Tax Practice: On the Move - Expats and wealth planning 3 of 3

The year in review and ahead for trusts



Presented by: Phia van der Spuy



Beneficial Ownership Transparency (BOT) a wise idea of government?

- 70% of selection of large corruption cases involved complex ownership structures designed to conceal identity of individuals, 15% involved trusts (World Bank study)
- International bodies developed guiding principles for the BOT of trusts. The relevant ones for South Africa:
 - FATF (Financial Action Task Force) Recommendations (South Africa is a member of the FATF),
 - Organisation for Economic Co-operation and Development's (OECD) Common Reporting Standard (CRS) (South Africa is a signatory to the CRS), and
 - → G20 High-Level Principles (South Africa is committed to the G20 High-Level Principles).
- ♦ It is here to stay!
- Our compliance or lack thereof is determined by FATF; NOT us!
- We promised FATF that we would do enough to get off the greylist by January 2025! Only 1 year left!
- Severe impact on country if we not removed from greylist



Let's rewind... how did the FATF react to SA's plan not to be greylisted?

- → The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act of 2022 amends the Financial Intelligence Centre Act, the Non-profit Organisations Act, Trust Property Control Act, the Companies Act and the Financial Sector Regulations Act. Aim to respond to the deficiencies identified during the peer review of the country conducted by the FATF; address around 14 of the 20 areas in which the FATF found SA deficient.
- The Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Act addresses 2 other deficiencies
- January 2023 assessment of SA's progress SA made significant and positive progress, reducing 67 Recommended Actions to 8 strategic deficiencies, where more progress is required
- The FATF president identified key actions required:
 - 1. To improve risk-based supervision of non-financial professionals and businesses that can be potentially be used by criminals to facilitate, knowingly or unknowingly, money laundering and terror financing
 - To make available, in a timely manner, accurate information about the ultimate beneficial owners of entities such as companies, trusts and non-profit organisations
 - 3. To update the framework used to adopt the targeted financial sanctions published by the United Nations Security Council, and the domestic designation of people suspected of terrorism or terror financing



8 strategic actions after we got greylisted

- 1. Demonstrate a sustained increase in outbound Mutual Legal Assistance requests that help facilitate money laundering/terrorism financing (ML/TF) investigations and confiscations of different types of assets in line with its risk profile;
- 2. Improve risk-based supervision of Designated Non-Financial Businesses and Professions (DNFBPs) and demonstrate that all AML/CFT supervisors apply effective, proportionate, and effective sanctions for noncompliance;
- 3. Ensure that competent authorities have timely access to accurate and up-to-date Beneficial Ownership (BO) information on legal persons and arrangements and applying sanctions for breaches of violations by legal persons to BO obligations;
- 4. Demonstrate a sustained increase in law enforcement agencies' requests for financial intelligence from the Financial Intelligence Centre for its ML/TFML/TF investigations;
- Demonstrate a sustained increase in investigations and prosecutions of serious and complex money laundering and the full range of terrorist financing activities in line with its risk profile;
- 6. Enhance its identification, seizure, and confiscationstrumentalities of a wider range of predicate crimes, in penalty/punishment
- 7. Update its terrorist financing risk assessment to inform comprehensive national counter-financing of terrorism strates.
- 8. Ensure the effective implementation of targeted financial sanctions and demonstrate an effective mechanism to identify individuals and entities that meet the criteria for domestic designation.

Quick recap of 2023

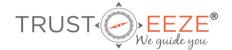
- ♦ Government promulgated onerous amendments to the Trust Property Control Act (TPCA) on 22 December 2022 (which were gazetted on 29 December 2022)
- Issued Regulations for its implementation on 31 March 2023, effective from 1 April 2023
- April 2023 Temporary capability to upload "Beneficial Ownership" information onto the Master's portal. Government only managed to replace this temporary beneficial ownership register developed on a Google Docs platform with a permanent Beneficial Ownership register in October 2023
- → Department of Justice and Constitutional Development issued media statement on 4 May 2023 reminding (informing) public that new measures have come into effect from 1 April 2023 with the heading "Increased measures for Trusts to combat money-laundering and terrorism financing crimes".
- ♦ Chief Master also issued Directive 8 of 2023, effective 16 October 2023, titled "Beneficial Ownership Register", which reminds trustees that the requirements apply to all trusts, "irrelevant of when and for what purpose it has been registered". No extension is provided to submit beneficial ownership information to the Master and it stresses that "all South Africans are required to provide records and reports on all information about beneficial owners as from 1 April 2023".



Quick recap of 2023 (cont.)

- → The Minister of Finance, Enoch Godongwana, delivered Medium-Term Budget Policy Statement (MTBPS) on 1 November 2023:
 - ♦ Stressed that "there is also a significant amount of work that must still be done" to prove to FATF that enough done to remove South Africa from greylist.
 - Government expects to address all the deficiencies identified by the FATF by early 2025
 - ♦ Some of the relevant areas the FATF requires South Africa to still address:
 - → Focus on improving risk-based supervision of designated non-financial businesses and professions such as lawyers, notaries, other independent legal professionals and accountants, and trust and company service providers
 - Ensuring that competent authorities have timely access to accurate and up-todate beneficial ownership information on legal persons and arrangements
 - Applying sanctions for breaches of violations by legal persons to beneficial ownership obligations, and demonstrating that all anti-money laundering and counter-terrorism finance supervisors apply effective, proportionate, and effective sanctions for non-compliance.

Warning of fines and/or imprisonment in 2024?



Quick recap of 2023 (cont.)

- Nov 2023 Justice and Correctional Services Minister Ronald Lamola, approved welcome rescue plan for the Master's Office, which has been plagued with backlogs and inefficient processes across the country.
 - Attempts to address various shortfalls in the Master's administration of deceased estates, the setting up and liquidating of trusts, and managing the Guardian's Fund
 - Aim to address backlogs, improve digitisation (interesting the choice of words as digitisation only focuses on converting and recording data, whilst digitalisation is about developing processes and changing workflows to improve manual systems), increase capacity, ensure standardisation and transparency, and to stop corruption in offices across the country
 - Not public document
- ♦ Bill in process to be approved expected to present to president in December 2023? Includes rights of the Chief Master to review decisions of the Masters
- Online trust portal, similar to estates?



Quick recap of 2023 (cont.)

The South African Revenue Service (SARS) also jumped on bandwagon:

- ♦ SARS webinar on 29 July 2021 "Trust and Tax obligations"
- "Trust Filing Season: Form and System Changes to be Introduced from 23 June 2023"
 - Attribution rules
 - ♦ Beneficial Ownership Declaration
 - Upload mandatory supporting documents upload mandatory supporting documents
- ♦ Government Gazette (30 June 2023) "Returns of information to be submitted by third parties in terms of Section 26 of the Tax Administration Act, 2011" Submission date of IT3(t) May 2024, BUT moved to 30 Sep 2024 in Government Gazette on 10 Nov 2023
- ♦ SARS provided guidance on 31 August 2023, when they issued a communication titled "Clarification of certain matters pertaining to the completion of the trust income tax return (ITR12t)". SARS confirmed that its aim is to record all beneficial owners of registered trusts to comply with the FATF requirements.

National Treasury issued media statement "Greylisting: Positive Progress in Addressing Technical Compliance Deficiencies in South Africa's Anti-Money Laundering System" on 29 November 2023

- → FATF published the follow-up report "South Africa: Follow-up Report on Technical Compliance Re-rating" (South Africa 2nd Follow-Up Report) on 28 November 2023 positive progress made by South Africa in addressing technical compliance deficiencies in its anti-money laundering system.
- Recap: FATF final report, published in October 2021, scored 40 technical areas/ legislation adequacy. SA found to be:

 - → partially compliant/non-compliant in 20
- 27 October 2023 FATF Plenary formally re-rated 18 of 20 deficiencies on application by SA
 - 4 14 Recommendations are now fully or largely compliant, and 1 Recommendation was rated as not being applicable to SA
 - ♦ SA now deemed to be fully or largely compliant (or not deficient) in 35 of 40 FATF Recommendations, including in 5 of the 6 core FATF Recommendations.
 - SA left with 5 deficiencies in technical compliance (including 3 of the 18 which were upgraded from non-compliant to partially compliant), and 2 which remain as partially compliant since 2021
 - ♦ SA to continue to address the remaining 5 deficiencies, with the expectation that they will be deemed to be addressed in the next FATF Follow-up report in October/November 2024
- Addressing remaining actions within agreed timelines will require significant effort from all relevant South African authorities. SA authorities will also need to demonstrate that improvements are sustainable, before deemed by FATF to have adequately addressed all action items

National Treasury issued media statement "Greylisting: Positive Progress in Addressing Technical Compliance Deficiencies in South Africa's Anti-Money Laundering System" on 29 November 2023

In summary, the FATF Plenary approved the following upgrades:

Recommendation	Measure	October 2021	October 2023
1	Assessing risks & applying a risk-based approach	Partially Compliant	Largely Compliant
2	National cooperation and coordination	Partially Compliant	Partially Compliant
5 (Core)	Terrorist financing offence	Partially Compliant	Compliant
6 (Core)	Targeted financial sanctions related to terrorism and terrorist financing	Non Compliant	Partially Compliant
7	Partially Compliant	Partially Compliant	Largely Compliant
8	Non-profit organisations	Non Compliant	Partially Compliant
10 (Core)	Financial institution secrecy laws	Partially Compliant	Largely Compliant
12	Politically exposed persons	Non Compliant	Largely Compliant
14	Money or value transfer services	Partially Compliant	Largely Compliant
15	New technologies	Non Compliant	Partially Compliant
17	Reliance on third parties	Non Compliant	Not Applicable
18	Internal controls and foreign branches and subsidiaries	Partially Compliant	Largely Compliant
22	DNFBPs: Customer due diligence	Partially Compliant	Largely Compliant
23	DNFBPs: Other measures	Partially Compliant	Compliant
24	Transparency and beneficial ownership of legal persons	Partially Compliant	Largely Compliant
25	Transparency and beneficial ownership of legal arrangements	Partially Compliant	Largely Compliant
26	Regulation and supervision of financial institutions	Partially Compliant	Largely Compliant
27	Powers of supervisors	Partially Compliant	Largely Compliant
28	Regulation and supervision of DNFBPs	Partially Compliant	Largely Compliant
32	Cash couriers	Partially Compliant	Partially Compliant



National Treasury issued media statement "Greylisting: Positive Progress in Addressing Technical Compliance Deficiencies in South Africa's Anti-Money Laundering System" on 29 November 2023

- Recap: The FATF final report, published in October 2021, scored 11 areas of efficiency of implementing legislation. SA found to be critically weak on all
- The FATF Follow-up Report does not address the progress made by SA to improve the effectiveness deficiencies identified
- Overcoming the effectiveness deficiencies essential for South Africa to exit the FATF "greylist"
- Completing implementation of Action Plan essential for South Africa to exit FATF "greylist"
- Distinct process from addressing technical compliance and conducted under the FATF's International Co-operation Review Group Joint Group (ICRG JG) process
- SA's progress against Action Plan is reviewed by the FATF Africa/Middle East Joint Group (FATF AME JG) meets every 4 months
- Cabinet and the Justice, Crime Prevention and Security (JCPS) Cluster overseen implementation of Action Plan, via the Interdepartmental Committee on AML/CFT (IDC-AML/CFT) chaired by the Director-General of National Treasury.
- The IDC-AML/CFT includes large number of government departments and agencies including the South African Police Services' Directorate for Priority Crime Investigation (the Hawks), the National Prosecuting Authority, the Special Investigating Unit, the State Security Agency, the Financial Intelligence Centre, the South African Reserve Bank, the Financial Sector Conduct Authority, the Department of Justice and Constitutional Development, the Companies and Intellectual Property Commission and the South African Revenue Service. Cabinet has been closely monitoring progress by the IDC-AML/CFT and government departments and agencies, as noted in the Cabinet statement of 18 October 2023
- Through the IDC-AML/CFT, SA reported on its progress against the Action Plan at 2 AME Joint Group meetings in May and September 2023, and currently preparing to engage on 3rd report to Joint Group



National Treasury issued media statement "Greylisting: Positive Progress in Addressing Technical Compliance Deficiencies in South Africa's Anti-Money Laundering System" on 29 November 2023 - Action Plan and the timelines for completion adopted by the FATF when greylisting South Africa in February 2023:

Immediate Outcome	Action Item	Expiry date
IO2	 South Africa should demonstrate a sustained increase in outbound MLA requests and timely follow up to help facilitate ML/TF investigations and confiscations of different types of assets in line with its risk profile. 	May 2024
IO3/4	 The authorities should proactively identify and take action against unlicensed cross-border MVTS. 	January 2025
	South Africa should improve risk-based supervision of DNFBPs by: a) implementing and keeping up-to-date supervisory risk-assessment tools to identify higher risk DNFBPs as a basis for risk-based supervision;	May 2024
	 b) conducting inspections on a risk-sensitive basis of high-risk DNFBPs; and 	September 2024
	 c) conduct training and awareness programmes on their AML/CFT obligations, particularly with regards to filing and submitting STRs filed in line with risks. 	September 2024
	3. South Africa should strengthen the AML/CFT supervisory capacity (human and financial resources) of FSCA and FIC.	May 2024
	4. South Africa should demonstrate that all AML/CFT supervisors apply and monitor implementation of follow-up remedial actions and that effective, proportionate and dissuasive sanctions are being applied	January 2025



National Treasury issued media statement "Greylisting: Positive Progress in Addressing Technical Compliance Deficiencies in South Africa's Anti-Money Laundering System" on 29 November 2023 - Action Plan and the timelines for completion adopted by the FATF when greylisting South Africa in February 2023:

	1	
105	 South Africa should demonstrate that competent authorities have timely access to adequate, accurate and up to date beneficial ownership information of legal persons and arrangements. 	September 2024
	 South Africa should apply remedial actions and/or dissuasive and proportionate sanctions for violations of the transparency obligations applicable to legal persons. 	January 2025
106	1. The SAPS should demonstrate a succeed to the suc	ay 2024
107	South Africa should demonstrate a sustained increase in investigations and prosecutions of serious and complex money laundering, in particular involving professional money laundering networks/enablers and third-party ML in line with its risk profile.	January 2025
108	South Africa should enhance its identification, seizure and confiscation of proceeds and instrumentalities of a wider range of predicate crimes, in line with its risk profile.	September 2024



Who is who in the zoo? Know their requirements



Master



Enforcement agencies

FATF

SARS



FIC





The gap...

Setting up a trust

Accounting and tax



Lack of communication and understanding regarding services provided



The "superhuman" accountant - "my accountant has everything under control"





Which service do (want) you to provide?

		<u>-</u>	
Statutory	Trust administration and compliance	Independent trustee	Accounting and tax
 New trust deed Trust deed amendments Trustee changes Accountant changes 	Active hand-holding of trustees: Trust deed execution Meetings Resolutions "Beneficial Owner" registers Accountable institution reports Supporting documents/ contracts Audit trails Master requirements Demonstrate active participation	 Parker case of 2005 - IT should be an "independent outsider" who ensures there adequate separation of control from enjoyment with proper realisation of responsibilities of trusteeship Play active role in trust and ensure that trust functions properly and that provisions of trust instrument are observed (confirmed in Chief Master's Directive of 2017) Conduct of trustees who do not observe trust instrument should be scrutinised and checked by IT 	 Accounting is NOT compliance Do trustees have Asset Register? Audit trail backed up with resolutions and contracts Does Asset Register, financials, IT3(t)'s, beneficial owner info and tax returns reconcile? Real-time trust information Is the tax practitioner becoming the ultimate reconciler and checker?
Accountable institution	Accountable institution	Accountable institution	Accountable institution?
Charge	Extra compliance; PI cover?	Risk-based pricing; PI cover?	Fees; PI cover?

Separate Engagement Letter for each service - include indemnification for non-participative trustees and "beneficial owners"

Changes to TPCA - Effective 1 April 2023!

- New subsection 10(2) (Section 10 Trust account) a trustee to disclose their position as trustee to any accountable institution with which the trustee engages in that capacity, and to make it known to that accountable institution
- New subsection 11(1)(e) (Section 11 Registration and identification of trust property) record details of accountable institutions which trustees use as agents to perform trustee functions and who provide any services to trustees
- Property) information in relation to beneficial ownership
- New Section 19(2) If trustee fails to comply with highlighted Sections, commits an offence and on conviction liable to fine not exceeding R 10 million/imprisonment not exceeding 5 years, or both



Watch out for the Regulations - What must trustees and Master do?

11A.

- (1) A trustee must—
- (a) establish and record the beneficial ownership of the trust;
- (b) keep a record of the prescribed information relating to the beneficial owners of the trust;
- (c) lodge a register of the prescribed information on the beneficial owners of the trust with the Master's Office; and
- (d) ensure that the prescribed information referred to in paragraphs (a) to (c) is **kept up to date**.
- (2) The Master must keep a register in the prescribed form containing prescribed information about the beneficial ownership of trusts.
- (3) A trustee must make the information contained in the register referred to in subsection (1)
- (c), and the Master must make the information in the register referred to in subsection (2), available to any person as prescribed.
- (4) The prescribed requirements referred to in this section must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence 35 Centre Act, 2001 (Act No. 38 of 2001).



What do trustees have to do regarding their interactions with "accountable institutions"?

- Become a FIC "expert" to identify who are accountable institutions
- Keep a register of accountable institutions trustees deal with (New subsection 11(1)(e))
- ♦ Inform accountable institution that trustee is acting in their capacity as trustee (New subsection 10(2)):
 - ♦ Paperwork!!!!!
 - Discipline Engagement Letter, indemnify!
 - Resolution of board of trustees
 - ♦ Confirmation to accountable institution in writing

Careful FIC can cross-check between what trustees do (as required by law) and what accountable institutions do (as required by law)

Therefore REALTIME! Do not leave to catch up every now and again! Get a system to collect evidence and track trustee discipline!



GET THE BASICS RIGHT



Trust administration - the accountant's version

Statement of Financial Activities

for the year to 31 March 2015

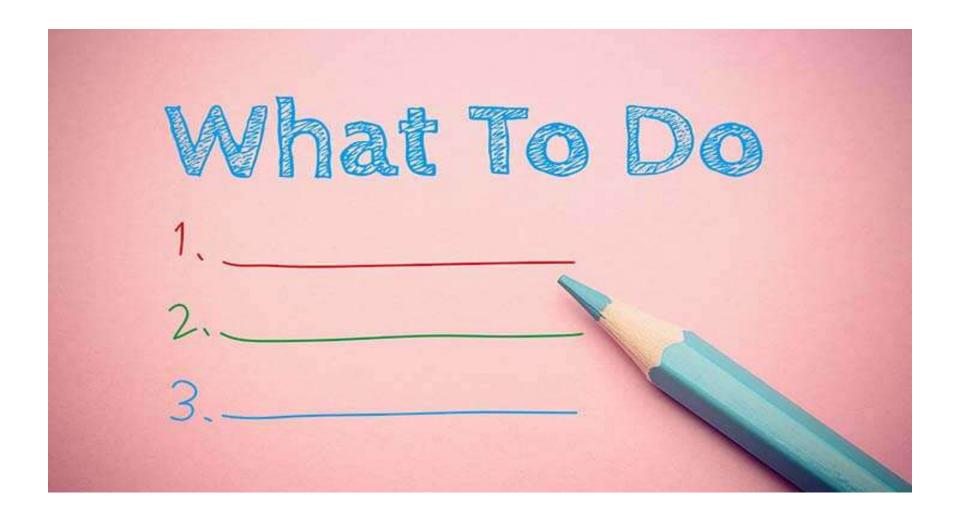
For the Year to 3/1	March 2015		Verto 31 March 2014
Unrestricted Runds £	Endowment Funds £	Total á	Total á
2,569,562	12	2,968,562	2,746,226
2,564,562		3564562	2746236
	904,469	904,460	1,056,585
1,851,757		1,861,757	1,519,755
10,575		18,575	13,132
1,879332	904,469	2774801	2 609 472
699,210	(504,460)	(206,219)	116,754
1.0	29,992,680	29,002,640	(813,164)
	(1,753,222)	(1,83,222)	(3,865,845)
698,230	27, 334,949	28,033,179	(8, 542,255)
2,031,061	236,854,994	279,987,645	83,429,900
2,729,291	304, 191,533	306,920,824	279,997,645
	Universidad Runds £ 2,568,562 2,568,562 1,651,557 18,575 1,879,332 698,210 2,011,061	Runds Funds	Unrouti dad Endowment Funds

Balance Sheet

for the year to 31 March 2015

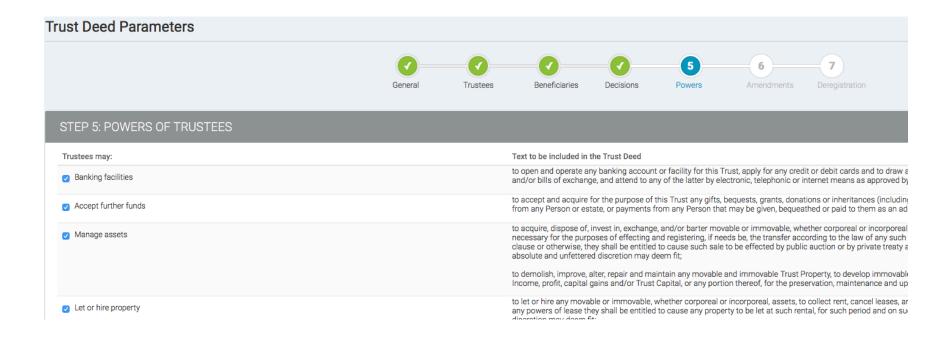
2015 £	2014 á
12,671	22,449
266,957,070	267,136,721
266,970,001	267,161,170
\$11,607	\$17,286
20,594,817	21,184,763
21,096,424	21,904,089
(145,641)	077,574
20,950,783	21,726,475
106,920,824	279,997,644
2,729,291	2,031,061
306,191,523	276,854,994
106,920,824	279,897,645
	12,671 285,957,000 285,970,041 511,607 20,594,817 21,096,424 (145,641) 20,950,783 206,920,824







Have you read and understand what the trust deed requires?



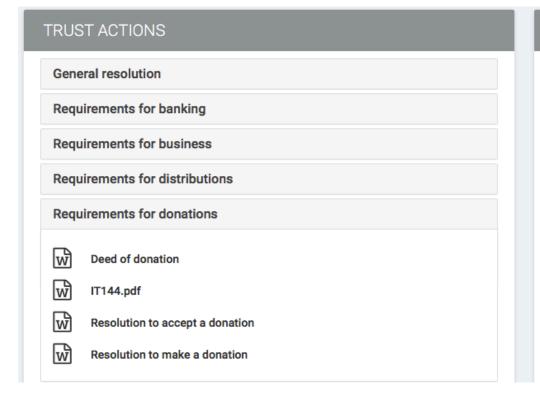


Open a bank account and register with SARS

BANK ACCOUNT: 111 AT FIRST NATIONAL BANK					
Import Statement	•	Opening Balance			
DESCRIPTION	AMOUN	T BALANCE		ACTION	N
2019-03-01 - Interest Allocated to: Interest earned on bank current account - First National Bank: 111 -remove	R123.0	0 R556,151.87		☆	
2019-03-01 - Money on loan Allocated to: Accountancy fees -remove 🖹 View	-R50,000.0	0 -R19,470,848.13		☆	
2019-03-01 - February interest	R823.5	i1 R1.00	æ	☆	ŵ
2019-03-01 - Agent fee paid	-R63.5	66 R1.00	æ	☆	ŵ
2019-03-01 - VAT on Agent fee paid	-R9.5	3 R1.00	æ	☆	ŵ
2019-03-06 - Sale of asset	R80,000.0	0 R536,028.87	م	☆	ŵ



Separation of ownership and enjoyment - demonstrate that! Adhere to "Joint Action Rule"



DIGITAL SIGNATURES



If you are going to manually sign a document, there is no need to complete this process.

To have your resolutions electronically signed, please follow these steps.

- Download the appropriate template from the list on the left.
 NOTE: Only documents downloaded from this page can be signed as they contain digital placeholders for each Trustee.
 Other documents will not complete the signing process successfully!
- · Make any required changes or additions to the document.
- Upload the document using the form below. Only upload a document once it is final, no changes can be made afterwards.



Keep minutes of meetings





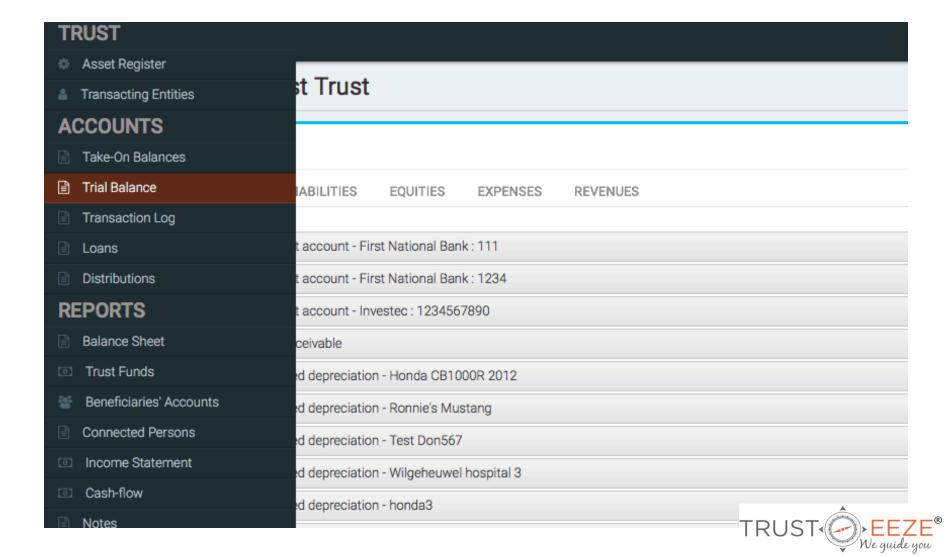
Do you have an asset register?

Asset Register - A Test Trust

	Location		Description		Cost	Market Value
Land And Build	Land And Buildings					
2019-03-03	Johannesburg		jon's Hotel Land And Buildings		R10,000,000.00	R10,000,000.00
2020-03-01	Johannesburg		Wilgeheuwel hospital 3 Land And Buildings		R1,000,000.00	R1,000,000.00
				Land And Buildings sub-total:	R11,000,000.00	R11,000,000.00
Listed Investm						
2019-10-28	Jhb		ABSA		R0.00	R0.00
			Listed Investments			
2020-08-06	Jhb	JSE	Absa Bank		R10,000.00	R10,000.00
0000 00 10	11-1-	IOF	Listed Investments		D1 000 00	D1 000 00
2020-08-12	Jhb	JSE	Absa Bank Listed Investments		R1,000.00	R1,000.00
2020-01-22	jhb	JSE	Adcock		R1,000.00	R1,000.00
2020-01-22	JIIU	JJE	Listed Investments		K1,000.00	K1,000.00
2020-05-05	Cape Town	JSE	Krugerrand		R500,000.00	R500,000.00
2020 00 00	oape rom	002	Listed Investments		11000,000.00	11000,000.00
2019-03-01	Johannesburg		SYNQUID INV		R800.00	R800.00
			Listed Investments			
				Listed Investments sub-total:	R512,800.00	R512,800.00
Motor Vehicle						
2019-11-25	Johannesburg		honda3		R10,000.00	R10,000.00
			Motor Vehicle			
2010 02 01	lahannaahura		Handa 0010000 2012		DEU UUU UU	DE0 000 00



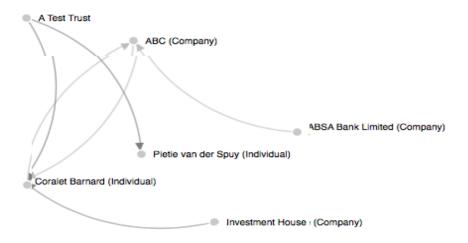
Keep books of account



Do the trustees know who "connected persons" are?

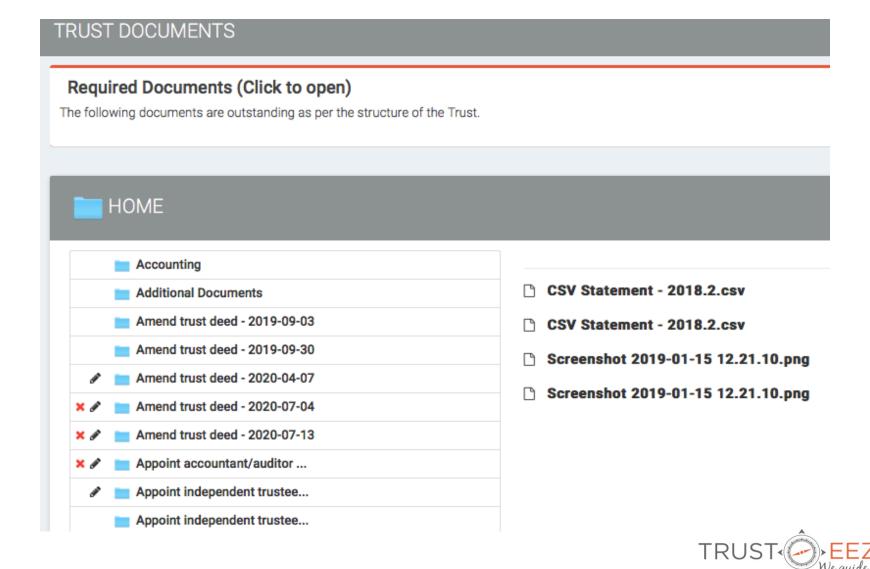
Connected Persons in relation to the trust

Single-click on a node to increase it's visibility, double-click to return it to normal size. Drag a node to re-order





Keep documents for 5 years after trust termination



Questions



