

TRUSTS

Trust Moneys Protection Act 34 of 1934, as amended in South Africa to November 1979

Summary: This Act ([SA GG 2201](#)) protects trust moneys. It provides for the registration of trust deeds and, in some circumstances, requires security from trustees.

Applicability to SWA: Section 8A(1) states: “Subject to the provisions of subsections (2) and (3), this Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” Subsection (2) exempted certain trustees appointed prior to the Act from the provisions of the Act. Subsection (3) specifies that the Magistrate of Rehoboth shall be considered the “Master” where a trustee is a member of the Rehoboth Baster community. (In other circumstances “Master” is defined as the Master of the Supreme Court of South Africa.)

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended. There were no amendments to the Act in South Africa after that date and prior to Namibian independence. The Act was repealed in South Africa by the *Trust Moneys Control Act 57 of 1988* ([RSA GG 11357](#)) which was not made expressly applicable to SWA.

Amendments: The following pre-independence South African amendment was applicable to SWA –

- *General Law Amendment Act 57 of 1975* ([RSA GG 4670](#)), which inserted section 8A making the Act applicable to SWA.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on the Master of the High Court in respect of trusts.

Regulations: Regulations are authorised by section 8 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Cases: *Ellis & Others NNO v Noabeb* 2015(2) NR 325 (HC) (a sole trustee cannot be a sole beneficiary).