

REGULATIONS MADE IN TERMS OF

Trust Administration Act 11 of 2023

section 51

Trust Administration Regulations

Government Notice 245 of 2023

([GG 8164](https://www.lac.org.na/laws/2023/8164.pdf))

came into force on date of publication: 3 August 2023

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**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 lodgement 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.

[The word “to” appears to have been omitted after the word “referred”.]

(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.

[The term “ascertainable person” may have been intended to be “ascertainable beneficiary”.   
The Act makes repeated references to “ascertainable beneficiaries”, but makes   
no mention of “ascertainable persons”.]

(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 -

[The word “a” appears to have been omitted before the word “record”.]

(a) the name of the financial institution or accountable institution;

(b) the registration details if the financial institution or accountable institution is juristic person;

[The word “a” appears to have been omitted before the term “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).

ANNEXURES

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