

INDEPENDENT TRUSTEES

The Chief Master's Directive issued in March 2017, (the "**Directive**"), announced new changes to be implemented with respect to the administration of all trusts. The **Directive** demands the appointment of an independent trustee where the trust is registered for the first time with the Master's Office and it emerges from the trust deed that the trust is a "family business trust". This requirement results from the judgment in *Land and Agricultural Bank of South Africa v Parker and Others*, where the court determined that the Master must restrict or prevent the abuse of trusts.

A trust is seen as a "family business trust" if:

1. The trustees have the power to contract with independent third parties;
2. All the trustees are also beneficiaries of the trust; and
3. All the beneficiaries are related to each other.

The Master must ensure that adequate separation of control from enjoyment of trust benefits is maintained. An independent trustee is someone who can ensure that the provisions of the trust deed are observed and that the conduct of other trustees is scrutinized. An independent trustee must:

- have no family relation or connection (blood or other) to any of the existing or proposed trustees, beneficiaries and / or founder of the trust;
- have no reason for concluding or approving transactions that may prove to be invalid, because of his / her knowledge about the trust laws;
- not have any interest in the trust property as a beneficiary;
- not be disqualified by the Trust Property Control Act 1998 from acting as a trustee; and
- be a person who will not accept office without being aware that failure to observe the duties of independent trustee may risk action for breach of trust.