



Republic of Namibia
MINISTRY OF JUSTICE

Ministry of Justice

Master of the High Court

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Beneficial Ownership (Trusts)



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Originates from FATF Recommendation 25

Adequate, accurate and up-to-date information on the beneficial owners of express trusts and other similar legal arrangements

- All parties to a trust
- Including classes of beneficiaries and discretionary beneficiaries
- Any other party exercising significant control
- Require all trustees residing in jurisdiction to hold this information
- Obligations on trustee to hold the information and disclose their status to FIs and DNFBPs

Beneficial ownership (Trusts)



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70%

of corruption cases involve
anonymously-owned corporate vehicles

(in over 200 cases of grand corruption surveyed, The World Bank, 2011)

Transparency of BO

Ownership and control structures can be complex;

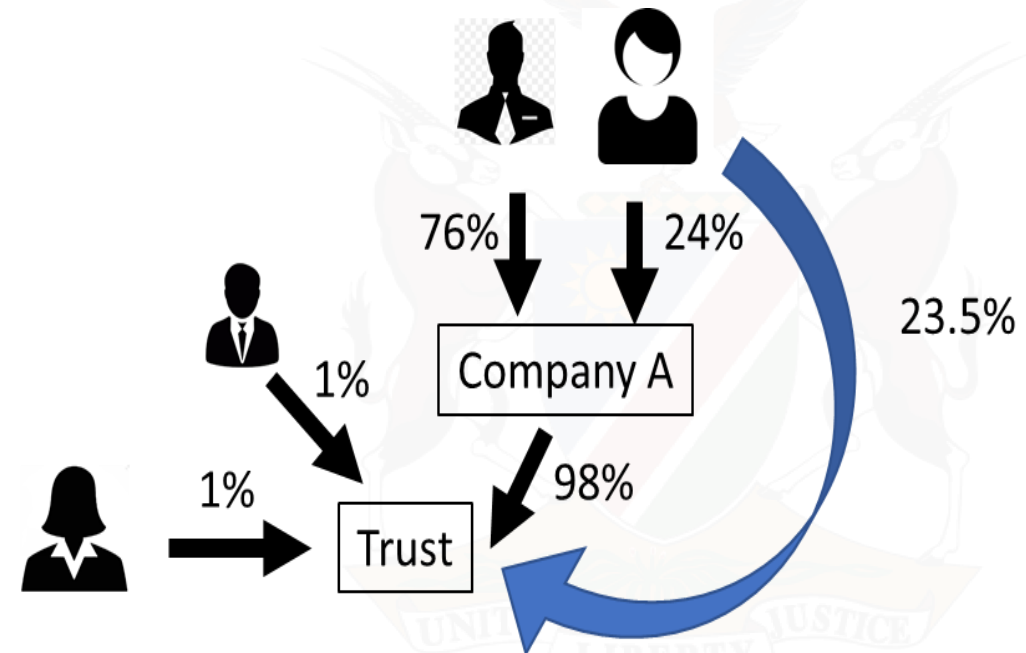
But too often, information is missing, inaccessible or hard to use;

This is why transparency over who ultimately owns and controls corporate vehicles, has become an important phenomena;



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Picture two



Who is the Beneficial Owner of a Trust and why does it matter?



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All parties to the trust;

- ❖ Founder (Settlor or Donor)
- ❖ Trustee
- ❖ Beneficiary (vested or discretionary)
- ❖ Trust practitioners (aka – TCSP's)
- ❖ Protector (if any)

Who is the Beneficial Owner of a Trust and why does it matter?



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- ❖ When beneficial owners are obscured, abuse of corporate vehicles is enabled
- ❖ Bribes disguised through trust;
- ❖ Purpose is to find the natural person who ultimately owns or control a trust;

A common approach to legal entities and arrangements



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- ❖ Individuals can use legal arrangements to own, control and benefit from trust assets
- ❖ Legal entities and arrangements can be part of the same ownership structure
 - Trusts can operate as businesses
 - Trusts can hold ownership in companies (e.g. shares as trust assets)
- ❖ This makes compliance for companies more difficult
 - Legal entities and partnerships can be parties to a trust
- ❖ In Namibia, despite not having any juristic personality:
 - ❖ ○ Trustees are capable of opening a bank account in name of the trust
 - ❖ ○ A trust can constitute a debtor within the context of the Insolvency Act and can therefore be sequestrated

Intention of the new Act



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- ❖ Act has clear and robust definitions in general and that of 'beneficial owner' of trusts is covered in Section 1 of FIA and Schedule 5
- ❖ Comprehensive coverage - Cover both domestic and foreign law trusts having any connection with Namibia
- ❖ all relevant types of trusts and categories of people are comprehensively covered in the disclosure regimes
- ❖ Makes clear provision for the data on trusts that should be collected, maintained and disclosed at a minimum

Intention of the new Act



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- ❖ Access to BO data of trusts will not be accessible publicly but only to competent authorities and those with legitimate interest
- ❖ Collecting structured BO data of trusts – a new digital platform will be used to collect, store, and publish data as structured.
- ❖ Will use unique identifiers to facilitate identification of individuals, trusts and companies when several data sets are combined



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Intention with the new Act

- ❖ Is to create a beneficial ownership register for trusts
- ❖ This will lead to the most useful and usable data, the most timely access, the most accurate and up-to-date data, and therefore effectiveness with respect to FATF evaluations
- ❖ ● Most countries has taken the central register route (ours will be multi-pronged have access to info on BIPA's register)
- ❖ ○ E.g. Denmark and Mauritius have companies and trusts in a single register

Section 22 & 33 – BO Register



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- ❖ Duty is placed on both trustee and the Master to keep this BOR
- ❖ Trustee must lodge this BOR with the master, keep it up-to-date
- ❖ Master has a duty to keep this register, verify the accuracy of the information in the register and provide access to this BOR to competent authorities;
- ❖ Data on trusts will be verified on submission, including verifying relevant trust documents (such as the trust deed), and keep updated – or confirm that it still holds true – on a regular basis.
- ❖ This can be done by checking that data conforms to known and expected patterns;
- ❖ cross-checking information against existing authoritative systems and other government-held datasets (such as Home Affairs)

Up to date records



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- ❖ At initial registration and subsequent changes to BO should be submitted in a timely manner.
- ❖ Trusts and trustees should be given a prescribed period for submitting or updating/reporting any change in their BO declaration (regulations and Act)
- ❖ Trustees should confirm the data as correct on at least on an annual basis;
- ❖ Historical records with dates should be maintained, including changes to trusts, inactive trusts, and terminated trusts

Sanctions and enforcement



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- ❖ Section 46 and 47 of the Act has effective, proportionate, dissuasive, and enforceable sanctions in cases of non-compliance with the disclosure requirements, including non-submission,
- ❖ late submission, incomplete submission, or false submission (criminal sanctions), in order to drive up compliance.
- ❖ Administrative Sanctions include monetary and non-monetary sanctions

Way forward



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- Lodgement of BO information as per Directive 1 of 2023;
- Complete BO information form;
- Act coming into force 21 July 2023
- Comply by 31 July 2023



Thank You
So Much