



NON-PROFIT TRUSTS AND BENEFICIAL OWNERSHIP

By Ricardo Wyngaard

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RICARDO WYNGAARD ATTORNEYS which is aimed at updating the non-profit sector on relevant legal issues.

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RICARDO WYNGAARD

ATTORNEYS is a law practice that specialises in rendering advice and assistance on non-profit law and governance.

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The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022 (the Amendment Act) introduced several changes to the Trust Property Control Act (the Trust Act) that are also relevant to non-profit trusts.

Firstly, the amended section 1 of the Trust Act contains a definition for ‘*beneficial owner*’, which includes: ‘a natural person who exercises effective control of the administration of the trust arrangements that are established pursuant to a trust instrument’ and ‘each founder of the trust’ and ‘each trustee of the trust’.

This definition is wide enough to apply to non-profit trusts. Put differently, non-profit trusts also have beneficial owners, as defined in the amended Trust Act.

Secondly, a trustee must in terms of the new section 11A establish and record the ‘beneficial ownership’ of the (non-profit) trust, keep a record of the ‘beneficial ownership’ of the (non-profit) trust and lodge the register of the prescribed information relating to the ‘beneficial owners’ with the relevant Master of the High Court.

Trustees must keep the above information up to date.

Thirdly, trustees must make the above information available to any person, as prescribed.

Fourthly, trustees who fail to comply with, amongst other, an obligation referred to in section 11A(1) of the amended Trust Act, commits an offence and on conviction is liable to a fine not exceeding R10 million, or imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

Fifthly, the amended section 6 (1A) of the amended Trust Act introduces several factors that will disqualify a person from being authorised as a trustee.

The above amendments come into effect on 1 April 2023. To access the proposed draft regulations, as published by the Minister of Justice and Correctional Services, click here:

<https://www.justice.gov.za/legislation/invitations/20230111-TPCA-BeneficialOwnershipRegisters-Regulations.pdf>

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