



## Does your Family Business Trust have an independent trustee?

Although not recorded in SA legislation, the Chief Master (Adv. LG Basson) in a directive of 6 March 2017 (the “**Directive**”), made it a requirement for all Masters offices across South Africa to consider the appointment of an independent trustee to the Board of Trustees of all new Family Business Trusts.

The **Directive** was proclaimed as a result of the Supreme Court of Appeal case, the *Land and Agricultural Bank of South Africa v Parker* case, where the Court insisted that, in curbing the abuse and mismanagement of Family Business Trusts, Masters across South Africa should, during registration of new Family Business Trusts, strongly consider the appointment of independent trustees.

2. The trustees are all beneficiaries; and
3. The beneficiaries are all related to one another.

The **Directive** mentioned, inter alia, that an independent trustee must be a person / entity with no family relation or any other relation to any of the existing or proposed trustees, the founder or the beneficiaries, and cannot be a beneficiary of the trust.

The objective behind the appointment of an independent trustee is therefore to ensure that Family Business Trusts are managed properly and that the trustees' fiduciary duties towards the beneficiaries of the Family Business Trusts are met.

A Family Business Trust, for the purposes of the **Directive**, is a trust with the following characteristics:

1. The trustees have the power to contract with independent third parties, thereby creating trust creditors;

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