who has 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.</p> <p>(2) A trustee resigning under subsection (1) shall account to the Master, in the prescribed form, for the administration and disposal of trust property, and lodge with the Master all accounting records including underlying invoices and contracts related to the administration and disposal of trust property, and a letter of authorisation issued to the trustee.”.</p>
Insertion of section 28A in the Act	<p>14. The Act is amended by inserting immediately after section 28, the following new section —</p> <p>“Termination by trust</p> <p>28A. (1) Where a trust is being terminated, the Master shall be furnished with —</p> <p>(a) a resolution outlining —</p>

- (i) the reasons for dissolving or terminating the trust,
 - (ii) whether the trust was active or dormant, and
 - (iii) whether a bank account was opened in the name of the trust and if so, a letter from the bank confirming that the bank has closed the account;
- (b) a bank statement reflecting a —
- (i) nil statement, or
 - (ii) final statement;
- (c) proof that a beneficiary has received his or her benefits;
- (d) accounting record, including underlying contracts and invoices for the administration and disposal of trust assets;
- (e) proof that creditors to the trust have been settled;
- (f) an original letter of authority; and
- (g) an affidavit by the trustee confirming that the trust has been divested of all assets.
- (2) The Master shall terminate a trust if satisfied that there is compliance with subsection (1), and shall deregister the trust.”.

15. Section 30 of the Act is amended by inserting immediately after subsection (3), the following new subsection —

Amendment
of section 30
of the Act

“(4) Notwithstanding the provisions of this section, the Master may impose an administrative penalty of an amount not exceeding P500 000 or deregistration of the trust and trustee where a trustee contravenes the provisions of this Act.”.

16. Section 31 of the Act is amended by substituting for subsection (2), the following new subsection —

Amendment
of section 31
of the Act

“(2) Without derogating from the generality of subsection (1), regulations may provide for —

- (a) the type of information to be provided to the Master at the time of registration of a trust by the trustee, settlor or any other person who has effective control of the trust property;
- (b) the method of making requests for information under section 19 including the methods a trustee may use to give that information;
- (c) the fees to be charged for any purpose under this Act;
- (d) accounting records; and
- (e) any matter under this Act which may be prescribed.”.

PASSED by the National Assembly this 19th day of December, 2024.

DR. GABRIEL GOITSEMODIMO
G. MALEBANG,
Clerk of the National Assembly.