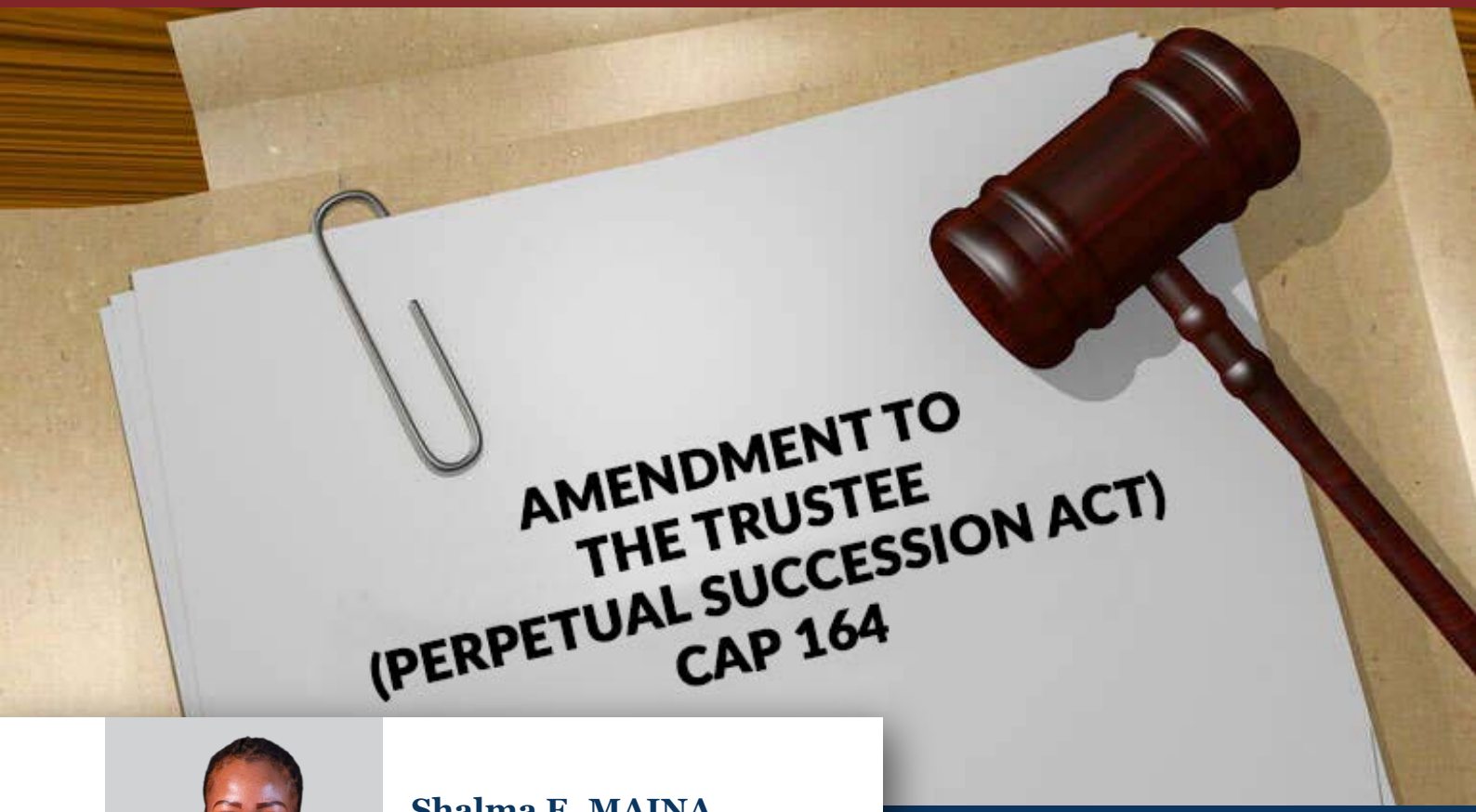
CM ADVOCATES LLP

Legal Alert

AMENDMENTS TO THE TRUSTEE (PERPETUAL SUCCESSION ACT) CAP 164





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INTRODUCTION

On 24th April, 2024, the President assented into law The Statute Law (Miscellaneous Amendments) (No.2) Bill of 2023, effecting significant amendments to 16 Acts of Parliament, including the Trustee (Perpetual Succession Act) Cap 164.

The TPSA is an Act of Parliament that governs the incorporation of various trusts, including charitable trusts, family trusts, and non-charitable purpose trusts. The recent amendments impact the procedural aspects relating to the different types of trusts.

KEY AMENDMENTS TO THE TPSA

1. Shift from Principal Registrar to Registrar of Companies:

The Registrar of Companies now assumes responsibilities previously held by the Principal Registrar under the Registration of Documents Act (Cap. 285). These responsibilities include: -

a. Registration of charitable, family, and non-charitable purpose trusts;
b. Processing applications for incorporation of trusts.
c. Issuing Certificates of Incorporation for trusts.
d. Maintaining a register of registered and incorporated trusts.
e. Approving applications to inspect and get copies of public documents in the register of trusts; and
f. Making regulations pertaining to trusts.

2. Change of Prescribed Application Form for Incorporation Trusts:

The prescribed application form for incorporation of trusts has changed from Form A (as per the Land (Perpetual Succession) Regulations) to Form TR1, now included in the First Schedule to the TPSA.

3. Revision of Official Fees for Incorporation and Conducting Searches:

A second schedule has been added to the TPSA that outlines the fees chargeable by the Registrar for incorporation of trusts as well as the inspection of the register of trusts or obtaining copies of public documents or information thereof.

The fees chargeable for the incorporation of a trust have been increased from Kshs. 3,000/= to Kshs. 10,000/= while the fee for inspecting the register of trusts is Kshs. 500/=.

CONCLUSION

The amendments made to the TPSA are fundamental and will help achieve faster registration of trusts and ensure proper record keeping by the Registrar of Companies. To this extent, we await issuance by the Registrar of Companies' of the regulations aimed at streamlining the incorporation of trusts and related procedures.

In the meantime, we are guided by Section 23 (3) of the Interpretations and General Provisions Act (Cap 2) that safeguards existing rights, obligations, liabilities, and privileges where legislation is repealed, unless a contrary intention so appears.

ABOUT US

The Wealth and Private Clients department at CM Advocates LLP boasts a dedicated team equipped with the requisite resources, skills, and expertise in estate planning, wealth management, and trust administration. Our strength lies in delivering personalised, compassionate and effective legal services, drawing from extensive experience in structuring, amending, and incorporating various trust forms.

For inquiries regarding trust establishment, amendment, or related matters, please reach out to us at ***privatewealthlawyers@cmadvocates.com*** or ***law@cmadvocates.com***

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