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TRUST PROPERTY CONTROL ACT 57 OF 1988

[ASSENTED TO 1 JUNE 1988] [DATE OF COMMENCEMENT: 31 MARCH 1989]

(Afrikaans text signed by the State President)

as amended by

Justice Laws Rationalisation Act 18 of 1996

ACT

To regulate further the control of trust property; and to provide for matters connected therewith.

Section 1 Definitions

In this Act, unless the context otherwise indicates-

'banking institution' means an institution registered otherwise than provisionally as a bank in terms of the Banks Act, 1965 (Act 23 of 1965);

'building society' means a mutual building society registered finally as a mutual building society in terms of the Mutual Building Societies Act, 1965 (Act 24 of 1965), or a building society registered finally as a building society in terms of the Building Societies Act, 1986 (Act 82 of 1986);

'court' means the provincial or local division of the Supreme Court of South Africa having jurisdiction;

'financial institution' means a financial institution as defined in the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984);

'Master', in relation to any matter, means the Master, Deputy Master or Assistant Master of the Supreme Court appointed under section 2 of the Administration of Estates Act, 1965 (Act 66 of 1965), who under section 3 of this Act has jurisdiction in respect of the matter concerned;

'trust' means the 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 executor, tutor or curator in terms of the provisions of the Administration of Estates Act, 1965 (Act 66 of 1965);

'trustee' means any person (including the founder of a trust) who acts as trustee by virtue of an authorization under section 6 and includes any person whose appointment as trustee is already of force and effect at the commencement of this Act;

'trust instrument' means a written agreement or a testamentary writing or a court order according to which a trust was created;

'trust property' or 'property' means movable or immovable property, and includes contingent interests in property, which in accordance with the provisions of a trust instrument are to be administered or disposed of by a trustee.

Section 4 Lodgement of trust instrument

(1) Except where the Master is already in possession of the trust instrument in question or an amendment thereof, a trustee whose appointment comes into force after the commencement of this Act shall, before he assumes control of the trust property, upon payment of the prescribed fee, lodge with the Master the trust instrument in terms of which the trust property is to be administered or disposed of by him, or a copy thereof certified as a true copy by a notary or other person approved by the Master.

(2) When a trust instrument which has been lodged with the Master is varied, the trustee shall lodge the amendment or a copy thereof so certified with the Master.

Section 6 Authorization of trustee and security

(1) Any person whose appointment as trustee in terms of a trust instrument, section 7 or a court order comes into force after the commencement of this Act, shall act in that capacity only if authorized thereto in writing by the Master.

(2) The Master does not grant authority to the trustee in terms of this section unless-

(a) he has furnished security to the satisfaction of the Master for the due and faithful performance of his duties as trustee; or

(b) he has been exempted from furnishing security by a court order or by the Master under subsection (3) (a) or, subject to the provisions of subsection (3) (d), in terms of a trust instrument:

Provided that where the furnishing of security is required, the Master may, pending the furnishing of security, authorize the trustee in writing to perform specified acts with regard to the trust property.

(3) The Master may, if in his opinion there are sound reasons to do so-

(a) whether or not security is required by the trust instrument (except a court order), dispense with security by a trustee;

(b) reduce or cancel any security furnished;

(c) order a trustee to furnish additional security;

(d) order a trustee who has been exempted from furnishing security in terms of a trust instrument (except a court order) to furnish security.

(4) If any authorization is given in terms of this section to a trustee which is a corporation, such authorization shall, subject to the provisions of the trust instrument, be given in the name of a nominee of the corporation for whose actions as trustee the corporation is legally liable, and any substitution for such nominee of some other person shall be endorsed on the said authorization.