

Deed of Donation *Mortis Causa*

How does it work?



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Deed of Donation *Mortis Causa* allows an individual domiciled in South Africa, the donor (account owner), to nominate a donee (nominated beneficiary) to receive the proceeds of their investment account after death. This is without the requirement for the completion of probate, as assets donated to beneficiaries under a Deed of Donation *Mortis Causa* do not fall within the deceased's probate estate.

Should you have any questions in relation to the tax or other consequences arising out of the Deed of Donation *Mortis Causa* arrangement then you should seek advice from your own legal and tax advisers.

Points for Consideration

1. The Deed of Donation will take effect on the day preceding the death of the deceased donor.
2. The donation is a revocable gift made by the donor during their lifetime and designed to take effect only upon their demise. The donor retains the power to withdraw or alter the gift at any point prior to their death.
3. The donor understands that there is a pre-requisite that the donation must be completely benevolent in nature.
4. The donation supersedes all previous beneficiary nominations linked to the investment account.

The Process

The donor submits a Deed of Donation that nominates the donee.

The Deed must be signed in the presence of two competent witnesses over 14 years of age, with a 'wet signature' by all donor(s) and donee(s) respectively. The original will be retained by the donor and a scanned copy of the signed copy of the Deed of Donation *Mortis Causa* and Nomination Form must be sent to Capital International Limited for their retention.

The account will be maintained in the Donor's / Donors' own name(s), without any access restrictions.

The donee(s) will not have any involvement or legal entitlement to the account during the donor's lifetime.

Upon the death of the last surviving donor, the right, title and interest of the account will pass to the donee(s).

The donee will contact Capital International Limited and provide them with a copy of the Deed of Donation, a certified copy of the death certificate and up to date ID&V for each of the donee(s).

The donee(s) can now take control of the account without the need for probate.

The donee(s) can choose to withdraw all funds or retain these assets by opening a new account with Capital International Limited in their own name.

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Case Study

Pieter is a South African national living in Johannesburg; he is married to Megan and they have an 25 year old daughter, Emma and a 20 year old son, Jacob. They already have an account with Capital International Limited, in their joint names, and their financial advisor has suggested that they jointly donate their account by way of a Deed of Donation *Mortis Causa* to their children, ensuring that upon their untimely death, there is no significant delay in the children accessing the account funds whilst their deceased estates are administered through the Master's office.

Their advisor confirms that there is no requirement for a costly and complex donation trust structure, or trustees to be appointed – a simple deed is put in place which will take effect one day prior to the death of the last surviving donor (account owner). Until that time, Pieter and Megan have full control of the account and at any time can change the donee(s) (nominated beneficiaries) of the donation or revoke the gift.

After Pieter's untimely death, the joint account automatically transfers to Megan. When Megan dies several years later, the Deed of Donation *Mortis Causa* comes into place with control of the account transferring to their children, Emma and Jacob.



Frequently Asked Questions

Can we nominate contingency beneficiaries?

No – care must be taken due to the presumption against 'donation *Mortis Causa*' to ensure the deed is not deemed to be a "Will in disguise".

My husband and I have a joint account, what happens if I die before him? Do my children benefit upon my death?

No, as a joint account, the ownership of the account automatically transfers to the joint donor upon the death of the other – the Deed of Donation *Mortis Causa* only comes into place upon the death of the last remaining donor, with control then transferring to the donee(s).

Will my account, donated in terms of the Deed of Donation form part of my South African estate when I die?

No, it will not form part of a deceased estate, although it will be deemed part of the estate for the purpose of calculating estate duty.

Why is this only available to those domiciled in South Africa?

If the account owner is not South African domiciled, the governing law in respect of the Investment Account (moveable assets) will be determined in accordance with its geographical location or *lex situs*; in the case of assets held with Capital International Limited, it would be the Isle of Man.

If the account owner is South African domiciled, and the Investment Account is donated in terms of a valid donation *Mortis Causa* then, as the general rule, South African law would apply over such assets.

Capital International Limited

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Can the Deed of Donation *Mortis Causa* be completed and signed electronically?

Whilst the deed and form must be completed digitally, both the donor, donee, and all witnesses, must sign with 'wet signatures', prior to the implementation of the Deed of Donation *Mortis Causa*.

If I hold multiple accounts with Capital International Limited, can one Deed of Donation *Mortis Causa* be assigned against all?

No, each account requires the assignment of an individual Deed of Donation *Mortis Causa* in addition to a completed nomination form.

Can I donate the proceeds of a trust or corporate account using Deed of Donation *Mortis Causa*?

No, a Deed of Donation *Mortis Causa* is only appropriate for individual or joint personal accounts.

After the death of the last surviving donor, how long will it take for my donee to receive their monies?

Subject to the documents being in order, transfer will take place a minimum of 21 business days after document approval.

Can I donate the proceeds of my account to a trust, using a Deed of Donation *Mortis Causa*?

Yes, but there may be tax implications in doing so, so all clients should seek individual tax advice before proceeding.

How many Donee(s) can be appointed with a Deed of Donation *Mortis Causa*?

Whilst legally there is no limit to the number of donee(s) that can be appointed, CIL has an operational limit in place of a maximum of four per account.

Issue Date: 20/03/2026
Ref: SDODCv1b

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