



Republic of Namibia
Annotated Statutes

Trust Moneys Protection Act 34 of 1934 (SA)

(SA GG 2201)

came into force in South West Africa on 20 June 1975,
when section 8A of the Act was inserted by Act 57 of 1975

APPLICABILITY TO SOUTH WEST AFRICA: Section 8A(1), inserted by Act 57 of 1975, 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 TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. There were no amendments to the Act in South Africa after that date and prior to Namibian independence; the Act was repealed in South Africa by the *Trust Moneys Control Act 57 of 1988* (RSA GG 11357), which did not apply to South West Africa because it was not made expressly so applicable.

as amended by

General Law Amendment Act 57 of 1975 (RSA) (RSA GG 4760)

came into force in relevant part on date of publication: 20 June 1975

ACT

To provide for the protection of trust moneys.

[No information about signature or date of assent is provided in the Government Gazette.]

ARRANGEMENT OF SECTIONS

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BE IT ENACTED by the King's Most Excellent Majesty the Senate, and the House of Assembly of the Union of South Africa, as follows:-

Definitions

1. In this Act -

“Court” means the provincial division of the Supreme Court of South Africa having jurisdiction or any judge thereof and whenever a matter in relation to which this expression is used is within the jurisdiction of a local division of the Supreme Court, the expression “court” includes that local division or any judge thereof.

“Master” means the Master of the Supreme Court of South Africa -

- (a) having jurisdiction in respect of the estate or any part of the estate of the settlor, if the written instrument operates by way of testamentary disposition, or
- (b) within whose jurisdiction the greater portion of the settled moneys are being administered, if such instrument operates *inter vivos* or if such instrument operates by way of testamentary disposition and no master has any jurisdiction in respect of any part of the estate of the settlor.

“Trustee” means a person appointed by written instrument operating either *inter vivos* or by way of testamentary disposition whereby moneys are settled upon him to be administered by him for the benefit, whether in whole or in part, of any other person.

Trust deeds to be lodged with Master

2. Every trustee appointed by written instrument operating *inter vivos* and executed after the commencement of this Act shall lodge such instrument with the Master or a copy thereof certified as correct by a person approved of by the Master or by a notary and shall from time to time lodge with the Master any written variations of such instrument or a copy thereof likewise certified.

Security

3. (1) Every trustee appointed by an instrument executed after the commencement of this Act shall, before he enters upon the administration of any settled moneys and thereafter as the Master may require, find security to the satisfaction of the Master for the due and faithful administration of such moneys unless the instrument of settlement directs the Master to dispense with such security and the Master is satisfied that such security should be dispensed with or the court otherwise directs.

- (2) The Master shall allow the reasonable costs of finding security to be charged out of the income of the settled moneys or if such income is insufficient for the purpose, out of the settled moneys: Provided that not more than one-half of such costs shall be charged out of the settled moneys.

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(3) The security shall be for such an amount as in the circumstances of each particular case appears to the Master reasonable.

(4) If any default is made in the faithful administration of the settled moneys, the Master may proceed to enforce the security or recover from the person in default or from his sureties the actual loss incurred.

(5) A certificate under the hand of the Master shall be *prima facie* evidence of any such loss.

Powers of the Master

4. (1) Every trustee shall, whenever he is required so to do by the Master, frame and lodge with the Master an account showing to the Master's satisfaction up to such date as may be specified by the Master the administration and distribution of the settled moneys or the income derived therefrom.

(2) The remedies available in terms of section *one hundred* of Act No. 24 of 1913 against an executor who fails to lodge his administration account shall *mutatis mutandis* be available against a trustee who fails to lodge with the Master such an account as is referred to in sub-section (1).

[The Administration of Estates Act 24 of 1913 was replaced by the Administration of Estates Act 66 of 1965, which was applicable to South West Africa and is still in force in Namibia.]

(3) The Master may at any time require a trustee to deliver to him any books or documents relating to the settled moneys and to answer any enquiry made by him in relation to such moneys and the Master may also, if he thinks fit, apply to the court to examine the trustee on oath, or the Master may cause an independent investigation to be made of the administration of the settled moneys by some fit and proper person appointed by him.

(4) Any costs and expenses incurred in respect of an independent investigation under the provisions of sub-section (3) shall be payable out of the income of the settled moneys or if such income is insufficient for the purpose, out of the settled moneys: Provided that on the application of the Master or any interested party the court may order such costs and expenses as well as the costs of such application to be paid *de bonis propriis* by the trustee administering the settled moneys or by the person at whose instance the investigation took place.

(5) Whenever a trustee is ordered to pay any such costs and expenses *de bonis propriis* and he is unable to pay them in whole or in part, such part of the costs and expenses as cannot be recovered from such trustee shall be paid out of the settled moneys or income derived therefrom, as the court may order.

Records to be kept

5. Save with the written consent of the Master a trustee shall not destroy any documents whatsoever relating to the settled moneys or the administration or distribution thereof.

Offences

6. Any trustee who fails to comply with or contravenes any provision of this Act shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds.

[A fine not exceeding one hundred pounds is equivalent to a fine not exceeding N\$200.]

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Removal of trustee

7. (1) If a trustee is convicted of any offence under this Act or if the court is of opinion that he has failed to administer the settled moneys diligently or honestly the court may on the application of the Master or any interested party remove him from his office and appoint some other fit and proper person as trustee, subject to such other person finding security in terms of section *three* and may order the trustee so removed to pay the costs of such application *de bonis propriis* or make such other order as to costs as to it may seem meet.

(2) The provisions of sub-section (5) of section *four* shall *mutatis mutandis* apply in respect of any award of costs *de bonis propriis* under sub-section (1) of this section.

Regulations

8. The Minister of Justice may make regulations prescribing the fees to be paid to the Master in respect of anything required to be done under this Act.

Application of Act in South West Africa

8A. (1) 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.

(2) The provisions of this Act as applied by sub-section (1) shall not apply to a trustee appointed by any instrument referred to in the definition of “trustee” in section 1 which was executed before the commencement of this section.

(3) In the application of this Act in the territory known as the “Rehoboth Gebiet” and defined in the First Schedule of the agreement set out in the Schedule to Proclamation No. 28 of 1923 of South West Africa, with reference to moneys settled upon a trustee as contemplated in the aforementioned definition of “trustee” by a person who is or was a member of the Rehoboth Baster community, any reference in this Act and in any provision of the Administration of Estates Act, 1965 (Act No. 66 of 1965), as applied by section 4(2) of this Act, to the Master shall be construed as a reference to the Magistrate of Rehoboth.

[Section 8A is inserted by Act 57 of 1975. At the time, administration of estates in the Rehoboth Gebiet was governed by the Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941 (OG 920), which was repealed by the Estates and Succession Amendment Act 15 of 2005 (GG 3566); Act 15 of 2005 provides that the administration of all estates is now governed by the Administration of Estates Act 66 of 1965.]

Short title and commencement

9. This Act may be cited as the Trust Moneys Protection Act, 1934, and shall come into operation on the first day of September, 1934.