

April 2023

TRUSTEES HAVE NEW DUTIES: UPDATE

INTRODUCTION

In our February 2023 circular dealing with amendments to the Trust Property Control Act, 1988, we recorded that, whilst most of the amendments would come into force on 1 April 2023, no commencement date was mentioned in respect of certain of the amendments.

The amendments for which no commencement date had been provided were:

- The obligation on the Master of the High Court to establish and maintain a public register of persons disqualified from serving as a trustee.
- The obligation on trustees to lodge details with the Master of the beneficial owners of a trust.
- The obligation on the Master to keep a register of the beneficial owners of trusts.
- The obligation on trustees and the Master to make information relating to the beneficial owners of trusts available to prescribed persons.
- The stipulation that trustees who:
 - do not disclose their status to accountable institutions;
 - do not keep a record of the accountable institutions with which they deal; or
 - do not maintain the required record of beneficial ownership of the trust;

commit an offence rendering them liable to a fine not exceeding R10m or imprisonment for a period not exceeding five years or both.

COMMENCEMENT DATE

On 31 March 2023 the President determined 1 April 2023 as the commencement date for all of the above amendments.

REGULATIONS

On the same day the Minister of Justice and Correctional Services published Regulations dealing with these matters with the same commencement date of 1 April 2023.

The Regulations make provision for the following matters:

- The details that the Master is required to record are described with respect to persons who are disqualified from acting as trustees. The Master is obliged to make that information available to the public both electronically and at any Master's Office during office hours.
- The details that trustees must record in relation to accountable institutions which the trust deals with are as follows:
 - The name of the accountable institution.
 - The registration number of the accountable institution if it is not a natural person.
 - The identity document or passport number of the natural person and country of issue.
 - If the accountable institution is used as an agent to perform trustees' functions, the nature of those functions.
 - The nature of the services procured from the accountable institution.
 - The date and nature of any transaction concluded with an accountable institution which is not in the ordinary course of a business relationship and where the value of the transaction exceeds R5 000,00.
 - Where a trust has a business relationship with an accountable institution and engages in transactions with it on a regular basis, the date on which the business relationship was entered into and the nature of that relationship.
- In relation to beneficial ownership, trustees must keep a record of the following information relating to each identified beneficial owner:
 - Full names.
 - Date of birth.
 - Nationality.
 - Identity document or passport number indicating country of issue.

- Citizenship.
 - Residential address.
 - Address for service of notices.
 - Other means of contact.
 - The person's tax number if registered as a taxpayer in the Republic.
 - The class or category of beneficial ownership.
 - The date upon which the person became a beneficial owner.
 - If applicable, the date on which the person ceased to be a beneficial owner.
 - If the beneficial owner is a minor, all of the above information in relation to the minor's legal guardian.
-
- Trustees must also keep certified copies of the identity document or passport of each beneficial owner which must accurately accord with the details recorded in the beneficial owner register maintained by the trustees.
 - The Master must maintain an electronic register of the beneficial owners of trusts with a facility for trustees to:
 - lodge the information described above in respect of each beneficial owner;
 - upload documents; and
 - sign off electronically on the information lodged.
 - The electronic register must allow trustees to access the information that they have lodged with the Master.
 - The Master and trustees must make the information relating to beneficial ownership available to:
 - The National Prosecuting Authority.
 - The Independent Police Investigative Directorate.
 - The State Security Agency.
 - The Intelligence Division of the National Defence Force.
 - A Special Investigating Unit.
 - An Investigative Division in a National Department listed in Schedule 1 to the Public Service Act, 1994.

- The Public Protector.
 - The South African Revenue Service.
 - The Financial Intelligence Centre.
 - An Investigative Division of the Auditor-General.
 - Any other person entitled to receive such information in terms of other national legislation.
-
- These entities are required to submit written requests for the information to the Chief Master and provide proof that they qualify to be granted access to the information, with details as to the specific officials to whom access is to be granted.
 - The Regulations do not prescribe the same formalities in respect of requests for information directed at trustees. However, it would be reasonable for trustees to require any such request to, in the first instance, be cleared by the Chief Master before providing the information concerned.

CONCLUSION

Whilst no time limit is specified for trustees to comply with their obligations described in this circular, it is recommended that trustees attend to these matters promptly.

As a first step, a trustee should establish from the Master having jurisdiction over the trust whether the electronic register contemplated in the Regulations is in place and, if not, what other electronic means are in place for lodging the requisite information relating to beneficial owners.

The Regulations provide that trustees who are unable to electronically lodge beneficial ownership details with the Master may visit their nearest Master's Office for assistance.

ALASTAIR HAY
COX YEATS
Direct Tel: 031 - 536 8508
E-mail: ahay@coxyeats.co.za