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Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

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CIRCULAR 52... OF 2023

(HEAD OFFICE FILE 12/P)

CHIEF MASTER DIRECTIVE 8 OF 2023– Beneficial Ownership Register

1. Your attention is drawn to the contents of the attached Directive with regards to the Beneficial Ownership Register of the Master.
2. This Directive amends and /or repeals prior Directives, Circulars or instructions regarding this subject as per the effective date indicated on the Directive.
3. Any enquiries should be addressed in writing to the Office of the Chief Master.



Ms P Roberts
ACTING CHIEF MASTER

TO ALL OFFICES IN THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT



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Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

CHIEF MASTER'S DIRECTIVE 8 OF 2023

BENEFICIAL OWNERSHIP REGISTER

1. PURPOSE OF THIS DIRECTIVE

The purpose of this Directive is to direct all Masters in the performance of their functions regarding the Master's duty to keep an electronic Beneficial Ownership register for Trust matters .

This Directive is issued in terms of:

- 1.1. Section 3 of the Judicial Matters Amendment Act, 2005 which requires the Chief Master to "exercise control, direction and supervision over all the Masters".
- 1.2. Section 2(1) of the Administration of Estates Act 66 of 1965.

2. BACKGROUND

- 2.1. In February 2023, South Africa was greylisted by the Financial Action Task Force (FATF) for not fully complying with international standards regulating the prevention of terrorism financing, money laundering and proliferation financing. The greylisting places South Africa under increased monitoring by FATF to tighten control measures around anti money laundering activities as well remediate deficiencies within agreed timelines.
- 2.2. One of the eight strategic actions South Africa has committed to resolving by January 2025 is "Ensuring that competent authorities have timely access to accurate data and up-to date Beneficial Ownership (BO) information on legal persons and applying sanctions for violation by legal persons and trusts with regard to BO obligations.
- 2.3. The FATF report indicated that our legislation should be amended to ensure that South African authorities have access to beneficial ownership information on legal persons and arrangements and that sanctions should be imposed for non-compliance.

- 2.4.** The Trust Property Control Act of 1988(Act No. 58 of 1988) (“the Act”) needed to be amended to deal with the regulation of beneficial ownership and to address the existing deficiencies highlighted by the FATF.
- 2.5.** The Act was accordingly recently amended by the General Laws (Anti Money-Laundering and Combating Terrorism Financing) Amendment Act, 200 (Act No. 22 of 2022), in order to provide for, inter alia, the establishment and maintenance of registers of beneficial owners (BO) of trusts by trustees and the Master of the High Court (section 11A of the Act).(see attached **ANNEXURE A**) This was followed by the publication of the Regulations in the Government Gazette No 48351 on 31 March 2023 under Notice No. R. 3240 (see attached **ANNEXURE B**).
- 2.6.** Section 11A(1) of the Act provides that, a trustee must:
- i. establish and record the beneficial ownership of the trust;
 - ii. keep a record of the prescribed information relating to the beneficial owners of the trust;
 - iii. lodge a register of the prescribed information on the beneficial owners of the trust with the Master's Office; and
 - iv. ensure that the prescribed information referred to in paragraphs (a) to (c) is kept up to date.
- 2.7.** Trustees are therefore obligated by section 11A of the Act to, as from 1 April 2023, lodge the registers of the prescribed information of beneficial owners of trusts with the Master of the High Court.
- i. According to regulation 3D, trustees are required to lodge beneficial ownership registers electronically on a platform provided by the Master of the High Court.
 - ii. The Masters must make all uploaded BO information available or accessible to Law Enforcement Agencies, including SARS, as part of the FATF’s requirement for BO transparency.
- 2.8.** Given the urgency of the matter, a temporary BO register was developed on a Google documents platform with the intention of migrating the data to a permanent application when the Department was ready to place such application into the production environment.
- 2.9.** However, the Masters have been inundated with queries and complaints from Trustees represented through various bodies such as FISA, BASA, SAICA and others regarding the

feasibility of compliance as well as the usability and security of information in the Google Form.

2.10. In order to deal with the abovementioned challenges, a new Trust Beneficial Ownership Register has now been developed for the Office of the Master of the High Court of South Africa. This is a web-based system that will enable trustees and other authorized parties to submit Trust Beneficial Owners details in a safe and secure environment.

3. As part of the Chief Master's statutory obligations, the following direction is being given to clarify and ensure uniformity in all Master's Offices:

3.1. The previously used Google form will be decommissioned

- i. All submissions of Trust Beneficial Ownership must be done on the newly developed system which can be accessed on the following link: <https://trustonline.justice.gov.za/Masters>.
- ii. Information already submitted on the Google form will be migrated by ICT to the newly developed system and
- iii. trustees who submitted on the previous Google forms, will be notified by email should any updates be necessary.
- iv. Information which was submitted in a file format which is different from the given EXCEL template cannot be migrated and will need to be lodged anew.

3.2. Trustees (including other authorized parties) will need to register on the system to start submitting, viewing, and updating the Beneficial Ownership Register for their trusts.

- i. A defined Excel template for beneficial ownership information is available on the website for download. (<https://trustonline.justice.gov.za/Masters>)
- ii. Beneficial ownership information must be filled in as outlined in the template;
- iii. The filled in template must then be uploaded to the website.
- iv. The information submitted will be populated in to the Trust Beneficial Ownership Register established by the Master of the High Court of South Africa in terms of Trust Property Control Act 57 of 1988, as amended by the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act.

- v. Information may be uploaded by way of a duly signed and valid Power of attorney given by the trustees of any trust.

3.3. Automated checks are built into the system to validate correctness and completeness of key data elements of the submitted information.

- i. Feedback on incorrect and missing data is provided through the system, for the trustees to correct the data and fill in missing data.
- ii. Data that is not submitted in the defined template cannot be submitted.

3.4. Access to the information on the Beneficial Ownership Register(BOR) of trusts by the Law Enforcement Agencies(LEA's) in terms of section 11A (3) read with regulation 3E, should be done as follows:

- i. a formal, written request on the letterhead of the institution must be lodged with the Office of the Chief Master;
- ii. proof must be provided, to the satisfaction of the Chief Master, that the agency qualifies to be granted access to the information contained in the register; and
- iii. designate official(s) who will have access to the beneficial ownership register kept by the Master:

The following details of the designated official(s) must be provided in the application:

- a) Full names, ID number and employment number;
- b) Certified copy of the ID document of the designated person;
- c) Contact details of designated person (cell number, e-mail address, postal address, physical work address);
- d) The period for which the person will be designated, if determined;
- iv. Should a person no longer be a designated official of the relevant entity or authority must immediately provide the Chief Master with a written notice thereof;
- v. The Master will revoke access to information contained in the register by a person in respect of whom the Chief Master has received a written notice referred to above.

- vi. Such application must be considered by the Office of the Chief Master, and if approved, access will be granted to the relevant register and/or relevant, available information on the Masters' system, which should have been contained therein, if not yet so completed by the trustee.

3.5. The obligations of trusts and trustees regarding the Act read with the Regulations:

- i. This Act is applicable on ALL trusts registered with the Master, irrelevant of when and for what purpose it has been registered;
- ii. Should the submitted information of Beneficial Owners of a trust change at any time, Trustees (including other authorized parties) must submit a complete and updated Beneficial Ownership Register for the trust;
- iii. Trustees are required to keep in their records certified ID copies of all beneficial owners of the trust;
- iv. Where a beneficial owner is a minor, a trustee must also keep a record of the relevant information in respect of the minor's legal guardian;
- v. Trustees are advised to keep in their records, the filled in and successfully submitted Excel template of beneficial owners of their trust;
- vi. Information fully captured and uploaded on the Masters BOR is deemed to be submitted to the Master of the High Court in terms of Section 11A(1)(c);
- vii. Updated BO information should be provided annually to SARS upon the lodgement of the annual tax return of the trust and should correlate with what has been reported on the Master's BOR.

3.6. The period under which compliance is required

- i. All South African Trusts are required to provide records and report on all information about beneficial owners as from 1 April 2023.
- ii. Trustees should ensure that the relevant information is provided
 - i. in the correct format and on the correct platform;
 - ii. within a reasonable time after the launching of the Master's electronic BOR.
- iii. Should the information on any trust be requested by a LEA and it is found to not have been lodged yet as indicated above, the information should be made available and loaded by the relevant trustee(s) within 48 hours after

the request has been made, in order to avoid the penalty clause of the Act to be activated.

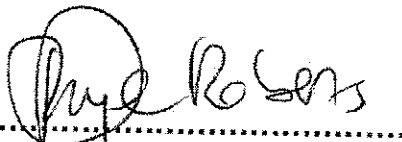
- iv. The Master may request any trustee of a trust to provide/update the BO information on the BOR at any time they deem fit and the Trustees must ensure that they comply within the timeframe stipulated by the Master.

3.7. The manner and effect of the sanctions for non-compliance

- i. Non-compliance by trustees to the above paragraphs may lead to a penalty of up to R10 million or imprisonment for a period not exceeding five years, or to both such fine and imprisonment for any non-complying trustee

4 EFFECTIVE DATE

This directive repeals prior Directives, Circulars or instructions regarding this subject, with effect from date of signature of this Directive.



**Ms P Roberts
ACTING CHIEF MASTER**

Date

16/10/2023