

TRUST PROPERTY CONTROL (AMENDMENT) ACT, 2019

No. 10



of 2019

ARRANGEMENT OF PROVISIONS

SECTION

1. Short title and commencement
2. Amendment of Act No. 11 of 2018
3. Amendment of section 4 of the Act
4. Amendment of section 7 of the Act
5. Insertion of new section 16A into the Act
6. Insertion of new section 17A into the Act
7. Amendment of section 20 of the Act
8. Amendment of section 26 of the Act
9. Amendment of section 27 of the Act
10. Amendment of section 28 of the Act
11. Validation of trustees registered and trust instruments lodged and registered after expiry of initial transitional period

An Act to amend the Trust Property Control Act, 2018 to provide for requirements to keep records and information, provide information and documents when requested to do so by the Master as well as to provide further for transitional and connected matters.

Date of assent: 28.08.2019

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act is the Trust Property Control (Amendment) Act, 2019 and comes into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Trust Property Control Act (Act No. 11 of 2018) in this Act referred to as “the Act” is amended in section 2 as follows —

Amendment of Act No. 11 of 2018

(a) by deleting the definition of “Master” and substituting for it, the following new definition —

““Master” in relation to this Act means the Master of the High Court and includes the Deputy Master, Senior Assistant Master and Assistant Master appointed under Part II of the Administration of Estates Act”;

Cap. 31:01

(b) by deleting the definition of “trust” and substituting for it, the following new definition —

““trust” includes a trust, a foundation or any other 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 any other written law;”;

- (c) by deleting the definition of “trustee” and substituting for it, the following new definition —

““trustee” means any person, including the founder or settlor of a trust who acts as trustee by virtue of an authorisation under section 7 and includes any person whose appointment as trustee is already in force at the commencement of the Act; ”; and

- (d) by adding the following new definition in its correct alphabetical order —

““settlor” means a person who makes or arranges for the making of a trust instrument under which the person’s ownership in property is made over or bequeathed to other specified persons and “founder” shall have the same meaning;”.

Amendment
of section 4
of the Act

3. Section 4 of the Act is deleted and substituted with the following new section —

“Registration
of trusts and
trustees

4. (1) Subject to the provisions of this Act, the Master shall register trusts and trustees.

(2) The Master shall establish and maintain a register for trusts and trustees.

(3) The register for trusts and trustees shall be kept at the office of the Master.

(4) Any person may request to inspect the register during office hours upon payment of such fees as may be prescribed.

(5) The Master shall —

(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 14; and

(c) remove from the register, the name of a trustee who dies, resigns from office or is removed from office.”.

Amendment
of section 7
of the Act

4. Section 7 (3) is deleted and substituted with the following new subsection —

- “(3) For purposes of this section, a “beneficial owner” means a —
- (a) natural person, who directly or indirectly through any contract, arrangement, understanding, relationship or otherwise is the settlor, trustee or ultimate beneficiary of the trust; or
 - (b) natural person who has the power, alone or jointly with another person or with the consent of another person, to —
 - (i) dispose of, advance, lend, invest, pay or apply trust property;
 - (ii) vary or terminate the trust;
 - (iii) add or remove a person as a beneficiary to or from, a class of beneficiaries;
 - (iv) appoint or remove a trustee or give another person control over the trust; or
 - (v) direct, withhold consent or overrule the exercise of a power referred to in paragraphs (i) to (iv).”

5. The Act is amended by inserting immediately after section 16, the following new section —

“Keeping
of records

16A. (1) Every trustee shall keep accurate and up to date information and records of —

- (a) the founder and the 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 12 (1),
 - (iv) trust accounts including trust investments as required under section 12 (1) (c),
- (c) beneficiaries and the beneficiaries’ identity documents;
- (d) any business relationship with any financial institution and the nature of that relationship;
- (e) all trustees including co-trustees appointed under section 8 and if relevant, any former trustees and their relationship with beneficiaries;
- (f) any variation or deletion of a provision of a trust instrument by the court under section 14 and details of the effect on trust property;
- (g) any variation of a trust instrument under section 15;
- (h) any reports of irregularities and how the trustee dealt with those irregularities; and
- (i) all expenses and disbursements paid to the trustee under section 24.

Insertion of
new section
16A into the
Act

(2) The Minister may make regulations relating to the information and records required to be kept under subsection (1).

- (3) Regulations made under subsection (2) shall specify —
- (a) the period that the information and records referred to in this section must be kept;
 - (b) the form in which the information and records shall be submitted to the Master; and
 - (c) the intervals at which the information and records shall be submitted to the Master.”.

Insertion of new section 17A into the Act

6. The Act is amended by inserting immediately after section 17, the following new section —

“Master’s requests for information
17A. (1) In addition to the written requests referred to under section 17 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.”.

Amendment of section 20 of the Act

7. Section 20 of the Act is amended by substituting for the words “section 17” in that section the words “sections 16A, 17 and 17A”.

Amendment of section 26 of the Act

8. Section 26 of the Act is amended —

- (a) by inserting immediately after subsection (1), the following new subsections —

“(1A) Subject to subsection (3A), any trust instrument executed before 29th June, 2018 which is lodged with the Master after the expiry of the period specified in subsection (1) shall be registered by the Master; and the provisions of the Trust Property Control Act shall apply to it despite that it was lodged and registered after the expiry of the period specified in subsection (1).

(2A) Subject to subsection (3A), any trustee whose appointment as a trustee is in terms of a trust instrument executed before 29th June, 2018 whose registration is done after the expiry of the period specified in subsection (1) shall be registered by the Master, and the provisions of the Trust Property Control Act shall apply to that trustee despite that the registration of that trustee is done after the expiry of the period specified in subsection (1).

(3A) The Master shall not accept any trust instrument lodged with him or her for registration after 31st December, 2020.”; and

(b) by adding immediately after subsection (2), the following new subsection —

“(3) The Minister may make subsidiary legislation dealing with further transitional arrangements for —

- (a) the lodging and registration of trust instruments executed before 29th June, 2018;
- (b) the registration of trustees whose appointments as trustees is in terms of trust instruments executed before 29th June, 2018; and
- (c) imposing any administrative penalties for failure to lodge or register within the stipulated period.”

9. Section 27 of the Act is deleted and substituted with the following new section —

“Offences and penalties

27. (1) A person commits an offence who—

- (a) fails to register a trust in accordance with the provisions of this Act;
- (b) fails to register as a trustee in accordance with the provisions of this Act; or
- (c) purports to act as a trustee without the authority of the Master required under section 7.

(2) A person who commits an offence under subsection (1) is liable to a fine of P20 000, or to a term of imprisonment not exceeding two years, or to both.

(3) Any trustee who —

- (a) fails to comply with an order made under section 20 directing him or her to keep the information and records required to be kept under section 16A;
- (b) fails to comply with an order made under section 20 directing him or her to account for his or her administration and disposal of trust property as required under section 17;
- (c) refuses to provide information or documents to the Master under section 17A when required to do so by an order of the court made in terms of section 20;
- (d) gives information which is false or misleading; or
- (e) fails to perform or comply with any requirement under this Act,

commits an offence and is liable to a fine not exceeding P20 000, or to imprisonment for a term not exceeding five years, or to both.”.

Amendment
of section 27
of the Act

Amendment
of section 28
of the Act

10. Section 28 of the Act is deleted and substituted with the following new section —

“Regulations 28. (1) The Minister may make regulations for the better carrying out of the purposes and objects of this 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 17A(1) including the methods a trustee may use to give that information; or

(c) any matter under this Act which requires to be prescribed.”.

Validation of
trustees
registered
and trust
instruments
lodged and
registered
after expiry
of initial
transitional
period

11. (1) Any trust instrument executed before 29th June, 2018 which was lodged with the Master for registration after the expiry of the period specified in section 26 (1) of the Trust Property Control Act, but before the day on which this Act commences, is deemed to be validly registered.

(2) Any trustee registered by the Master whose appointment as a trustee is in terms of a trust instrument executed before 29th June, 2018 is deemed to be validly registered if that registration was done after the expiry of the period specified in section 26 (1) of the Trust Property Control Act, but before the day on which this Act commences.

(3) The provisions of the Trust Property Control Act apply to a trustee and a trust instrument registered under this section.

PASSED by the National Assembly this 8th day of August, 2019.

BARBARA N. DITHAPO,
Clerk of the National Assembly.