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Majority Decision-Making by Trustees: Can a Trust Deed Lawfully Permit Decisions by a Simple Majority of Trustees?

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17 July 2026

INTRODUCTION

The starting point in South African trust law is that trustees must act jointly when administering a trust and when purporting to bind it in dealings with third parties. This principle flows from the nature of trusteeship: trustees hold and administer trust property collectively, rather than as individual office-bearers acting alone.

A recurring question, however, is whether a trust deed may validly depart from that default position by allowing decisions of trustees to be taken by a simple majority vote, rather than requiring unanimity each and every time.

The short answer is yes, provided that the trust deed clearly authorises the decision-making mechanism (by majority, rather than by unanimity) and provided that the trustees comply with the deed's procedural requirements for the taking of that decision. South African courts have consistently recognised that the rule requiring trustees to act jointly applies only in the absence of a contrary provision in the trust deed.

Consequently, where the trust deed expressly authorises majority voting or quorum-based decision-making, those provisions are generally valid and enforceable, provided the prescribed procedures in the deed itself are followed.

The extent and effect of such provisions in a trust deed departing from and amending the common law position, has been clarified in several important judgments, most notably *Thorpe and Others v Trittenwein and Another* 2007 (2) SA 172 (SCA), *Shepstone & Wylie Attorneys v De Witt and Others* NNO 2026 (1) SA 349 (CC) (1 August 2025), and *Jansen NO v Ringwood Investments 87 CC* 2013 JDR 1265 (GNP).

This note examines the case law that establishes the default position in trust law – that trustees' decisions must be taken unanimously; and the manner in which our courts have authorized a departure from that position if the trust deed authorises decisions of trustees to be made on majority.

THE DEFAULT RULE: TRUSTEES MUST ACT JOINTLY

The starting point in South African trust law is that trustees must exercise their powers jointly. A trust is not a separate juristic person in the same way as a company; it acts through its trustees, who exercise the powers conferred by the trust deed and their letters of authority. Accordingly, unless the trust deed provides otherwise, decisions concerning the administration of trust property and transactions entered into on behalf of the trust ordinarily require all trustees to be notified and given a proper opportunity to participate.

This principle has long been recognised by the courts and is rooted in the notion that trustees, like co-owners of property, must act collectively when exercising powers vested in them. Individual trustees possess authority by virtue of their appointment and the letters of authority issued by the Master of the High Court, but that authority generally becomes effective only when exercised jointly with the other trustees. That rule is important, but it is not absolute: the trust deed may validly prescribe a different decision-making mechanism.

THE EXCEPTION: MAJORITY DECISION-MAKING UNDER THE TRUST DEED

In *Thorpe and Others v Trittenwein and Another*[1], the Supreme Court of Appeal reaffirmed the general principle that trustees must act jointly, but confirmed that the principle yields where the trust deed prescribes a valid alternative decision-making mechanism.

The trust deed in *Thorpe* provided for three trustees and stipulated that decisions were to be taken by majority vote. The Court accepted that such a provision constituted a valid departure from the default rule. It emphasised that a trust is not bound by the unilateral assent of one trustee, but may be bound by a majority decision properly taken by the trustees where the trust deed expressly permits that mechanism.

The Court further observed that, even in the absence of a contrary provision in the trust deed, trustees may authorise another person to act on their behalf. The authorised representative may be one of the trustees, provided the authority is validly conferred in accordance with the trust deed and any applicable statutory formalities. The significance of *Thorpe* lies in its clear confirmation that trust deeds may validly regulate decision-making procedures and may authorise trustee decisions to be taken by a majority rather than unanimously.

CLARIFICATION BY THE CONSTITUTIONAL COURT

The Constitutional Court revisited this issue in *Shepstone & Wylie Attorneys v De Witt and Others* NNO 2026 (1) SA 349 (CC). The case concerned whether a trust could be bound by a contract signed by only two of its three trustees at a meeting from which the third trustee was absent.

The Supreme Court of Appeal had previously held that the contract was invalid, reasoning that even where a trust deed authorises majority decision-making, all trustees must nevertheless sign the relevant resolution. The Constitutional Court rejected this approach and held that the Supreme Court of Appeal had incorrectly interpreted South African trust law. The Court explained that South African trust law permits the trust deed itself to regulate how trustees make decisions, including by majority vote or through quorum-based procedures. The Constitutional Court distinguished between two categories of trusts:

1. **Trusts Requiring Unanimous Trustee Decisions** : In such trusts, trustees are required to act both jointly and unanimously. Every trustee must be involved in the decision-making process, and all trustees must agree before a valid decision can be taken.
2. **Trusts Permitting Majority or Quorum-Based Decisions** : In trusts permitting majority or quorum-based decisions, trustees must still act jointly in the sense that all trustees must be informed of meetings and afforded an opportunity to participate. However, unanimity in the taking of decisions is not required. Once the requirements of the trust deed have been met (inasumuch as whatever procedure prescribed for the taking of a decision has been complied with), a majority decision is sufficient to bind the trust.

The Constitutional Court further held that where a trust deed establishes a quorum, trustees constituting that quorum may validly conduct trust business and make binding decisions at a properly convened meeting. In the case before the Court, the trust deed provided that two trustees constituted a quorum. Consequently, the two trustees who attended the meeting were authorised to conclude the contract even though the third trustee was absent, provided proper notice of the meeting had been given to all trustees.

Importantly, the Court rejected the argument that quorum and majority provisions apply only to the internal administration of a trust. Instead, it confirmed that such provisions are equally effective in relation to external dealings, including contracts concluded with banks, service providers, purchasers, organs of state, regulators, and other third parties, where the trust deed authorises the relevant trustees to bind the trust.

INTERNAL MANAGEMENT AND EXTERNAL DEALINGS

Internal management concerns decisions among trustees; external dealings concern acts intended to bind the trust in relation to third parties. The distinction between internal management and external dealings is discussed extensively in Honoré's South African Law of Trusts. Internally, trustees may organise their affairs in whatever manner the trust deed permits. The deed may provide for:

- Majority voting;
- Quorum-based decision-making;
- Delegation of certain functions; or
- Committees of trustees.

However, when trustees deal with third parties, the validity of the transaction depends on the authority conferred by the trust deed and compliance with any prescribed procedures. Unless the deed expressly authorises a smaller number of trustees to bind the trust, third parties must generally assume that all trustees must act together.

For example, if a trust deed expressly authorises two of three trustees to sign transfer documents, institute litigation, or conclude contracts, those acts may validly bind the trust if all prescribed procedures have been followed. Conversely, if the deed contains no such provision, third parties cannot safely rely on the signatures of only some trustees.

As a matter of prudent contracting, third parties should obtain and review the relevant trust deed, letters of authority, and resolutions before relying on the authority of fewer than all trustees. A trust will not ordinarily be bound by acts performed outside the authority conferred by the deed.

Although estoppel may, in limited circumstances, assist an innocent third party who relied on a misleading representation of authority, it is unlikely to assist where the third party knew, or ought reasonably to have known, that the trust deed did not authorise the trustees' conduct.

PRACTICAL IMPLICATIONS FOR TRUSTEES AND THIRD PARTIES

In practice, trustees and third parties should not assume that a majority of trustees can bind a trust merely because a majority supports a decision. They should first check the trust deed, the letters of authority, any quorum and voting provisions, the required form of resolution, and any signature or delegation requirements. Where the transaction involves immovable property, public authorities, regulatory approvals, or significant contractual obligations, those checks should be recorded carefully before the trust acts.

CONCLUSION

It is lawful for a trust deed to provide that decisions may be taken by a simple majority of trustees. The general rule requiring trustees to act jointly is a default rule, but it remains important unless the trust deed clearly provides otherwise. The Supreme Court of Appeal in *Thorpe and Others v Trittenwein and Another*[2] confirmed that trust deeds may validly authorise majority decision-making, while the Constitutional Court in *Shepstone & Wylie Attorneys v De Witt and Others NNO*[3] clarified that properly adopted majority or quorum decisions can bind a trust both internally and externally. At the same time, *Jansen NO v Ringwood Investments 87 CC*[4] demonstrates that trustees must comply strictly with the procedural requirements contained in the trust deed. Accordingly, the validity of trustee decisions depends not on a rigid requirement of unanimity, but on faithful adherence to the decision-making framework established by the trust deed itself. Where the deed authorises majority voting or quorum-based resolutions, South African law recognises those mechanisms. Properly adopted decisions may bind the trust, provided the trustees follow the prescribed procedures.

[1] *Thorpe and Others v Trittenwein and Another* 2007 (2) SA 172 (SCA).

[2] *Thorpe and Others v Trittenwein and Another* 2007 (2) SA 172 (SCA)

[3] *Shepstone & Wylie Attorneys v De Witt and Others NNO* 2026 (1) SA 349 (CC) (1 August 2025)

[4] *Jansen NO v Ringwood Investments 87 CC* 2013 JDR 1265 (GNP).

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