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How does the amendment to the Trust Property Control Act impact beneficial ownership and B-BBEE trusts?

In South Africa, the administration and management of trusts fall under the Trust Property Control Act 57 of 1988 (TPCA).

In recent months, concerns have been raised as to the proposed changes to the TPCA, specifically with regard to the potential impact on beneficial ownership and Broad-Based Black Economic Empowerment or B-BBEE trusts.

What is beneficial ownership in the context of B-BBEE?

Beneficial ownership pertains to individuals or entities that have ultimate control over or ownership of a company or asset, often through intricate intermediary networks.

B-BBEE trusts, conversely, aim to involve historically disadvantaged individuals in the economy and foster transformation.

The suggested TPCA changes strive to enhance transparency and responsibility within trusts, especially with regard to beneficial ownership. *Trustees would be obliged to reveal information about beneficiarie*s as well as others who have control over the trust, including details about their interests. This information would be available in a public register regulated by the Master of the High Court in the various regions of jurisdiction.

How might the amendments impact B-BBEE trusts?

While these amendments might lead to increased transparency and accountability, there are concerns regarding their impact on B-BBEE trusts. Examples of possible detrimental implications are as follows:

- Revealing beneficiary details may threaten the privacy and security of beneficiaries and put beneficiaries at risk of discrimination or harassment;
- The potential misuse of the public register by competitors seeking a competitive edge or targeting *B-BBEE beneficiaries* could undermine the objectives of the B-BBEE Act and codes of good practice to advance economic transformation and address historical imbalances;
- A possible conflict of interest among trustees who may prioritise their personal or business interests above those of beneficiaries. Such self-serving behaviour could erode trust and undermine the objectives of the Trust and those of the B-BBEE Act and codes of good practice.

To address these issues, it is recommended that a balance be found between transparency and privacy while ensuring that the proposed changes do not undermine the B-BBEE Act and codes of good practice with reference to B-BBEE Trusts. Therefore, in order to establish the above balance, clearer guidance is required regarding trustee responsibilities and methods to prevent conflicts of interest.

In conclusion

Although the TPCA amendments are intended to bolster transparency and accountability, concerns remain about their impact on beneficial ownership and B-BBEE trusts. Policymakers must carefully consider these issues to ensure that amendments do not negatively impact the B-BBEE objectives with reference to B-BBEE trusts or put beneficiaries' privacy and security at risk.

As SA's leader in Legal Compliance and Transformation Solutions, *SERR Synergy assists businesses to implement viable B-BBEE initiatives and ensures alignment of initiatives with the legal requirements of the B-BBEE Codes*

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