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TRUST INFORMATION

BOOKLET

Tokyo Ndlela Attorneys Inc.

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1. WHAT IS A TRUST

In terms of the Trust Property Control Act 57 of 1988, a trust is an arrangement in terms of which ownership in property is transferred to trustees to be administered or disposed of in accordance with a trust instrument for the benefit of identified beneficiaries or for the achievement of a defined objective.

In practical terms, a trust is a legal structure through which assets are separated from personal ownership and managed by trustees in a fiduciary capacity for the benefit of designated beneficiaries.

2. PARTIES TO A TRUST

An inter vivos trust typically involves:

- Founder (Settlor) – The person who establishes the trust and transfers initial trust property.
- Trustees – Individuals appointed to administer and control the trust property in accordance with the trust deed and applicable law.
- Beneficiaries – Persons or classes of persons who may benefit from the trust property

3. THE TRUST INSTRUMENT (TRUST DEED)

A trust is created through a written instrument (the Trust Deed).

The Trust Deed governs:

- The powers and duties of trustees
- The rights of beneficiaries
- Distribution mechanisms
- Administrative procedures
- Governance safeguards

The Trust Deed is submitted to the Master of the High Court for registration.

4. LEGAL STATUS OF A TRUST

A trust is not a juristic person in South African law.

Trust property is owned by the trustees in their official capacity as trustees, not in their personal capacities.

Trustees must act jointly (unless the deed provides otherwise) and must exercise their powers in good faith and in the best interests of the beneficiaries. Trustees may not bind the trust individually unless expressly authorised in the Trust Deed.

5. FORMS OF TRUSTS

5.1. Inter Vivos Trust

Created during the lifetime of the founder.

5.2. Testamentary Trust

Created in terms of a will and comes into operation upon the death of the testator.

6. PURPOSES OF A TRUST

Trusts are commonly established for:

- Estate planning
- Asset structuring
- Succession planning
- Protection of minor beneficiaries
- Holding business or investment assets
- Multi-generational wealth planning

The suitability of a trust depends on proper structuring, governance discipline, and ongoing compliance.

7. GOVERNANCE AND FIDUCIARY DUTIES

Trustees owe fiduciary duties to beneficiaries and must:

- Act independently and without conflict of interest
- Keep proper accounting records
- Act jointly (unless authorised otherwise)
- Exercise independent discretion
- Avoid treating trust property as personal property

Failure to properly administer a trust may expose trustees to personal liability.

8. INDEPENDENT TRUSTEE AND AVOIDANCE OF "SHAM TRUST" RISK

South African courts have scrutinised trusts where there is no meaningful separation between control and benefit.

To strengthen governance and reduce risk:

- At least one independent trustee is generally recommended; and
- Trustees must exercise genuine discretion and independent judgment.

Where a trust is abused or treated as an alter ego of the founder, a court may disregard the trust structure.

9. TAX AND REGULATORY COMPLIANCE

Trustees are responsible for ensuring that the trust remains compliant with evolving tax and regulatory requirements. Failure to comply may result in penalties, personal liability exposure, or adverse tax consequences.

Trusts are subject to various compliance obligations, including:

- Registration with the Master of the High Court
- Registration with SARS
- Submission of annual tax returns (ITR12T)
- Compliance with applicable income tax provisions
- Beneficial ownership disclosure requirements
- Maintenance of accounting records
- FICA compliance

Trust taxation can be complex and may involve:

- Flat-rate taxation in the trust
- Distribution taxation principles
- Loan account considerations
- Donations tax implications

Professional tax advice is strongly recommended.

10. REGISTRATION REQUIREMENTS

To register an inter vivos trust, the following documents are generally required:

- Original signed Trust Deed
- Prescribed application forms
- Acceptance of Trusteeship forms
- Certified copies of identity documents of trustees and founder
- Proof of address (for FICA compliance)
- Bond of Security (unless exempted)
- Applicable registration fee

Upon registration, the Master issues Letters of Authority, which authorise trustees to act.

Trustees may not transact on behalf of the trust prior to the issuance of Letters of Authority.

11. ONGOING ADMINISTRATION

After registration, trustees must ensure:

- Separate bank account in the name of the trust
- Proper accounting records
- Annual trustee meetings (where required)
- Compliance with tax filing obligations
- Maintenance of beneficiary records

A trust requires ongoing governance discipline and cannot merely exist “on paper.”

Trustees are expected to exercise independent judgment and maintain proper separation between personal and trust affairs at all times.

12. IMPORTANT CONSIDERATIONS

A trust is not automatically:

- An asset protection shield
- A tax avoidance mechanism
- Immune from scrutiny by creditors or courts

The effectiveness of a trust depends on:

- Proper drafting
- Independent governance
- Compliance with statutory requirements
- Genuine separation between ownership and benefit

Courts will examine the substance of how a trust is administered, not merely the wording of the Trust Deed.

13. HOW WE ASSIST

Tokyo Ndlela Attorneys Inc. provides:

- Trust structuring advisory
- Drafting of bespoke Trust Deeds
- Registration with the Master of the High Court
- Governance advisory
- Regulatory compliance guidance

We approach trust formation not as a template exercise, but as a structured legal and governance process aligned with your long-term objectives.

This booklet provides general information and does not constitute tax, financial, or investment advice. Specific advice should be obtained based on your circumstances.

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