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OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

Page

GOVERNMENT NOTICES

No. 244	Commencement of Trust Administration Act, 2023	1
No. 245	Trust Administration Regulations: Trust Administration Act, 2023	2

Government Notices

MINISTRY OF JUSTICE

No. 244

2023

COMMENCEMENT OF TRUST ADMINISTRATION ACT, 2023

In terms of section 55(1) of the Trust Administration Act, 2023 (Act No. 11 of 2023) I determine that the Act comes into operation on the date of publication of this notice in the *Gazette*.

Y. DAUSAB
MINISTER OF JUSTICE

Windhoek, 31 July 2023

MINISTRY OF JUSTICE

No. 245

2023

TRUST ADMINISTRATION REGULATIONS: TRUST ADMINISTRATION ACT, 2023

Under section 51 of the Trust Administration Act, 2023 (Act No. 11 of 2023), I have made the regulations set out in the Schedule.

Y. DAUSAB
MINISTER OF JUSTICE

Windhoek, 31 July 2023

SCHEDULE**ARRANGEMENT OF REGULATIONS**

1. Definitions
2. Electronic filing of books or documents
3. Registration of trust and authorisation to act as trustee
4. Fees payable at lodgement of trust instrument
5. Establishment and maintenance of public register of persons disqualified from serving as trustees
6. Keeping of records
7. Beneficial ownership register by trustee
8. Basic information register of Master
9. Beneficial ownership register of Master
10. Access to information

ANNEXURE – Forms**Definitions**

1. In these regulations a word or an expression to which a meaning has been assigned in the Trust Administration Act, 2023 (Act No. 11 of 2023) has that meaning, and unless the context otherwise indicates –

“class or category of beneficial ownership” means a natural person that is party to a trust including founder, trustee and beneficiary, and any other person exercising ultimate control over a trust;

“electronic data and records management system” means a system using information and communication technology for the filing, tracking, managing, storage, recovery and disposal of electronic records, maintained and managed by the Master of the High Court; and

“the Act” means the Trust Administration Act, 2023 (Act No. 11 of 2023).

Electronic filing of books or documents

2. (1) A person who lodges or files a book or document with the Master through the electronic data and records management system, must –

- (a) keep the original book or document; and
- (b) produce such book or document on request by the Master or a staff member of the Ministry authorised by the Master for this purpose.

(2) A person who contravenes or fails to comply with subregulation (1) commits an offence and is liable upon conviction to a fine not exceeding N\$ 10 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Registration of trust and authorisation to act as trustee

3. (1) A person that is required to register a trust and obtain authorisation to act as trustee in terms of section 8 of the Act must lodge with the Master on the electronic data and records management system the –

- (a) trust instrument;
- (b) foreign trust instrument, in the case of a foreign trust, and submit hard copies of the original or certified copy to the Master for verification;
- (c) written acceptance of trust by the trustee to act as trustee on Form A set out in the Annexure;
- (d) undertaking by an accountant or an auditor to act as an accountant or auditor of the trust on Form B set out in the Annexure;
- (e) beneficial owner declaration on Form C set out in the Annexure;
- (f) national identity documents of the –
 - (i) founder;
 - (ii) trustees;
 - (iii) beneficiaries;
 - (iv) beneficial owners; and
 - (v) passport in the case of a natural person who is not a Namibian citizen who falls in the categories under items (i) to (iv);
- (g) certificate of incorporation or registration, in the case the founder, trustees or beneficiaries is a juristic person, partnership or another form of legal arrangement; and
- (h) proof of payment of the N\$ 200 fee made in accordance with regulation 4.

(2) The provisions of subregulation (1), apply with changes as required in the context, where a person wishes to apply for authorisation to act as a trustee in terms of section 11 of the Act.

(3) A person who contravenes or fails to comply with subregulation (1) or (2) commits an offence and is liable upon conviction to a fine not exceeding N\$ 10 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Fees payable at lodgment of trust instrument

4. (1) The fee payable to the Master in terms of subsection 8(5)(e) of the Act at the lodgment of a trust instrument is N\$ 200 in respect of both registration of each trust instrument and authorisation to act as trustee.

(2) Any fee payable in terms of the Act must be paid to the Receiver of Revenue and proof of such payment must be submitted to the Master.

Establishment and maintenance of public register of persons disqualified from acting as trustees

5. (1) The Master must establish and maintain a register of disqualified persons in terms of section 10(4) of the Act, to be known as a public register of persons disqualified to act as trustees, and the register must contain the –

- (a) full legal names of the disqualified person;
- (b) date on which the person became disqualified in terms of section 10(1) or (2) of the Act; and
- (c) court case number relating to the relevant court order or particulars of conviction contemplated in section 10(3) of the Act.

(2) The Master must update the register referred in subregulation (1) within 14 days of receipt of relevant information.

(3) A person disqualified from acting as a trustee may submit to the Master a written notice with proof that the reason for disqualification no longer exists when such person wishes to apply for authorisation to act as trustee in terms of section 8 or section 11 of the Act.

(4) The Master must remove the particulars of a person referred to in subregulation (4) from the register if the Master is satisfied that the reason for disqualification no longer exists.

Keeping of records

6. (1) A trustee must keep records of the information referred to in section 20(1) of the Act and must update and verify such records –

- (a) annually at the time of annual submissions of financial statements and tax returns in terms of section 19 of the Act;
- (b) on a quarterly basis during the financial year; and
- (c) within 14 days after any change in information occurred.

(2) A trustee must keep a certified copy of the official identity document or passport of each ascertainable person of the trust, and the information recorded in terms of subregulation (1) must appear the same way as it appears on such certified copy of the identity document or passport.

(3) A trustee must keep record of the following details of financial institutions and accountable institutions as contemplated in section 20(1)(l) of the Act:

- (a) the name of the financial institution or accountable institution;
- (b) the registration details if the financial institution or accountable institution is juristic person;
- (c) if the financial institution or accountable institution is a natural person, the official identity document number or passport number of the person, indicating the type of document and issuing country;

- (d) if the trustee uses the financial institution or accountable institution as an agent to perform the trustee's functions, the nature of the functions performed;
- (e) if the trustee obtains services from the financial institution or accountable institution, the nature of services obtained;
- (f) if the trustee entered into a single transaction, as defined in section 1 of the Financial Intelligence Act, with the financial institution or accountable institution, the date on which the single transaction was entered into and the nature of the single transaction; and
- (g) if the trustee entered into a business relationship as defined in section 1 of the Financial Intelligence Act, with the accountable institution, the date on which the business relationship was entered into and nature of the business relationship that was entered into.

(4) A person who contravenes or fails to comply with subregulation (1), (2) or (3) commits an offence and is liable upon conviction to a fine not exceeding N\$ 10 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Beneficial ownership register by trustee

7. (1) A trustee must keep a beneficial ownership register in terms of section 22(1)(b) of the Act that contains the following information of each beneficial owner to the trust:

- (a) full legal names and any former full legal names;
- (b) date of birth and identification number appearing on the national identity document of the beneficial owner;
- (c) in the case of a beneficial owner who is not a Namibian citizen, the official number appearing on the passport of the beneficial owner;
- (d) full particulars of residential address, business address, email address and postal address of the beneficial owner;
- (e) all available phone numbers of the beneficial owner;
- (f) the nationality of the beneficial owner;
- (g) the dates indicating the beginning and the conclusion of the beneficial ownership and the nature and extent of the beneficial ownership;
- (h) a certified copy of an official identity document or passport, indicating the type of document, country of issue and citizenship;
- (i) if different from residential address, the beneficial owner's address for service of notices;
- (j) other means of contact;
- (k) if the beneficial owner is a registered taxpayer in Namibia, the tax number;
- (l) the class or category of beneficial ownership under which the person falls;

- (m) where applicable, the date on which the person ceased to be a beneficial owner of the trust; and
 - (n) where a beneficial owner is a minor, a trustee must also keep a record of the information referred to in paragraphs (a) to (m) in respect of the minor's legal guardian.
- (2) A trustee must keep a certified copy of an official identity document or passport of each identified beneficial owner of the trust, and the information recorded in terms of subregulation (1) must appear the same way as it appears on the certified copy of the identity document or passport.
- (3) A trustee may keep the beneficial ownership register in written or electronic format.
- (4) The Master must verify the information referred to in subregulation (1) within 14 days of receipt through –
- (a) access to the information system maintained at the Ministry responsible for civil registration and identification of persons to verify Namibian identity documents;
 - (b) access to the information system of foreign identity documents maintained at the Ministry responsible for civil registration and identification of persons with the assistance of the Financial Intelligence Centre; and
 - (c) access to a database maintained by the Business and Intellectual Property Authority to verify juristic persons registered with the Business and Intellectual Property Authority.
- (5) A person who contravenes or fails to comply with subregulation (1) or (2) commits an offence and is liable upon conviction to a fine not exceeding N\$ 10 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Basic information register of Master

- 8.** (1) The Master must keep a basic information register referred to in section 32(1) of the Act relating to trusts, trustees and trusts practitioners and such register must contain –
- (a) the name of the trust;
 - (b) the trust number or unique identifying number;
 - (c) full legal names and any former full legal names of the founder;
 - (d) full legal names and any former full legal names of the trustee;
 - (e) full details of the trust practitioner, including contact details and registration details in the case of the trust practitioner being a juristic person;
 - (f) full details of the accountant or auditor, including contact details and registration details in the case of the accountant or auditor being a juristic person; and
 - (g) the status of the trust, meaning whether the trust is active or dormant or registered under the Act or amended under the Act or is terminated or deregistered under any law.
- (2) The Master must keep the basic information register in an electronic format accessible from the website of the Master.

Beneficial ownership register of Master

9. (1) The Master must keep a beneficial ownership register as referred to in section 33(1) of the Act and such register must contain the following information regarding each beneficial owner of the trust:

- (a) full legal names and any former full legal names;
- (b) date of birth and identification number appearing on the national identity document of the beneficial owner;
- (c) in the case of a beneficial owner who is not a Namibian citizen, the official number appearing on the passport of the beneficial owner;
- (d) full particulars of residential address, business address, email address and postal address of the beneficial owner;
- (e) all available phone numbers of the beneficial owner;
- (f) the nationality of the beneficial owner;
- (g) the dates indicating the beginning and, where applicable, the conclusion of the beneficial ownership and the nature and extent of the beneficial ownership;
- (h) a certified copy of an official identity document or passport of the beneficial owner, indicating the type of document, country of issue and citizenship;
- (i) the beneficial owner's address for service of notices, where it is different from the residential address;
- (j) the class or category of beneficial ownership under which the person falls;
- (k) if the beneficial owner is a registered taxpayer in Namibia, the beneficial owner's tax number; and
- (l) where a beneficial owner is a minor, a trustee must also keep a record of the information referred to in paragraphs (a) to (k) in respect of the minor's legal guardian.

(2) The Master must keep the beneficial owner register in an electronic format, accessible on the electronic data and records management system of the Master and in such a manner that provides for –

- (a) access to persons registered by the Master as registered users through a username and password;
- (b) adequate measures against loss of information as a result of damage to or failure of the medium on which the information is kept;
- (c) adequate security measures for the protection of the information contained in the register;
- (d) a trustee to lodge, through the electronic data and records management system, the information of each beneficial owner that the trustee is keeping in terms of the Act and these regulations;

- (e) a trustee to update the information that the trustee has lodged on the electronic data and records management system;
- (f) a trustee to upload documents;
- (g) a trustee to only have access to the information that the trustee has lodged and the documents that the trustee has uploaded on the electronic data and records management system; and
- (h) access by competent authorities and entities to the information contained in the electronic data and records management system.

(3) A trustee who is unable to electronically access the beneficial ownership register may visit any office of the Master for assistance.

Access to information

10. (1) The Master and a trustee must on request make the information contained in the beneficial ownership registers that the Master and a trustee keep in terms of section 22 and 33 of the Act respectively available to –

- (a) any supervisory body;
- (b) the Namibian Police Force;
- (c) the Anti-Corruption Commission;
- (d) the Namibian Central Intelligence Service;
- (e) the Prosecutor-General;
- (f) the Namibia Revenue Agency;
- (g) the Financial Intelligence Centre;
- (h) any other authority that may, in terms of any law investigate unlawful activities; and
- (i) a person who is entitled to receive such information in terms of the Act or other national legislation.

(2) The entities and authorities referred to in subregulation (1) must –

- (a) in writing, request access to the information contained in the register, from the Master; and
- (b) designate officials who will have access to the beneficial ownership register kept by the Master.

(3) The Master must, upon receipt of the details referred to in subregulation (2) provide the official referred to in paragraph (b) of that subregulation with access to the information contained in the register.

(4) A relevant entity or authority must provide the Master with a written notice when a person is no longer a designated official as contemplated in subregulation (2)(b).

(5) The Master must deny access to information contained in the register to an official in respect of whom the Master has received a written notice referred to in subregulation (4).

**Form A****ACCEPTANCE OF TRUST AS TRUSTEE**
(Regulation 3)

1. I accept my appointment as Trustee in terms of clause of the Trust Deed dated as trustee.
2. I am aware of the legal responsibilities and duties of trustees in their administration of a trust and undertake to abide thereby. The provisions of the Trust Administration Act, 2023 (Act No. 11 of 2023) regarding circumstances, which could justify the discharge of a trustee, do not apply to me. Should such circumstances arise, I undertake to inform the Master of the High Court thereof.
3. I undertake to open a bank account for the trust and to deposit all moneys forming part of the trust fund on that account.
4. I undertake to maintain accurate records of the trust and will exercise direct personal control over the trust.
5. I will submit the annual financial statements and tax returns of the trust to the Master of the High Court not later than seven months after the end of the Trust's financial year.
6. I will advise the Master of the High Court on all Trust matters and to furnish him/her with any information concerning the affairs of the Trust as he/she may require and instruct the auditor/accountant of the Trust to furnish the Master of the High Court with any information as the Master may requires.
7. I undertake to comply at all times with the provisions of the Trust Administration Act, 2023 (Act No. 11 of 2023) and inform the Master of the High Court immediately of any changes of the information provided in this declaration.
8. I undertake to:
 - (a) upon any change, immediately update; and
 - (b) annually confirm or update the information,of the trustees, founder, beneficiaries and beneficial owners on the Master's file as prescribed by the Trust Administration Act, 2023 (Act No. 11 of 2023) and the Financial Intelligence Act, 2012 (Act No. 13 of 2012) and understand that I commit an offence if I fail to submit such information.
9. I am exempted from furnishing security to the Master of the High Court in terms of clause of the Trust Deed.

Details of Trust

Name of Trust Country where Trust was set up Management company of the trust, if any

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Purpose of Trust Main assets of the Trust Country where main assets are situated

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Details of Trustee

First Name Surname Previous names, if any

--	--	--

Marital status Identity Number Date of Birth Nationality
Single

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Occupation/job description/source of income (ie salary, income from own business):

Country code Area code Telephone No. Cellphone No. E-mail address

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Postal Address P.O. Box Private Bag City/Town Street Address Country City/Town

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Domicilium address (street) Country City/Town

--	--	--

Details of Employment

Name of employer Country code Area code Telephone No. Street address of employer

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Country City/Town

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If self-employed, name, nature and location of business activities, if any:

Details of Auditor/Accountant

Name of Auditor/Accountant	Street address	Country	City/Town
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Country code	Area code	Telephone nr	End of financial year of trust	Signature of Trustee
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Details of Beneficiaries

Individual beneficiaries

First Names	Surname	ID Number/Date of Birth	Nationality
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

First Names	Surname	ID Number/Date of Birth	Nationality
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

First Names	Surname	ID Number/Date of Birth	Nationality
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

First Names	Surname	ID Number/Date of Birth	Nationality
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

First Names	Surname	ID Number/Date of Birth	Nationality
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

First Names	Surname	ID Number/Date of Birth	Nationality
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Class of beneficiaries

Please provide criteria for determination of beneficiaries and the benefits such person or institution will receive.

--

I herewith confirm that the above information is true and correct.

Signature of Trustee

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Place signed

--

Date signed

--

Form B**UNDERTAKING BY AUDITOR/ACCOUNTANT**
(Regulation 3)

Master of the High Court
Ministry of Justice, Republic of Namibia

Auditor/Accountant Information

Full Name	
ID/Passport No.	
<i>Domicilium</i> (street) address	City/Town
Postal address	City/Town
Cellphone No.	Work Telephone No.
Email address	Fax No.
Accreditation Body	Registration No.

Declaration and undertaking:

I hereby declare that I am qualified to act as Auditor/Accountant and undertake to advise the Master of the High Court:

- should I cease to act in the above Trust;
- the name of the new Auditor/Accountant should I be aware thereof;
- should the trustees fail to finalise the financial statements within seven months after the end of the trust's financial year;
- should the Trust not have been administered in accordance with the terms and conditions of the trust deed;
- should the trustees fail to keep proper records and resolutions; and
- should the trustees fail to register the trust with the Receiver of Revenue or submit annual tax returns.

I understand that if I fail to execute my duties as per my undertaking, I will not be allowed to act as an Auditor/Accountant for any new or existing Trusts.

.....
Signature of Auditor/Accountant

.....
Date

Form C**MASTER OF THE HIGH COURT**

Beneficial Ownership Declaration Form: Trusts
(In accordance with the Trust Administration Act, 2023)
(Regulation 3)

**NATURAL PERSONS**

TRUST INFORMATION			
Purpose of Beneficial Ownership Information Submission			Other:
Trust name		Registration No.	
Country of registration		Trust type	
BENEFICIAL OWNER PARTICULARS			
Full legal name			
Place of Birth			
Date of birth			
Nature of interest			
Nationalities			
Identity number			
Tax residencies			
Tax Identification Number (TIN)			
Country of residence			
Residential address			
Tel/Mobile No.			
Email address			

Occupation			
Employer			
PROMINENT INFLUENTIAL PERSON (PIP)			
Is the individual named above a PIP, because of holding a position of importance or being a close relative or associate of a person holding a position of importance?			
Relationship to beneficial owner			
Name of person with political role function			
Description of position/function		Jurisdiction of position/function	
Start date		End date	
ATTESTATION			
Declaration form prepared by:			
Name			
Position			
Organisation			
Telephone No.			
Email address			
<i>I, the undersigned, for and on behalf of the reporting entity confirm that, to the best of my knowledge, all information provided above and in the related sheets is accurate and reliable.</i>			
Signature		Date	