

Trust legislation amendments: What 'Beneficial Ownership' means



By [Graeme Palmer](#)

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On 29 December 2022, the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act was assented to by the President. The legislation was rushed through Parliament at the end of 2022 as part of South African efforts to avoid greylisting. Included in this legislation are amendments to the Trust Property Control Act and the introduction of a new definition of a 'Beneficial Owner' of a trust.



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The new definition creates five broad classes of beneficial owners of a trust, namely:

- a natural person who, directly or indirectly, ultimately owns the relevant trust property;
- a natural person who exercises effective control of the administration of the trust arrangements that are established pursuant to a trust instrument;
- each founder of the trust;
- each trustee of the trust; and
- each named beneficiary in the trust deed.

The purpose of creating classes of beneficial owners is to place an obligation on the Trust and the Master to keep records of the individuals who fall within these classes, which record will be useful to combat money laundering and terrorism. Although it may have been unintended by the legislature, deeming every founder, trustee and named beneficiary to be a beneficial owner of a trust will have legal and tax consequences.



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Beneficial ownership has a particular meaning. Beneficial ownership of the trust assets is different from “legal ownership” of trust assets, which vests in the trustees responsible for administering the trust. A trustee or founder cannot be said to be beneficial owners as they have no rights of use or enjoyment of the trust assets. Central to the concept of a trust is a separation between ownership or control and benefit. A founder has no claim to the assets of a trust even if they once belonged to him. Neither do trustees who are responsible for administering the assets. Furthermore, not all beneficiaries have a vested right to trust assets; for example, discretionary beneficiaries only have a contingent right to the assets.

The taxation of a trust beneficiary is triggered by that beneficiary acquiring a vested right to an amount or asset held by a trust. At the point of vesting, the beneficiary has use and enjoyment of the trust asset or amount and can be said to be a beneficial owner. Given that all parties to a trust (including the founder, trustees and discretionary beneficiaries) are to be deemed as beneficial owners, there is likely to be some legal confusion on these parties’ rights and obligations. The change to the Trust Property Control Act will only take effect upon proclamation by the President and therefore can still be amended.

ABOUT GRAEME PALMER

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