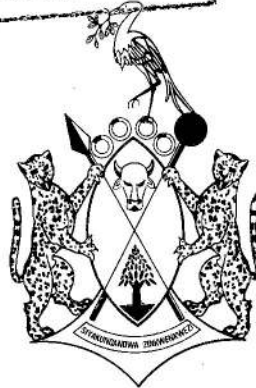


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**DEPARTMENT OF JUSTICE**

**GOVERNMENT NOTICE No. 90 OF 1993**

**CORRECTION NOTICE (DECREE No. 21 OF 1993)**

## **DEPARTMENT OF JUSTICE**

### **GOVERNMENT NOTICE No. 90 OF 1993**

#### **CORRECTION NOTICE**

1. The Extension of Criminal Jurisdiction Decree, 1993 (Decree No. 21 of 1993), as promulgated in Government Gazette No. 109 of 1 October 1993, is hereby corrected -

- (a) by the substitution in line 2 of section 4 for the word "abroad" of the word "aboard";
- (b) by the substitution in line 3 of section 4 for the expression "journey" of the word "journey"; and
- (c) by the substitution in line 7 of section 6 for the expression "performed" of the word "performed".

2. The Maintenance Amendment Decree, 1993 (Decree No. 23 of 1993), as promulgated in Government Gazette No. 111 of 1 October 1993, is hereby corrected by the substitution at the top of page 4 of the Gazette for the expression "(7A.)" of the expression "7A."

3. The Income Tax Amendment Decree, 1993 (Decree 2 of 1993), as promulgated in Government Gazette No. 12 of 19 February 1993, is hereby corrected by the substitution in line 5 of section 2 for the expression "14, section" of the expression "section 14".

## **DEPARTMENT OF FINANCE AND ECONOMIC DEVELOPMENT**

### **GOVERNMENT NOTICE No. 91 OF 1993**

#### **CORRECTION NOTICE: TAXATION AMENDMENT DECREE, 1993**

The Taxation Amendment Decree, 1993 (Decree 24 of 1993), as promulgated in Government Gazette No. 118 of 1 October 1993, is hereby corrected by the substitution in line 5 from the bottom of page 1 for the word "relinquishment" of the word "relinquishment".

#### **RE-INSTATEMENT OF DEREGISTERED COMPANIES**

The undermentioned company has been incorrectly deregistered and is now re-instated immediately as if it has never been deregistered.

88/001595 Bergharitus (Pty) Ltd.

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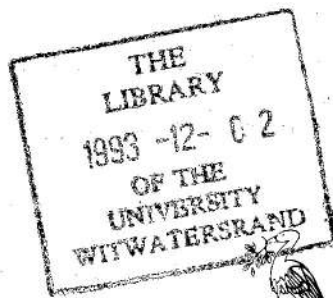
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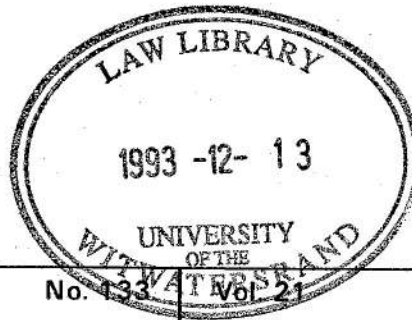
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DEPARTMENT OF THE COUNCIL OF STATE

GOVERNMENT NOTICE No. 93 OF 1993

It is hereby notified that the Chairman of the Council of State has assented to the following decree which is hereby published for general information:-

TRUST PROPERTY CONTROL DECREE, 1993  
(Decree No. 26 of 1993)

# COUNCIL OF STATE — REPUBLIC OF CISKEI

## TRUST PROPERTY CONTROL DECREE, 1993

### DECREE

To regulate the control of trust property and to provide for incidental matters.

*[English text signed by the Chairman of the Council of State. Assented to in 1 November 1993.]*

**BE IT DECREED** by the Council of State of the Republic of Ciskei, as follows:-

1. Definitions. — In this decree, unless the context indicates otherwise -

**"building society"** means a building society finally registered as a mutual building society in terms of the Mutual Building Societies Act, 1965 (Act 24 of 1965);

**"Ciskei"** means the Republic of Ciskei;

**"court"** means the Supreme Court;

**"deposit-taking institution"** means an institution registered otherwise than provisionally as a deposit-taking institution in terms of the Deposit-taking Institutions Decree, 1993;

**"financial institution"** means a financial institution as defined in the Financial Institutions (Investment of Funds) Decree, 1993;

**"Master"** means the Master, Deputy Master or Assistant Master of the court;

**"Minister"** means the Minister of Justice;

**"repealed law"** means any law repealed by this decree;

**"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 an executor, or a tutor or a curator in terms 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 decree;

**"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.

2. **Certain document deemed to be trust instrument.** — If a document represents the reduction to writing of an oral agreement by which a trust was created or varied, such document shall for the purposes of this decree be deemed to be a trust instrument.

## TRUST PROPERTY CONTROL DECREE, 1993

**3. Jurisdiction of Master.** — Jurisdiction shall lie with the Master in respect of all trust property which is to be administered or disposed of in terms of a testamentary writing.

**4. Lodgement of trust instrument.** — (1) Except where the Master is already in possession of the trust instrument or an amendment thereof, a trustee whose appointment comes into force after the commencement of this decree shall, before he assumes control of the trust property, 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) and at the same time pay the prescribed fee.

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

**5. Notification of address.** — A person whose appointment as trustee comes into effect after the commencement of this decree, shall furnish the Master with an address for the service on him of notices and process and shall, in case of change of address, notify the Master by registered post of the new address within fourteen days.

**6. Authorization of trustee and furnishing of security.** — (1) Any person whose appointment as trustee by a trust instrument or in terms of section 7 or a court order comes into force after the commencement of this decree shall act in that capacity only if authorized thereto in writing by the Master.

(2) The Master shall 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), by the trust instrument;

Provided that, where 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 the furnishing of security by a trustee;
- (b) reduce or cancel any security which has been furnished;
- (c) order a trustee to furnish additional security;
- (d) order a trustee, who has been exempted from furnishing security by the trust instrument (except a court order), to furnish security.

(4) If 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.

**7. Appointment of trustee or co-trustee by Master.** — (1) If the office of trustee cannot be filled or becomes vacant the Master shall, in the absence of any provision in the trust instrument, after consultation with as many of the interested parties as he may deem adequate appoint any person as trustee.

(2) When the Master considers it desirable he may, notwithstanding the provisions of the trust instrument, appoint any person whom he deems to be suitable as co-trustee of any serving trustee.

**8. Foreign trustees.** — When a person who was appointed outside Ciskei as trustee has to administer or dispose of trust property in Ciskei, the provisions of this decree shall apply to the said trustee in respect of that trust property and the Master may authorize such trustee under section 6 to act as trustee in respect of that property.



## TRUST PROPERTY CONTROL DECREE, 1993

**9. Care, diligence and skill required of trustee.** — (1) A trustee shall in the performance of his duties and the exercise of his powers act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another.

(2) Any provision contained in a trust instrument shall be void in so far as it purports to exempt a trustee from, or to indemnify him against, liability for breach of trust in any case where he fails to show the degree of care, diligence and skill required by subsection (1).

**10. Trust account.** — Whenever a person receives money in his capacity as trustee, he shall deposit such money in a separate trust account at a deposit-taking institution or building society.

**11. Registration and identification of trust property.** — (1) Subject to the provisions of the Financial Institutions (Investment of Funds) Decree, 1993, section 40 of the Administration of Estates Act, 1965 and the provisions of the trust instrument, a trustee shall -

- (a) indicate clearly in his bookkeeping the property which he holds in his capacity as trustee;
- (b) if applicable, register trust property or keep it registered in such a manner as to make it clear from the registration that it is trust property;
- (c) make any account or investment at a financial institution identifiable as a trust account or trust investment;
- (d) in the case of trust property other than property referred to in paragraphs (b) or (c), make such property identifiable as trust property in the best possible manner.

(2) In so far as the registration or identification of trust property being administered by a trustee at the commencement of this decree does not comply with the requirements of subsection (1), the trustee shall within a period of 12 months after the said commencement take such steps or cause such steps to be taken as may be necessary to bring the registration or identification of such property into conformity with the said requirements.

(3) Upon application made to him in terms of subsection (2) to bring the registration of trust property into line with the provisions of subsection (1), the officer in charge of the deeds registry, where such trust property is registered, shall free of charge take such steps as may be necessary to effect the required registration.

**12. Separate position of trust property.** — Trust property shall not form part of the personal estate of the trustee except in so far as he as trust beneficiary is entitled to any trust property.

**13. Power of court to vary trust provisions.** — If a trust instrument contains any provision which brings about consequences which, in the opinion of the court, the founder of a trust did not contemplate or foresee and which -

- (a) hampers the achievement of the objects of the founder, or
- (b) prejudices the interests of beneficiaries, or
- (c) is in conflict with the public interest;

the court may, on the application of the trustee or of any person who in the opinion of the court has a sufficient interest in the trust property, delete or vary such provision or make in respect thereof any order which the court deems just, including an order whereby particular trust property is substituted for particular other property or an order terminating the trust.

**14. Variation of trust instrument.** — Whenever a trust beneficiary who is under tutorship or curatorship becomes entitled to a benefit in terms of the trust instrument, the tutor or curator of such beneficiary may on behalf of the beneficiary agree to the amendment of the provisions of the trust instrument, provided such amendment is to the benefit of the beneficiary.

## TRUST PROPERTY CONTROL DECREE, 1993

**15. Report of irregularity.** — If an irregularity in connection with the administration of a trust comes to the notice of a person who audits the accounts of that trust, such person shall, if in his opinion it is a material irregularity, report it in writing to the trustee and, if such irregularity is not rectified to the satisfaction of such person within one month as from the date upon which it was reported to the trustee, that person shall report it in writing to the Master.

**16. Master may call upon trustee to account.** — (1) A trustee shall, if the Master so requests in writing, account to the Master to his satisfaction and in accordance with his requirements, for the administration and disposal of the trust property and shall, if the Master also so requests in writing, deliver to the Master any book, record, account or document relating to his administration or disposal of the trust property and shall to the best of his ability answer honestly and truthfully any question put to him by the Master in connection with the administration and disposal of the trust property.

(2) The Master may, if he deems it necessary, cause an investigation to be carried out by some fit and proper person appointed by him into the trustee's administration and disposal of trust property.

(3) The Master shall make such order as he deems fit in connection with the costs of the investigation contemplated in subsection (2).

**17. Custody of documents.** — A trustee shall not, unless authorized thereto by the Master in writing, destroy any document which serves as proof of the investment, safe custody, control, administration, alienation or distribution of trust property before the expiry of a period of five years from the termination of the trust.

**18. Copies of documents.** — Subject to the provisions of section 5(2) of the Administration of Estates Act, 1965, regarding the documents in connection with the estate of a deceased person, the Master shall, on application made to him in writing and on payment of the prescribed fee, furnish a certified copy of any document under his control relating to trust property to a trustee, his surety or his representative or to any other person who in the opinion of the Master has sufficient interest in such document.

**19. Failure by trustee to account or perform duties.** — If a trustee fails to comply with a request by the Master in terms of section 16 or fails to perform any duty imposed upon him by the trust instrument or by law, the Master or any person having an interest in the trust property may apply to the court for an order directing the trustee to comply with such request or to perform such duty.

**20. Removal of trustee.** — (1) A trustee may at any time, on the application of the Master or of any person having an interest in the trust property, be removed from office by the court if it is satisfied that such removal will be in the interests of the trust and its beneficiaries.

(2) A trustee may at any time be removed from office by the Master -

- (a) if he has been convicted in Ciskei or elsewhere of any offence of which dishonesty is an element or of any other offence for which he has been sentenced to imprisonment without the option of a fine; or
- (b) if he fails to give security or additional security, as the case may be, to the satisfaction of the Master within two months after having been requested thereto or within such further period as is allowed by the Master; or
- (c) if his estate is sequestered or liquidated or placed under judicial management; or
- (d) if he has been declared by a competent court to be mentally ill or incapable of managing his own affairs or if he is, under the Mental Health Act, 1986 (Act 23 of 1986), detained as a patient in an institution; or
- (e) if he fails to perform satisfactorily any duty imposed on him by or under this decree or to comply with any lawful request of the Master.

(3) If a trustee authorized to act under section 6(1) is removed from office or if he resigns, he shall without delay return his written authorization to the Master.



## TRUST PROPERTY CONTROL DECREE, 1993

**21. Resignation of trustee.** — Whether or not the trust instrument permits the trustee to resign, the trustee may resign by notice in writing delivered to the Master and the ascertained beneficiaries who have legal capacity, or to the tutors or curators of the beneficiaries of the trust who are under tutorship or curatorship.

**22. Remuneration of trustee.** — A trustee shall for the performance of his official duties be entitled to the remuneration provided for in the trust instrument or, where no such provision is made, to a reasonable remuneration which shall, in the event of a dispute, be fixed by the Master.

**23. Access to court.** — Any person, who feels aggrieved by an authorization, appointment or removal of a trustee by the Master or by any decision, order or direction of the Master made or issued under this decree, may apply to the court for relief and the court shall be competent to consider the merits of any such matter, to take evidence and to make any order it deems fit.

**24. Regulations.** — The Minister may make regulations regarding any matter which in terms of this decree is required or permitted to be prescribed.

**25. Application of decree.** — This decree shall not apply -

- (a) to a trust which has been exempted by law from its provisions or from the provisions of any repealed law; or
- (b) to a scheme in terms of the Participation Bonds Act, 1981 (Act 55 of 1981).

**26. Amendment or repeal of laws and savings.** — (1) The laws mentioned in the Schedule are hereby repealed or amended to the extent indicated in the third column thereof.

(2) Anything done under any provision of any law repealed by subsection (1) which may be done under a corresponding provision of this decree shall be deemed to have been done under that corresponding provision.

**27. Short title and commencement.** — This decree shall be called the Trust Property Control Decree, 1993 and shall come into operation on a date to be fixed by the Head of State by proclamation in the *Gazette*.

### SCHEDULE

#### LAWS AMENDED OR REPEALED (SECTION 26)

No. and year of law	Short title	Extent of amendment or repeal
Act 34 of 1934	Trust Moneys Protection Act, 1934	The repeal of the whole.
Act 19 of 1941	Attorney's Admission Amendment and Legal Practitioners' Fidelity Fund Act, 1941	The substitution for section 5 of the following section: "Obligation upon executors, etc., to provide security incapable of being waived.  5. The obligation to provide security imposed by any law upon executors, tutors, curators or trustees in insolvency, shall not be capable of being waived unless the instrument by which they are nominated expressly directs that such security shall be dispensed with or unless the Supreme Court on application grants special exemption therefrom."

# TRUST PROPERTY CONTROL DECREE, 1993

## SCHEDULE

### LAWS AMENDED OR REPEALED (SECTION 26)

No. and year of law	Short title	Extent of amendment or repeal
Act 66 of 1965	Administration of Estates Act, 1965	<p>1. The amendment of section 1-</p> <p>(a) by the deletion of the definitions of "accountant", "administrator" and "letters of administratorship"; and</p> <p>(b) by the insertion of the following definition after the definition of "territory":</p> <p>"'trustee' means a trustee as defined in section 1 of the Trust Property Control Decree, 1993;"</p> <p>2. The amendment of section 5 by the substitution for the proviso to subsection (2) of the following proviso:</p> <p>"Provided that any executor, trustee, tutor or curator (or his surety) may inspect any such document or cause it to be inspected without payment of any fee."</p> <p>3. The amendment of section 40 -</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>"(1) If a trustee has been appointed to administer any property of a deceased person under his will (including in the case of a massed estate any property forming part of the share of the survivor or survivors of that estate which according to a distribution account is to be administered by such trustee) the executor shall -</p> <p>(a) deliver to the trustee such of the movable property as should, according to the distribution account, be delivered to him;</p> <p>(b) cause the terms of the will, or a reference thereto, in so far as they relate to the administration to be endorsed against the title deeds of such of the property as is immovable, and against any mortgage or notarial bond forming part of the property, and deliver the title deeds and any such bond subject to the provisions of section 41(2), to the trustee;</p>

# TRUST PROPERTY CONTROL DECREE, 1993

No. and year of law	Short title	Extent of amendment or repeal
		<p>and</p> <p>(c) lodge with the Master the trustee's acquittance for any such movable property, deeds or bond, and a certificate by the registration officer concerned or a conveyancer that such deeds or bond have been endorsed as aforesaid."; and</p> <p>(b) by the deletion of subsections (2) and (3).</p> <p>4. The repeal of chapter III.</p> <p>5. The amendment of sections 95, 96, 98 and 99 by the deletion of the word "administrator", wherever it occurs.</p> <p>6. The amendment of section 101 -</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>"(1) A copy certified by the Master of any letters of executorship, tutorship or curatorship lodged with him under section 21, or under the said section read with section 74, or of a copy of any such letters, shall be admissible in evidence as if it were the original letters.";</p> <p>(b) by the deletion of paragraph (b) of subsection (2); and</p> <p>(c) by the substitution for subsection (3) of the following subsection:</p> <p>"(3) A certificate under the hand of the Master shall be <i>prima facie</i> proof of any loss referred to in section 23(5) or in section 77(5) and of any value referred to in section 35(1) or in section 46 or in the last-mentioned section as applied by section 85.".</p> <p>7. Amendment of section 102 -</p> <p>(a) by the substitution for paragraph (f) of subsection (1) of the following paragraph:</p> <p>"(f) being an executor will-fully distributes any estate otherwise than in accordance with the provisions of section 35(12), or of the relevant will; or";</p>

# TRUST PROPERTY CONTROL DECREE, 1993

No. and year of law	Short title	Extent of amendment or repeal
		<p>(b) by the substitution for paragraph (g) of subsection (1) of the following paragraph:</p> <p>“(g) contravenes or fails to comply with the provisions of section 9(1) or (3), 13, 27(1), 35(13), 47, 71, 78, 83, 93(1) or (3) or with any notice under section 9(2); or”;</p> <p>(c) by the substitution for paragraph (h) of subsection (1) of the following paragraph:</p> <p>“(h) contravenes or fails to comply with the provisions of section 6(4), section 8(1) or (2), section 11(1), section 26(1) or of the last-mentioned section as applied by section 85, section 28(1), (2) or (3) or of the last-mentioned section as applied by section 12(7) or by section 85, section 30, section 35(1) or with any direction under section 35(2) or any notice under section 43(3) or (4); or”; and</p> <p>(d) by the substitution for paragraph (i) of subsection (1) of the following paragraph:</p> <p>“(i) contravenes or fails to comply with the provisions of sections 7(1) or (2), section 35(8), section 41(1) section 54(5) or of the last-mentioned section as applied by section 85, or with any notice under section 7(3) or any direction under section 28(6) or of the last-mentioned section as applied by section 85 or fails without reasonable excuse to comply with a notice under section 32(1)(b) or, having appeared in answer to such notice, refuses to take the oath or to submit to examination or to answer fully and satisfactorily any lawful question put to him.”.</p> <p>8. The repeal of section 108.</p> <p>9. The substitution for the long title of the following long title:</p> <p>“ACT</p> <p>To consolidate and amend the law relating to the liquidation and distribution of the estates of deceased persons, the administration of the property of minors and persons under curatorship and of derelict estates; to regulate the rights of beneficiaries under mutual wills made by any two or more persons and to provide for incidental matters.”.</p>

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