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Enhancing governance through the application of the rule of law.

COMMENTS ON THE REGULATION OF TRUSTS BILL, 2026

1. Introduction

1.1. The Institute for Governance and Law (IGL) is a non-profit, public benefit organisation that aims to improve governance through the application of the Rule of Law. The scope of the IGL's activities includes submissions to Parliament on a range of issues, including proposed legislation and regulations.

2. Concern around the definition of "beneficial owner"

2.1. The definition of **"beneficial owner"** in the Bill covers a very wide spectrum of persons who, in one way or another, are involved in any specific trust, including founders, trustees and beneficiaries. Details of these persons are to be included in comprehensive information registers, lodged at the Master's office. The intention appears to be to keep an accessible and complete register of all persons who have any bearing in the creation and operation of any trust. As we understand, this has been introduced to help give effect to South Africa's delisting from the Financial Action Task Force's (FATF) grey list. (As set out by SARS in https://www.sars.gov.za/latest-news/media-release-south-africas-exit-from-the-fatf-grey-list/). The task of the FATF, an intergovernmental body, is amongst others, to develop and refine international standards to combat money laundering and the financing of terrorism.

2.2. The very broad nature of the individuals included in the definition of "**beneficial owner**" in the definitions of the Bill produces anomalies. These include the following:

2.2.1. "… *(a)* a natural person who directly or indirectly ultimately owns the relevant trust property; …. ".

2.3. If it is accepted that all the property in a trust is effectively owned by that trust (or trustees acting in their capacity as trustees), this definition of "**beneficial owner**" makes no sense, as it is impossible for any person (other than a

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trustee) or entity to own property which is held in a trust. The definition of "**trust property**" confirms this in its wording:

2.3.1. "**"trust property"** means property which is to be administered or disposed of by a trustee according to the provisions of a trust instrument".

2.4. As a result, it is impossible for a natural person (other than a trustee) to own, directly or indirectly, any portion of the trust property. If the reason for including in this definition those persons who held such property as their own **before** it was included in the trust, is that such details need to be included in the register held at the Master's Office, it is all perfectly understandable. However, the fact remains that they are not the owners of any trust property but persons who may have owned it before that property was included in the trust.

2.5. It is therefore submitted that subsection (a) of the definition of "**beneficial owner**" is illogical. If details of former owners of the property need to be disclosed, that would be fine, but it would have to be done under a separate heading, such as "former owners of trust property".

3. Alternative to "beneficial owner"

3.1. If the content of the definition which is set out in subsection (a) needs to be included in the categories that have to be included in the Master's register, we would suggest that an alternative is used to "**beneficial owner**". Some of the other categories that are included in the definition do not fit in well with the concept of a "**beneficial owner**": for example, a founder – who may have been the owner of relevant assets before the trust was founded.

3.2. It would therefore make sense to insert an alternative to the use of the "**beneficial owner**" by using a concept like a "**trust stakeholder**". This would more easily cover all categories, and one could also include a former owner of the assets that were placed in trust in such a definition. Persons who control the trust arrangements, founders, trustees and beneficiaries would all logically fit into such an amended definition, and this would make the content of the intended legislation more easily intelligible.

4. Conclusion

4.1. In short, the IGL's concern is based on the legal principle that the sole owners of a trust are the trustees in their capacity as trustees, not beneficiaries or founders.

4.2. Adopting our recommendations, as set out in this document, will avoid possible interpretative confusion in the envisaged legislation on trusts – thus ensuring the effectiveness of steps taken in support of the broad objectives of the FATF.

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