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NOTABLE CHANGES INTRODUCED BY THE TRUST ADMINISTRATION ACT, 2026

INTRODUCTION

The Trust Administration Act, 2026 (the "Act") marks a welcome step towards a clearer and more comprehensive framework for trusts in Kenya. It came into force on 25th September 2026, bringing together the rules for creating, registering, incorporating and administering trusts. It repeals the Trustees (Perpetual Succession) Act (Cap 164) and the Trustee Act (Cap 167).

This new framework calls for a review of existing trusts to identify any changes needed for compliance. Additionally, anyone establishing a new trust must meet the Act's requirements from the outset. In this article, we highlight eight notable changes introduced by the Act, explain why they matter and outline what trustees and families need to do.

1. REQUIREMENT TO REGISTER OR INCORPORATE ALL WRITTEN TRUSTS

Under the Act, written trusts must be registered or incorporated by the Registrar of Trusts. This is a key step in giving effect to the settlor's wishes and safeguarding trust assets and beneficiaries' interests. Without registration or incorporation, the trust may be unenforceable and could be declared invalid.

Section 5(4) of the Act allows a person claiming to have an interest in a written trust that has neither been registered nor incorporated to apply to the court for recognition or enforcement. Although this provides a possible remedy, a favourable outcome cannot be assumed. Completing the required formalities at the outset helps avoid the uncertainty, expense and delay of having to seek

recognition or enforcement through court proceedings.

2. BOARD OF TRUSTEES WITH INDIVIDUAL TRUSTEES MUST INCLUDE A KENYAN CITIZEN OR RESIDENT

a) Kenyan citizenship or residency

Where trustees are individuals, at least one must be a Kenyan citizen or resident of Kenya. This applies to charitable trusts, family trusts and non-charitable purpose trusts. If your trustees are all foreign nationals living outside Kenya, the composition of your board of trustees will need to be reviewed.

b) Minimum trustee numbers

Charitable and non-charitable purpose trusts must have at least three individual trustees or one corporate trustee. A sole individual trustee would not meet this minimum, even if that person is Kenyan.

A family trust may have a sole individual trustee, provided that person is a Kenyan citizen or resident of Kenya and meets the other eligibility requirements.

Charitable trusts registered or incorporated under the Act may seek an exemption from the above requirements under section 95. However, the process requires parliamentary committee approval, and an exemption is not guaranteed. In this regard, we recommend prioritising compliance.

Existing trusts must comply within twenty-four months of the Act coming into effect, or such other period as the Registrar may direct. Reviewing your trustee arrangements now gives you time to make any necessary changes.

Where changes are needed, appointing **a professional corporate trustee** (https://gabaeltrust.com/) registered in Kenya may be appropriate.

A corporate trustee must have a local contact person who is an individual resident in Kenya, as prescribed in the Act under section 36(4).

3. THE SETTLOR CANNOT BE THE SOLE BENEFICIARY OF A TRUST

A settlor, the person who creates a trust, may also be a trustee, beneficiary or enforcer. However, section 12(3) of the Act prohibits the settlor from being the trust's only beneficiary.

For existing trusts, this requirement must be read alongside the Act's transitional provisions, which recognise existing trusts and provide time for compliance. An existing trust should therefore not be treated as automatically invalid merely because its settlor is its only beneficiary. Instead, its beneficiary arrangements need to be reviewed and brought into compliance within the applicable transitional period.

If this applies to your trust, our **WELL Practice** (https://cmadvocates.com/practiceareas/private-wealth-family-business-and-global-mobility/) can review your trust deed and advise on the amendments needed.

4. IDENTIFY AND DISCLOSE YOUR TRUST'S BENEFICIAL OWNERS

Sections 65 and 66 require every trust to keep a register of its beneficial owners and file a copy with the Registrar of Trusts. Beneficial owners are the individuals who will ultimately own the trust property or on whose behalf transactions are carried out.

Trusts incorporated before the Act came into effect must file their register within twenty-four months of commencement, unless the Registrar extends this period. The register must also be kept up to date, with changes filed with the Registrar within twenty-one days of the change. Failure to file or update the register can attract administrative penalties.

5. YOUR TRUST AGENT MUST BE QUALIFIED

A trust agent is a professional appointed by trustees to assist with establishing or administering a trust. An agent must be an Advocate of the High Court of Kenya, a Certified Secretary or a Certified Accountant.

Providing banking, insurance or investment services does not, by itself, qualify someone to act as a trust agent. Before appointing a trust agent, check the person's professional qualifications. Documents that the law reserves for Advocates must still be prepared by a qualified Advocate.

Where an agent is appointed to handle statutory filings, provide an address or keep records, trustees must notify the Registrar within twenty-one days of appointment. The Registrar must also be notified when the appointment is terminated.

6. YOU HAVE TWENTY-FOUR MONTHS FROM COMMENCEMENT TO COMPLY WITH THE ACT

The Act recognises existing trusts duly incorporated under the former Trustees (Perpetual Succession) Act, as well as trusts created through registration of their deeds under the Registration of Documents Act. It also introduces new requirements and clarifies matters that may not be addressed in your current trust deed. A professional review can help you establish whether your trust needs any amendments to reflect the new law.

Section 99(2)(b) of the Act gives existing trusts twenty-four months from commencement to comply, or such other period as the Registrar may direct. This is a good opportunity to have your arrangements checked and make any necessary changes.

7. EXISTING INCORPORATION CERTIFICATES MAY BE REPLACED

Under section 99(3), the Registrar may issue new certificates of incorporation to previously incorporated trusts and recall certificates issued under the repealed Act.

Trustees should therefore remain alert to any directions concerning replacement certificates. We will keep our clients informed of any developments and guide them through the steps required if the Registrar exercises this power.

8. REGULATIONS TO EXPECT UNDER THE ACT

Section 96 empowers the Attorney-General to make Regulations on how the Act will operate in practice. These may cover:

1. Procedures and forms for filing documents under the Act.
2. Fees for services offered under the Act.
3. Requirements to be met by corporate trustees.
4. Disqualification of trustees.
5. The manner and form of documents issued by the Registrar.
6. Access to information required to be shared under the Act.
7. Procedures and requirements for electronic filings.
8. Beneficial ownership information.
9. Procedures and forms for applications for exemptions under the Act.
10. Licensing of corporate trustees.
11. Other information required to be prescribed by the Registrar under the Act.

We will monitor publication of these Regulations and any directions from the Registrar, keep our clients informed and explain the steps needed for compliance.

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HOW WE CAN HELP YOU

At **CM Advocates LLP**, our **WELL (Wealth, Estate, Legacy and Lifestyle**) Practice can help you understand what the new law means for your trust and take the necessary steps towards compliance.

For existing trusts, we can undertake a professional trust audit covering the deed, registration or incorporation status, trustees, beneficiaries, governance and records. We can identify what needs updating and assist with the changes.

For new trusts, we can advise on an appropriate structure and assist with registration or incorporation. Where appropriate, we can also facilitate professional corporate trustee services.

Existing trusts have **twenty-four months from the Act coming into effect**, or such other period as the Registrar may direct, to comply with the Act. An early review gives you time to address any gaps and keep your trust aligned with its purpose and the new law.

To discuss your trust or arrange a compliance review, email law@cmadvocates.com or privatewealthlawyers@cmadvocates.com.

For More Information

Wealth, Estate, Legacy & Lifestyle (WELL) Practice Unit
E: wellpractice@cmadvocates.com

Contributors:

Shalma E. N. Maina
Senior Associate - WELL Practice
snyambura@cmadvocates.com

Daisy Mwangi
Associate Advocate - WELL Practice
dmwangi@cmadvocates.com

CM Advocates LLP – Contact Details

Head Office Nairobi
I&M Bank House, 7th Floor, 2nd Ngong Avenue
T: +254 20 2210978 or +254 716 209673
P.O. Box 22588 – 00505, Nairobi Kenya
E: law@cmadvocates.com

Mombasa Office
Links Plaza, 3rd Floor, Links Road, Nyali
T: +254 041 447 0758 / +254 41 447 0548
P.O. Box 90056 – 80100, Mombasa Kenya
E: mombasaoffice@cmadvocates.com

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