## TRUSTS AND THE RECENT LEGISLATIVE CHANGES



A trust is a legal arrangement where assets or property are held by one party (the trustee) for the benefit of others (the beneficiaries). Recent legislative changes have significant consequences for non-compliance.

We discuss these changes below, highlighting trust administration and the role of an independent trustee.

## New Compliance Obligations

The legislative changes aim to improve transparency in beneficial ownership within South Africa's regulatory framework.

FICA: Under the amended Financial Intelligence Centre Act 38 of 2001 ("FICA"), any person involved in creating or managing trusts must register as an accountable institution. This includes implementing a Risk Management and Compliance Programme (RMCP) to report suspicious transactions and combat money laundering and terrorist financing.

TPCA: The Trust Property Control Act 57 of 1988 ("TPCA") has been amended to require trustees and the Master of the High Court to maintain registers of beneficial owners. Effective 1 April 2023, trustees must record and keep current information about beneficial owners and the accountable institutions they engage with. Beneficial owners are always natural persons, even when the founder, beneficiary, or trustee is a legal entity. Trustees must also inform accountable institutions that their transactions involve trust property and keep detailed records as prescribed by regulations.

Failure to comply with these requirements can result in severe penalties, including fines up to R 10 million or imprisonment for up to five years, or both.

SARS: All trusts must register with SARS and submit annual returns, including beneficial ownership information, which will be cross-referenced with the Master's records. As of 23 June 2023, Income Tax Returns for Trusts (ITR12T) require more detailed information. Trustees must also provide SARS with all distributions made to beneficiaries starting May 2024.

## Trust Administration vs. Independent Trustee

**Trust Administration** involves managing trust assets, including record-keeping, asset management, tax filings, distributions to beneficiaries, and legal compliance. Professional assistance from attorneys, accountants, independent trustees, or financial advisors is often necessary.

Independent Trustee plays a crucial role in trust administration, ensuring that the trust is managed in the best interests of the beneficiaries. They must not be a beneficiary or related to other trustees or beneficiaries and must fulfil fiduciary duties, maintain accurate records, and ensure legal compliance. Since 2017, the Chief Master of the High Court has mandated the appointment of an independent trustee for all new family business trusts being registered.

Conclusion

FICA requires anyone who creates or manages trusts for clients, including independent trustees, to register as accountable institutions. They must also have policies and procedures in place to prevent money laundering and terrorist financing.

Amendments to the TPCA now require keeping registers of the beneficial owners of trusts. Trustees must keep up-to-date records of who the beneficial owners are and the accountable institutions they work with. Not following these rules can lead to serious penalties.

SARS requires all trusts, even inactive ones, to be registered and submit annual returns. Trustees must provide detailed information about the beneficial owners, which will be checked against records held by the Master.

Trust administration involves taking care of the trust's assets, keeping records, managing assets, filing taxes, making distributions to beneficiaries, and following legal requirements. The professional staff at Royce Steyl White Inc. can assist in this being done correctly. Do not assume your trusted adviser handles this for you.

An independent trustee, who is not a beneficiary or related to other trustees or beneficiaries, is important for managing a trust. They act in the best interests of the beneficiaries, manage and distribute trust assets according to the trust deed, fulfil fiduciary duties, keep accurate records, communicate with beneficiaries, and ensure compliance with laws and regulations. Make sure your independent trustee meets these new compliance requirements.

South Africa's trust laws have evolved to enhance beneficial ownership transparency.

Compliance with FICA and TPCA is mandatory for those involved in trust creation and administration. Despite the increased obligations, Royce Steyl White Inc. is positioned to ensure that your trust is and remains compliant.

RSW provides legal assistance to both trusts and trustees and by working in conjunction with our extended network we can assist you with all your trust-related needs.

Do not hesitate to contact us on <a href="mailto:info@rswlaw.co.za">info@rswlaw.co.za</a> to find out more about how we can help you.



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