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26/08/2026

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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REPORT ON:

THE CONSIDERATION OF THE TRUST ADMINISTRATION BILL
(NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 26 AUG 2026 DAY. TUES
TABLED BY: CHAIRPERSON, JLAC HON. GITONGA MURUGARA
CLERK-AT THE-TABLE: MERCY CHUMO

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

AUGUST 2026

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LIST OF ABBREVIATIONS AND ACRONYMS

ARA	-	Asset Recovery Agency
BRITAM	-	British-American Insurance Company
BRS	-	Business Registration Service
CBS	-	Chief of the Order of the Burning Spear
CHAK	-	Christian Health Association of Kenya
DNFBP	-	Designated Non-Financial Businesses and Professions
EBS	-	Elder of the Order of the Burning Spear
EACC	-	Ethics and Anti-Corruption Commission
EGH	-	Elder of the Order of the Golden Heart
FATF	-	Financial Action Task Force
FORD	-	Forum for the Restoration of Democracy
FRC	-	Financial Reporting Centre
ICS	-	Institute of Certified Secretaries
ICPAK	-	Institute of Certified Public Accountants of Kenya
KCCB	-	Kenya Conference of Catholic Bishops
KLRC	-	Kenya Law Reform Commission
KRA	-	Kenya Revenue Authority
MCCP	-	Maendeleo Chap Chap Party
MDAs	-	Ministries, Departments and Agencies
MEDS	-	Mission for Essential Drugs and Supplies
MGH	-	Moran of the Order of the Golden Heart
MP	-	Member of Parliament
NCCK	-	National Council of Churches of Kenya
NIS	-	National Intelligence Service
ODM	-	Orange Democratic Movement
ODPP	-	Office of the Director of Public Prosecutions
OGW	-	Order of the Grand Warrior
SG	-	Office of the Solicitor-General
UDA	-	United Democratic Alliance
UDM	-	United Democratic Movement
WDM	-	Wiper Democratic Movement

LIST OF ANNEXURES

Annexure 1: Adoption Schedule
Annexure 2: Minutes
Annexure 3: Trust Administration Bill *(National Assembly Bill No. 29 of 2026)*
Annexure 4: Advertisement inviting the public to submit memoranda on the Bill
Annexure 5: Letter from the Clerk of the National Assembly inviting key stakeholders to a meeting to submit views on the Bill
Annexure 6: Memoranda by Stakeholders

CHAIRPERSON'S FOREWORD

This Report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Trust Administration Bill *(National Assembly Bill No. 29 of 2026)*. The Bill was published in the Kenya Gazette on 20th May 2026 and was read a First Time in the House on 16th June 2026. Pursuant to Standing Order 127(1), the Bill was committed to the Committee for consideration and reporting to the House.

The Bill seeks to consolidate and reform the laws relating to the regulation of trusts. The legal framework currently regulating trusts comprises the Trustees (Perpetual Succession) Act, Cap. 164 which commenced in 1923 and the Trustee Act, Cap. 167 which commenced in 1929.

The Trustees (Perpetual Succession) Act provides for the incorporation of trusts, the types of trusts, the appointment of trustees, and the keeping and maintenance of a register by the Registrar. The Trustee Act, on the other hand, applies to trusts including executorships and administratorships, and provides for the powers of trustees including the power to invest in authorised investments, the power of sale, the power to raise money, and the power to insure as well as the appointment and discharge of trustees. The consolidation of these two statutes is necessary to bring together related statutory provisions into a single, coherent legal framework. In addition, the existing laws, having been enacted almost a century ago, require updating to reflect the contemporary social and economic realities within which they operate.

The Bill is, therefore, a necessary reform of the law on trusts aimed to modernise its provisions, strengthen institutional and regulatory mechanisms, address emerging challenges, and ensure that the law remains relevant, effective and responsive to present and future needs.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on 18th June 2026, inviting the public to submit memoranda in the form of written statements on the Bill. In addition, the Committee, vide a letter referenced *NA/DDC/JLAC/2026/055* dated 28th July 2026 invited key stakeholders to submit views on the Bill and to attend a public participation forum on 6th August 2026. The memoranda were to be received on or before 2nd July 2026 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received sixteen (16) memoranda.

The Office of the Solicitor-General, State Department for Justice, Human Rights and Constitutional Affairs, National Intelligence Service, Ethics and Anti-Corruption Commission, Kenya Law Reform Commission, Financial Reporting Centre, Asset Recovery Agency, Kenya Revenue Authority, Central Bank of Kenya, Office of the Data Protection Commissioner, Law Society of Kenya, Institute of Certified Secretaries, Institute of Certified Public Accountants of Kenya, Lee, Kwesiga and Kiprono Advocates LLP, Musyimi and Company Advocates, British-American Insurance Company, National Council of Churches of Kenya, Kenya Conference of Catholic Bishops, Christian Health Association of Kenya and Mission for Essential Drugs and Supplies submitted their views on the Bill which the Committee considered in the preparation of this Report.

While considering the Bill, the Committee observed that the existing framework for regulation of trusts is fragmented across the Trustees (Perpetual Succession) Act, Cap. 164 which commenced in 1923 and the Trustee Act, Cap. 167 which commenced in 1929. Further, the Committee observed that the existing framework are obsolete. Therefore, there is need

for consolidation of the two statutes to bring together related statutory provisions into a single, coherent legal framework.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank all the stakeholders who submitted their views on the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who sat for long hours and made useful contributions towards the preparation and production of this Report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its Consideration of the Trust Administration Bill *(National Assembly Bill No. 29 of 2026)*.

It is my pleasure to report that the Committee has considered the Trust Administration Bill *(National Assembly Bill No. 29 of 2026)* and has the honour to report back to the National Assembly with the recommendation that the **House approves the Bill with amendments.**



Hon. George Gitonga Murugara, CBS, MP
Chairman, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
   (a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
   (b) To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;
   (c) To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
   (d) To study and review all legislation referred to it;
   (e) To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
   (f) To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
   (g) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
   (h) To examine treaties, agreements and conventions;
   (i) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;
   (j) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
   (k) To examine any questions raised by Members on a matter within its mandate.

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider:
   (a) The Judiciary;
   (b) Tribunals;
   (c) Access to Justice;
   (d) Public prosecutions;
   (e) Ethics, Integrity and Anti-corruption;
   (f) Correctional services;
   (g) Community service orders and witness protection;
   (h) Constitutional Affairs;
   (i) Sovereign immunity;
   (j) Elections including referenda;
   (k) Human rights;
   (l) Political parties; and
   (m) The State Law Office including insolvency, law reform, public trusteeship, marriages and legal education.

3. In executing its mandate, the Committee oversights the following Ministries, Departments and Agencies (MDAs):
   (a) The Judiciary;
   (b) Judicial Service Commission;
   (c) State Department for Correctional Services;
   (d) State Law Office and Department of Justice;
   (e) State Department for Justice, Human Rights and Constitutional Affairs;
   (f) Office of the Director of Public Prosecutions;
   (g) Ethics and Anti-Corruption Commission;
   (h) Independent Electoral and Boundaries Commission;
   (i) Commission on Administrative Justice;
   (j) Office of the Registrar of Political Parties;
   (k) Witness Protection Agency;
   (l) Kenya National Commission on Human Rights;
   (m) Kenya Law Reform Commission; and
   (n) Council of Legal Education.

1.3 Committee Membership

4. The Committee comprises the following Members:

Chairperson
Hon. Murugara George Gitonga, CBS, MP
Tharaka Constituency
UDA Party

Vice-Chairperson
Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Hon. Gladys Boss, MGH, MP
Uasin Gishu Constituency
UDA Party

Hon. Maalim Farah, EGH, MP
Dadaab Constituency
WDM-Kenya

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Francis Kajwang' Tom Joseph, CBS, MP
Ruaraka Constituency
ODM Party

Hon. Wetang'ula Timothy Wanyoyi, CBS, MP
Westlands Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP
Rarieda Constituency
ODM Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Mogaka Stephen M., MP
West Mugirango Constituency
Jubilee Party

Hon. Timothy Kipchumba Toroitich, MP
Marakwet West Constituency
Independent

Hon. Harold Kimuge Kipchumba, MP
Nominated Member
ODM Party

Hon. CPA Suleka Hulbale Harun, MP
Nominated Member
UDM Party

1.4 Committee Secretariat

5. The Committee is facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I / Head of Secretariat

Mr. Ronald Walala
Principal Legal Counsel

Mr. Samuel Wanjiru
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel I

Mr. John Nduaci
Serjeant-At-Arms

Ms. Rhoda Muchiri
Hansard Officer III

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Omar Abdirahim
Fiscal Analyst I

Ms. Vivienne Ogega
Research Officer III

Ms. Rahab Chepkilin
Audio Officer III

Mr. Wilson Murimi
Media Relations Officer III

Ms. Esther Mbatha
Public Communications Officer III

CHAPTER TWO

2 OVERVIEW OF THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY *BILL NO. 29 OF 2026)*

2.1 Background

6. The Bill, sponsored by the Hon. Kimani Ichungwah, EGH, MP Leader of Majority Party, was read a First Time in the House on 16th June 2026 (*Annexure 3*). It was thereafter committed to the Committee in line with Standing Order 127(1) of the National Assembly Standing Orders.

2.2 Summary of Legal Provisions

7. The Bill seeks to consolidate and reform the laws relating to the regulation of trusts. Currently, the legal framework that regulates trusts are the Trustees (Perpetual Succession) Act, Cap. 164 which commenced in 1923 and the Trustee Act, Cap. 167 which commenced in 1929.

8. The Trustees (Perpetual Succession) Act, Cap. 164 provides for the incorporation of trusts, types of trusts, appointment of trustees and the keeping and maintenance of a register of by the Registrar. The Trustee Act, Cap. 167 on the other hand, applies to trusts including executorships and administratorships, and provides for the powers of trustees including the power to invest in authorised investments, the power of sale, the power to raise money, and the power to insure as well as the appointment and discharge of trustees. The consolidation of these two statutes is necessary to bring together related statutory provisions into a single, coherent legal framework. This consolidation will enhance clarity, consistency and accessibility of the law by eliminating duplication, resolving inconsistencies and simplifying legal interpretation and application.

9. Additionally, the existing laws were enacted almost a century ago and no longer adequately reflect the contemporary social and economic realities within which they operate. The reform of the law on trusts is therefore necessary to modernize its provisions, strengthen institutional and regulatory mechanisms, address emerging challenges, and ensure that the law remains relevant, effective and responsive to present and future needs.

10. In particular:
    (a) **Part I** of the Bill provides for short title, interpretation and application of the Act. Clause 3 provides that the Act shall apply to all trusts created and trustees appointed under this Act or any other written law in relation to duties and obligations of trustees.

    (b) **Part II** of the Bill deals with formation of trusts. Clause 4 provides that a trust is created where there is a legal arrangement of which ownership of property of a person is transferred, conveyed or assigned in whole or in part, to a trustee to be administered and controlled in accordance with the terms of a trust deed, operation of law or by order of the court, for the benefit of another person or class of persons or for the achievement of a specific object. Clause 5 provides that a written trust is valid and enforceable upon registration or incorporation. Clauses 7 provides for the irrevocable nature of a trust unless the trust deed contains express power of revocation and where the express power of revocation has not been exercised, the trust is deemed to be irrevocable. Clauses 8, 9

and 10 outline the types of trust which include charitable trusts, non-charitable purpose trusts and family trusts. Parties to a trust who are the settlor, enforcer and beneficiary are covered under Clauses 12 -21 of the Bill.

(c) **Part III** of the Bill provides for the registration of a trust through an application to the Registrar of Trusts together with the accompanying documents which include a trust deed whose content is provided in Clause 23. Upon registration, the Registrar shall issue an applicant with a certificate of registration that is conclusive evidence of registration.

(d) **Part IV** of the Bill provides for the incorporation of a trust whose effect is to give legal personality to a trust capable of doing all such acts that may be done by a body corporate.

(e) **Part V** of the Bill provides for trust property where a trustee is obligated to deal or manage trust property in accordance with the terms of the trust deed without any deviation or derogation unless explicitly authorised by the trust dee, order of court or any other written law. Clause 35 provides that any property that is acquired illegally shall not form part of trust property and such property is subject to recovery and forfeiture proceedings.

(f) **Part VI** of the Bill provides for trustees including qualifications and disqualifications for acting as a trustee, appointment of a trustee, resignation of a trustee and removal of a trustee.

(g) **Part VII** of the Bill provides for the duties and general powers of trustees. The duties include duty to exercise reasonable care, skill and diligence, duty to act within powers, duty not to profit from trusteeship, duty to preserve trust property, duty to keep trust property separate from personal property and duty to keep records. The powers include power to apply income for the maintenance of a minor, power to manage and control trust property, power to delegate functions, power to appropriate trust property towards the satisfaction of the interest of a beneficiary, power of sale and lease of trust property, power to borrow using trust property, power to distribute trust property and power to insure.

(h) **Part VIII** of the Bill provides for the remuneration, reimbursement of expenses, liability and indemnification of a trustee. It also provides for the obligation of trust keeping a register of prescribed information as well as accounting records.

(i) **Part IX** of the Bill provides for the requirement of a trust to keep a register of beneficial owners of a trust and update the register in case of any changes.

(j) **Part X** of the Bill provides for the power of the court in relation to vesting orders of trust property.

(k) **Part XI** of the Bill makes provisions relating to the change of name of a trust, filing of annual returns with the Registrar and appointment of a trust agent.

(l) **Part XII** of the Bill provides for Registrar of Trust which shall be an office within the Business Registration Service and the duty of the Registrar to keep a register of trusts.

(m) **Part XIII** of the Bill provides for dissolution of a trust through an application by a trustee if the purpose of the trust has been fulfilled, it is impossible for the trust to achieve its purpose or a court has ordered the trust to be dissolved.

(n) **Part XIV** of the Bill provides for miscellaneous provisions which include e-filing, duty to comply with the Data Protection Act, the offence lodging of false documents or making misleading statements and dispute resolution mechanisms.

(o) **Part XV** of the Bill provides for delegated powers to the Attorney General to make regulations as may be necessary to give effect to the provisions of the Act.

(p) **Part XVI** of the Bill provides for a consequential amendment to the Registration of Documents Act to exempt a trust deed or a deed of appointment of trustees registered under the Trust Administration Act from the requirement of registration under the Registrar of Documents. It also provides for the repeal of the Trustees (Perpetual Succession) Act and the Trustee Act and transitional provisions.

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

11. Article 118 (1)(b) of the Constitution provides that:

"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

12. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

"(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism including-

(a) inviting submission of memoranda;

(b) holding public hearings;

(c) consulting relevant stakeholders in a sector; and

(d) consulting experts on technical subjects.

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 Memoranda Received on the Bill

13. Pursuant to the aforementioned provisions of the law, the Committee placed an advertisement in the print media on 18th June 2026 *(Annexure 4)* inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide a letter referenced *NA/DDC/JLAC/2026/055* dated 28th July 2026 *(Annexure 5)* invited key stakeholders to submit views on the Bill and attend a public participation forum on 6th August 2026.

14. To this end, the Committee received sixteen (16) memoranda from the Office of the Solicitor-General (SG); State Department for Justice, Human Rights and Constitutional Affairs; National Intelligence Service (NIS); Ethics and Anti-Corruption Commission (EACC); Financial Reporting Centre (FRC); Office of the Data Protection Commissioner (ODPC); Law Society of Kenya (LSK); Institute of Certified Secretaries (ICS); Institute of Certified Public Accountants of Kenya (ICPAK); Lee, Kwesiga and Kiprono (LKK) Advocates LLP; Musyimi and Company Advocates; British-American Insurance Company (BRITAM); National Council of Churches of Kenya (NCCK); Kenya Conference of Catholic Bishops (KCCB); Christian Health Association of Kenya (CHAK); and Mission for Essential Drugs and Supplies (MEDS). The memoranda are annexed to this Report as *Annexure 6.*

15. The SG submitted a harmonised memorandum incorporating the views of the NCCK, the Public Trustee, the Central Bank of Kenya (CBK) and the Kenya Revenue Authority (KRA).

16. In addition, the SG, NIS, EACC, Kenya Law Reform Commission (KLRC), FRC, ARA, Kenya Revenue Authority (KRA), ICS, NCCK, KCCB, CHAK and MEDS attended the public participation forum on 6th August 2026 whilst the SG together with the Business Registration Service (BRS), KLRC, Central Bank of Kenya (CBK) and ICPAK appeared before the Committee on 18th August 2026 and submitted their views on the Bill. The SG together with BRS, KLRC, KRA and CBK further appeared on 25th August 2026 and submitted their views on the Bill.

3.2.1 Submissions in Support of the Bill

17. While attending the public participation forum on 6th August 2026, ARA supported the Bill in its entirety.

18. In addition, the ODPC supported the Bill stating that clause 91 requires compliance with the Data Protection Act, Cap. 411C when processing personal data. The ODPC added that it remains committed to protecting Kenyans' personal data through rigorous enforcement, awareness and collaborative partnerships

19. The FRC supported the Bill noting as follows:
    (a) The Bill marks a significant transition from fragmented and inadequate trust framework to a comprehensive, transparent and well-regulated regime, strengthening compliance with the Financial Action Tas Force (FATF) Recommendation 25 relating to transparency and beneficial ownership of trusts and Immediate Outcome 5.
    (b) The Bill introduces a centralized Register of Trusts and makes registration a prerequisite for the legal recognition and enforceability of trusts, thereby promoting transparency and reducing the risk of trusts being used to conceal beneficial ownership or facilitate illicit activities.
    (c) The Bill requires trustees to maintain accurate and up-to-date records including that of beneficial ownership information while imposing a seven-year record retention period. This is in line with FATF Recommendations 10 and 25 which amongst others, requires records to be kept for a minimum of five (5) years and for trusts to compile and keep a record of beneficial owners, lodge it with the registrar and keep it up to date.
    (d) With regard to charitable trusts, they are generally not allowed to trade. In the event that they do, they should do so under a different legal entity incorporated differently from the charitable trust. The provisions in clause 8(3) of the Bill, therefore, seek to ensure this position and is accordingly supported in its current form.
    (e) The Bill reinforces the regulatory framework through enforcement measures, including administrative and criminal penalties for non-compliance, monetary fines and imprisonment. These provisions are intended to ensure adherence to the law, enhance accountability and strengthen the country's ability to prevent and combat money laundering, terrorist financing and the misuse of trust structures for illicit purposes.
    (f) The Bill would ensure that competent authorities are able to obtain in a timely manner adequate, accurate and up-to-date basic and beneficial ownership information on trusts including, the residence of the trustees and their equivalents and any assets held or managed by the financial institution or Designated Non-Financials Businesses and Professions (DNFBP), in relation to any trustees or their equivalents with which they have a business relationship, or for which they undertake an occasional transaction. Additionally, reporting institutions (financial institutions and DNFBP) under the Proceeds of Crime and Anti-Money Laundering Act, Cap. 59A would be able to request for and obtain information on trusts. This access to information on trusts is an important pillar in the fight against financial crime.

3.2.2 Submissions on Proposed Amendments

20. Whilst proposing amendments to the Bill, the SG, State Department for Justice, Human Rights and Constitutional Affairs, KLRC, CBK, NIS, EACC, FRC, ODPC, LSK, ICS, ICPAK, LKK Advocates LLP, Musyimi and Company Advocates, BRITAM, NCCK, KCCB, CHAK and MEDS submitted as follows:

Long Title

21. The SG proposed amending the title to provide that the object of the Bill is to merge the laws relating to trusts which is currently fragmented and regulated by the Trustees (Perpetual Succession) Act, Cap. 164 and Trustee Act, Cap. 167.

Committee Observation

22. The Committee agreed with the proposal.

Clause 2

Definition of 'beneficial owner'

23. The SG proposed amending the definition of 'beneficial owner' to remove the cross reference to the Companies Act and provide a definition that is suitable with respect to administration of trusts.

24. KCCB proposed amending the definition of 'beneficial owner' to provide one tailored to trusts, identifying the parties to the trust settlor, trustees, protector or enforcer and beneficiaries.

Committee Observation

25. The Committee observed that the cross-referencing of the definition to the Companies Act may bring result in uncertainty in its application to trusts.

Definition of 'competent authority'

26. NIS proposed expanding the definition of 'competent authority' to include MDAs responsible for matters lands, virtual assets and intellectual property and assets recovery to cover all aspects of trust property as captured in the Bill.

Committee Observation

27. The Committee observed that the definition as used in the Bill is intended to capture entities exercising anti-money laundering, counter-terrorism financing, trust supervisory among others, and is not intended as a general catalogue of every MDA that happens to administer a category of property a trust might hold.

Definition of 'enforcer'

28. NIS also submitted that the definition of 'enforcer' was inadequate and required amendment to ensure persons qualified to be enforcers have the requisite capacity and independence to act in the best interests of the beneficiaries.

Committee Observation

29. The Committee observed that the power to appoint an enforcer is a discretionary power.

Definition of 'Registry'

30. The KLRC proposed introducing a definition of 'Registry' as contained in clause 83(3)(b) to prevent ambiguity.

Committee Observation

31. The Committee agreed with the proposal to define 'Registry' to provide clarity in its use in the Bill.

Definition of 'trust agent'

32. ICPAK proposed amending the definition of 'trust agent' to include a certified accountant holding a valid practising certificate under the Accountants Act, Cap. 531 to provide clarity on the professional qualifications and ethical standards applicable to trust agents.

Committee Observation

33. The Committee observed that the definition of 'trust agent' as provided in the Bill sufficiently addresses what entails a trust agent.

Definition of 'trust deed'

34. The SG proposed amending the definition of 'trust deed' by inserting the words 'and includes reference to a constitution or trust instrument' immediately after the word 'thereof'.

Committee Observation

35. The Committee observed that not every trust is created by a trust deed. Therefore, extending the definition ensures the law applies functionally.

Definition of 'reporting institution'

36. The SG proposed inserting a new definition of 'reporting institution' to assign it the meaning contained in the Proceeds of Crime and Anti-Money Laundering Act, Cap. 59A.

Committee Observation

37. The Committee agreed with the proposal to define 'reporting institution' to provide clarity in its use in the Bill.

Clause 3

38. The SG proposed amending the clause to expand the scope of application of the Act.

39. While referring to clauses 5(1), 5(2), 6(1)(f) and 48(2)(g), FRC proposed amending clause 3 to expand the scope of application of the Act to foreign trusts with sufficient links to Kenya that avoid registration or local trusteeship. Furthermore, introduction of mandatory declaration or registration requirements for foreign trusts with sufficient links to Kenya, including ownership of local assets or financial relationships in compliance with FATF Immediate Outcome 5 which requires jurisdictions to identify and mitigate risks from foreign legal arrangements with local links.

Committee Observation

40. The Committee observed that the current provision does not cater to the different forms of trusts and limiting the application of the Act to trusts registered or administered in Kenya may create a regulatory gap in respect of foreign trusts that have substantial links to Kenya but are neither registered nor have trustees resident in Kenya.

Clause 4

41. The SG proposed amending the clause to address self-declared trusts in cases of a settlor who doubles up as a trustee.

42. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending clause 4 to provide clarity and avoid ambiguity on the creation of trusts.

Committee Observation

43. The Committee observed that clause 4 ought to clearly provide for the manner in which a trust may be created, including the circumstances where a settlor also acts as a trustee to provide legal certainty as to the validity and requirements for the creation of trusts.

Clause 5

44. The SG proposed amending the clause to provide for the recognition and enforceability of trusts for clarity.

45. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending sub-clause (1) to distinguish between validity, registration and enforceability of a trust.

46. NCCK proposed amending sub-clause (1) to provide a grace period of ninety (90) days from execution for registration of written trusts to avoid immediate invalidity for trusts created in good faith but pending administrative processing. In the Council's view, the requirement for registration as a precondition for validity is a significant departure from current practice and may affect existing informal trusts by surprise.

47. Noting that a settlor's documented intention could be defeated for a purely procedural default, LSK and LKK Advocates LLP proposed amending sub-clause (2) to: confine inadmissibility to disputes over title or priority; preserve admissibility to prove the settlor's intention; and exempt testamentary, resulting and constructive trusts. Furthermore, in ***Albert Kigera Karume and 2 Others v Geroge Ngugi Waireri and 3 Others [2020] KEHC 9609 (KLR) {hereinafter Karume Case}***, the settlor's transfer of his assets into a private trust and the trust document recording his intentions, were central to the court's decision to uphold the structure. Excluding such documents would frustrate proof of the settlor's true wishes, the very freedom the trust device exists to serve.

Committee Observation

48. The Committee observed that the validity, registration and enforceability of a trust are distinct legal concepts and should be clearly distinguished to avoid uncertainty as to the legal effect of non-registration.

Clause 6

49. EACC proposed inserting a new sub-clause to expressly provide for the invalidation or voiding of trusts through application by a competent authority, especially in a criminal investigation.

Committee Observation

50. The Committee observed that the proposal is adequately addressed in the Bill.

Clause 7

51. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending sub-clause (1) for clarity to ensure that settlors understand the effect of creating a trust and the circumstances in which revocation is possible.

52. Musyimi and Company Advocates submitted that sub-clause (1) be amended to add 'or by its very character is revocable'.

53. Similarly, Musyimi and Company Advocates proposed amending sub-clause (2) to include an additional condition when a trust could be deemed irrevocable, namely, the death of the settlor does not have the effect of revocation of the trust.

Committee Observation

54. The Committee observed that the default position is that a trust is irrevocable unless there is an express power of revocation to safeguards the integrity and stability of the trust arrangement by ensuring that trustees and beneficiaries may rely on the terms of the trust instrument.

Clause 8

55. MEDS proposed amending the definition of charitable trusts in sub-clause (1) to define 'healthcare' as a separate limb, on the premise that healthcare services are an integral charitable purpose in their own right, whereas the current definition merely subsumes them under the broader category of human rights.

56. The SG proposed deleting of sub-clause (3).

57. Noting that sub-clause (3) restricts charitable trusts from trading, NIS proposed an amendment because the aspect of trading would enable charitable trusts to be self-reliant and generate income which could aid the trust to expand its area of coverage by reaching out to many beneficiaries.

58. LSK and CHAK proposed amending sub-clause (3) to enable charitable trusts to generate their own income instead of solely relying on donations, grants or government funding provided that the additional income would be applied solely for trust's charitable activities.

59. NCCK proposed deleting sub-clause (3) in its entirety because a blanket ban on trading for charitable trusts is more restrictive contrary to paragraph 10 of the First Schedule to the Income Tax Act, Cap. 470 and the Income Tax (Charitable Organizations and Donations Exemption) Rules, 2024.

60. Similarly, KCCB proposed amending sub-clause (3) to define a non-trading entity and to provide that a charitable trust does not cease to be non-trading by reason of only income-generating activity whose surplus is applied solely to its charitable objects. This would enable charitable trusts to carry on trade in direct furtherance of its purpose as a mission school or hospital does when it charges fees.

61. MEDS proposed amending sub-clause (3) to clarify that the undertaking of trading activities does not in itself detract from the charitable nature of a trust since revenue-generating activities are undertaken solely in furtherance of a charitable purpose and any resulting surpluses applied exclusively towards the trust's charitable objects.

Committee Observation

62. The Committee observed that sub-clause (1) sufficiently caters to healthcare as it allows for any purpose beneficial to the general public including healthcare.

63. Relating to sub-clause (3), the Committee observed that charitable trusts should be allowed to generate income which is ordinarily exclusively applied towards the objects of the charitable trust.

Clause 9

64. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending sub-clauses (2) and (3) to require every non-charitable purpose to have at least one enforcer as a condition for registration. This is because an enforcer becomes the only realistic check on the trustee's conduct in absence of a beneficiary.

Committee Observation

65. The Committee observed that the settlor could adequately hold the trustee to account for the proper administration of a non-charitable purpose trust. Accordingly, the appointment of an enforcer should remain optional depending on the terms and circumstances of the trust.

Clause 10

66. Musyimi and Company Advocates proposed amending sub-clause (2)(a) to include the words 'whether living or not' to expand the beneficiaries that could be contemplated in a family trust in conformity with the existing provisions on family trusts as set out in the Trustees (Perpetual Succession) Act, Cap. 164.

Committee Observation

67. The Committee observed that the wording in sub-clause (2)(a) caters for unborn beneficiaries.

Clause 11

68. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending sub-clause (3) to exempt international or purely non-charitable trusts with no Kenyan-situs property. Alternatively, allow a Kenya-resident trust agent to satisfy the residency requirement on the trustee's behalf. In the State Department's view, a narrower, risk-based residency rule would achieve the same transparency objective at lower cost to the sector.

69. KCCB proposed amending sub-clause (3) to exempt charitable trusts whose trustees are all natural persons from the requirement to have at least one trustee be a citizen or resident of Kenya. Instead, the Council proposed requiring such trusts to appoint a resident trust agent or local contact person, similar to the requirement applicable to corporate trusts under the proposed section 36(4). KCCB submitted that missionary and international congregations serving in Kenya are sometimes governed by superiors abroad. And that, in its view, requiring a resident trust agent or local contact person would achieve the intended transparency objective without excluding such communities.

Committee Observation

70. The Committee observed that requiring at least one trustee to be a citizen or resident of Kenya is a reasonable governance and accountability measure. The requirement provides a substantive nexus between the administration of a trust and the Kenyan jurisdiction and facilitates effective regulatory oversight, accountability and enforcement of trustees' fiduciary obligations.

Clause 13

71. The SG proposed inserting a new sub-clause after (1) to require that a settlor should only exercise powers provided under the trust deed.

72. The CBK proposed amending sub-clause (1) to include the words 'any other written law' after the word 'Act'.

73. Musyimi and Company Advocates proposed deleting sub-clause (2) because the settlor should be entitled to act as a trustee.

74. MEDS proposed deleting sub-clause (2) because, in its view, it conflicts with clause 12(3) and would result in confusion as to whether a settlor can be a trustee or not.

Committee Observation

75. The Committee observed that sub-clause (1) adequately addresses the SG's concerns. However, the Committee agreed with the CBK's proposal to amend sub-clause (1) to align with other statutes containing provisions relating to trust administration.

Clause 14

76. NIS proposed amending the clause to provide for adequate qualifications of an enforcer and a supervisory body in charge of persons qualified to be enforcers. This could include minimum professional competences and absence of conflict of interest in the trust property as well as grounds for disqualification.

Committee Observation

77. The Committee observed that the power to appoint an enforcer is a discretionary power.

Clauses 17(4), 37(3), 39(10), 40(5), 41(4), 46(3), 49(3), 66(4), 67(2) and 93

78. FRC proposed amending the provisions to enhance administrative penalties and introduce additional measures such as escalating fines, compliance orders, suspension of trustees and disqualification for repeated breaches to ensure sufficient proportionality for high value trusts in line with FATF Immediate Outcome 5.

Committee Observation

79. The Committee agreed with the proposal and further noted that the clauses, as drafted, allow the court the discretion to determine the proportionality.

Clause 19

80. As read with clause 9, the State Department of Justice, Human Rights and Constitutional Affairs proposed amending sub-clause (1) to specify that the provision applies to trust with beneficiaries and does not derogate from the validity of non-charitable purpose trusts.

Committee Observation

81. The Committee observed that the provision only applies to trusts with beneficiaries.

Clause 21

82. The State Department of Justice, Human Rights and Constitutional Affairs proposed clarifying whether the disclaimer should be made before acceptance of benefits and whether a

disclaimer can be revoked. Furthermore, the State Department proposed specifying the form of disclaimer to be in writing and signed by the beneficiary.

Committee Observation

83. The Committee observed that the clause is clear on the point at which a disclaimer may be made. The Committee further observed that the general rule is that a disclaimer is final and allowing a revocation would undermine certainty for trustees and other beneficiaries who have relied on the disclaimer.

Part III

84. Musyimi and Company Advocates proposed including a provision on name reservation for purposes of registration of trusts to mirror the provision in Part IV in so far as it relates to name reservation.

85. Whilst supporting the introduction of registration of tier trusts that do not require corporate status, NCCK submitted that the registration requirements under Part III may be overly burdensome for small charitable trusts. Thus, the Council proposed that the Regulations prescribe simplified registration forms for charitable trusts and that the registration fee structure be graduated based on trust size or asset value.

Committee Observation

86. The Committee observed that name reservation for purposes of registration of a trust may not be necessary since registration does not confer a trust with corporate status as in the case of incorporation.

Clause 22

87. The SG proposed amending sub-clause (2)(e) to align with the discretionary power to appoint an enforcer. Additionally, the SG proposed amending sub-clause (2)(f) to correct a typographical error.

88. EACC proposed inserting a new clause to enable the Registrar to seek for or consider information relevant to determine whether a trust should be registered where that information is ordinarily in the custody of a competent authority.

Committee Observation

89. Relating to sub-clause (2)(e), the Committee observed that the power to appoint an enforcer is discretionary.

90. The Committee observed that the proposal by EACC could be handled administratively.

Clauses 22, 29, 33(2) and 48

91. FRC proposed defining the term 'details' and prescribing minimum identification requirements, including full name, nationality, date of birth, address and identification documents as used in the clauses. This would comply with FATF Recommndations 24 and 25 that require adequate identification information.

Committee Observation

92. The Committee observed that further details may be provided in the Regulations as contemplated in clause 95.

Clause 25

93. LSK proposed introducing a new clause after 25 to provide for a right of appeal or review to a tribunal or to the High Court against a decision of the Registrar refusing to register a trust or issue a certificate.

Committee Observation

94. The Committee observed that the provisions of Article 50 of the Constitution on fair hearing are available to an aggrieved party.

Clauses 25 and 31

95. The SG proposed clauses 25(1)(a) and 35(1)(a) by inserting the words 'is formed for an unlawful purpose or' immediately after the word 'trust'. Furthermore, the SG proposed deleting clauses 25(1)(d) and 35(1)(d).

96. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending clauses 25(1)(d) and 35(1)(d) to define the vetting process and specify the minimum information a settlor, trustee or beneficiary is entitled to be given about adverse findings together with a right of reply before refusal in addition to the existing right to reasons after the fact.

97. The SG proposed amending the clauses to insert a new sub-clause after (2) to require that an applicant be afforded an opportunity to be heard or to regularise an application to meet the requirements for registration.

98. As read together with clause 31, KCCB proposed amending the clauses 25 and 31 to specify the grounds for refusal and the criteria applicable to any vetting process, and to expressly provide for the right of appeal to the High Court against a refusal. The Council further proposed requiring the Registrar to act proportionately in exercising these powers. In KCCB's view, these amendments would prevent likely infringements of the freedoms of religion and association and the right to property.

Committee Observation

99. The Committee observed that it may be necessary to include a trust that is formed for an unlawful purpose as a ground for refusal to register a trust. Further, the Committee noted that removing vetting as a pre-requisite to registration replaces subjective assessment with objective and verifiable criteria.

Clause 26

100. The SG proposed amending the clause to provide a manner in which revocation of registration of a trust is to done pursuant to a court order.

Committee Observation

101. The Committee observed that an order of the court is final and therefore prescribing a manner of revocation may not be necessary.

Clause 28

102. The SG proposed amending the clause to correct a numerical error.

Committee Observation

103. The Committee agreed with the proposal.

Clause 29

104. Musyimi and Company Advocates proposed amending sub-clause (2)(d) to require that a copy of the register of beneficial owners shall only be submitted in the case of a non-charitable trust because charitable trusts do not ordinarily have beneficial owners.

Committee Observation

105. The Committee agreed that the beneficial ownership requirements in the Bill are not appropriately applicable to charitable trusts because such trusts are established for charitable purposes and, unlike non-charitable trusts, do not ordinarily confer beneficial ownership on identifiable persons.

Clause 32

106. The SG proposed inserting new sub-clauses after sub-clause (1) to specify that an incorporation of a trust shall not extinguish or otherwise affect the trust and convert the beneficial interest of a beneficiary into a shareholding or other proprietary interest.

Committee Observation

107. The Committee observed that incorporation of a trust does not extinguish or convert the beneficial interest of a beneficiary into a shareholding or proprietary interest.

Clause 35

108. EACC proposed amending the proposal to expressly include the Anti-Corruption and Economic Crimes Act, Cap. 65 and the Conflict of Interest Act, 2025 because they contain provisions for recovery and forfeiture of illegally acquired property.

Committee Observation

109. The Committee observed that the clause adequately caters to all other applicable laws which provide for recovery and forfeiture of illegally acquired property.

Part VI, VII and VIII

110. Musyimi and Company Advocates submitted that Part II on investments, Part III on general powers of trustees and Part IV on provisions relating to indemnities given to trustees by means of advertisement and notice of the Trustee Act, Cap. 167 have been largely omitted to the detriment of trustees and beneficiaries.

Committee Observation

111. The Committee observed that the proposed amendments under clause 51 in the instant Bill caters for the power to invest by trustees whereas Part VII adequately provides for the duties and general powers of trustees. In addition, the Committee observed that Part VII of the instant Bill addresses the issues on indemnification.

Clause 36

112. The SG proposed deleting sub-clause (1)(b) because the qualification is adequately addressed in sub-clause (2)(c).

113. The SG also proposed amending sub-clause (1)(d) by inserting the words 'or any other written law' immediately after the word 'Regulation.

114. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending sub-clause (2)(d) to raise the disqualifying period from a criminal offence attracting imprisonment for a term exceeding six months to one attracting a term exceeding three years. Alternatively, limit the disqualification to offences involving dishonesty, violence or breach of fiduciary duty. Disqualifying a person from acting as a trustee on the basis provided seems disproportionate to the mischief the clause is seeking to prevent.

115. Similarly, NCCK submitted that the proposed disqualification from appointment as a trustee for any offence attracting imprisonment exceeding six months is overly broad and may exclude persons convicted of minor regulatory offences or historical offences who have been rehabilitated. Hence, the Council proposed disqualification be limited to offences relating to dishonesty, fraud, breach of trust, or, in the alternative, moral turpitude or that a rehabilitation period of ten years be provided after which disqualification ceases.

116. LSK and LKK Advocates LLP submitted that the disqualifications set out in sub-clause (2) should not apply to a settlor acting as a trustee of their own family trust or, alternatively, that such a settlor should be permitted to act as trustee upon full written disclosure to the beneficiaries. LSK and LKK further proposed that the disqualifications apply only to corporate and charitable trustees who hold funds on behalf of others or the public. In LSK and LKK's view, a settlor settling their own property for their own family is not the third-party fiduciary contemplated by the disqualification regime. Afterall, the ***Karume Case*** illustrates the trust's central role in succession and intergenerational wealth and, thus, imposing a permanent bar could raise proportionality concerns of Articles 27 and 40 of the Constitution.

117. BRITAM proposed amending sub-clause (3)(a) to expand what entails a corporate trustee to include an entity incorporated under other statutes such as limited liability partnerships, partnerships and incorporated trusts under the Registration of Documents Act, Cap. 285.

Committee Observation

118. The Committee agreed with the proposal to amend sub-clause (1)(d) to align with other statutes containing provisions relating to trust administration.

119. The Committee observed that sub-clause (2)(c) adequately addresses the qualifications of trustees on the ground of soundness of mind.

120. Further, the Committee observed that a trusteeship creates a fiduciary relationship which demands the highest standard of integrity, honesty and probity, therefore, a person convicted of an offence attracting imprisonment for a term exceeding six months has demonstrably fallen short of that standard.

121. Regarding the proposal to amend sub-clause (3)(a), the Committee observed that companies incorporated under the Companies Act are subject to a well-established governance and regulatory framework.

Clause 37

122. The SG proposed amending sub-cause (1) to apply to any statutes relevant to appointment of trustees.

Committee Observation

123. The Committee agreed with the proposal to align with other statutes containing provisions relating to appointment of trustees.

Clauses 38

124. While appearing before the Committee on 25th August 2026, the CBK submitted orally that sub-clause (1) be amended to include 'and any other written law' to cater to any other statues relevant to trust administration.

Committee Observation

125. The Committee agreed with the proposal to align with other statutes containing provisions relating to trust administration.

Clause 39

126. The SG proposed amending sub-clause (3) to provide that the appointment of the trustee be done subject to the Public Trustee Act, Cap. 168 and any other written law.

127. Additionally, the SG proposed amending sub-clause (4) to clarify that trusteeship ceases upon declaration of bankruptcy or insolvency.

Committee Observation

128. The Committee observed that the initiation or commencement of a bankruptcy or insolvency proceeding must result in a declaration of bankruptcy and insolvency before a ceases to hold office. The mere commencement of such proceedings does not, of itself, establish that the trustee is bankrupt or insolvent.

129. The Committee agreed with the proposal to amend sub-clause (4) because it would ensure that the provision covers all applicable laws.

Clause 40

130. The State Department for Justice, Human rights and Constitutional Affairs proposed amending sub-clause (1) to specify the person who may apply to court for removal of a trustee since legitimate interest is not defined anywhere in the Bill and removal of a trustee is a serious step that could disrupt the administration of a trust.

131. The LSK and LKK Advocates LLP proposed amending the provision to: define 'legitimate interest'; confine removal of a trustee to proven breach of trust, statutory disqualification or loss of legal capacity; and make the section subject to the settlor's reserved powers under the proposed section 13(d). LKK further proposed that the court's discretion should not be exercised to defeat the settlor's wishes in an irrevocable trust, save on the grounds set out in clause 13(1)(b). This would be in line with the judicial decision in ***Karume Case.***

Committee Observation

132. The Committee observed that the removal of a trustee should be left open to any person with a legitimate interest to reflect principles that fiduciary power must remain answerable to those it affects.

Clause 41

133. The SG proposed amending sub-clause (1) to cater for the power of appointing substitute or additional trustees provided under clause 38.

Committee Observation

134. The Committee observed that amending sub-clause (1) would cater for instances of appointment of an additional or substitute trustee where a trustee has been disqualified or otherwise ceased to be a trustee.

Clause 44

135. Linked to clause 36(3)(a), BRITAM submitted that sub-clause (4)(a), as drafted, limits action through a resolution of the board of directors which would not be applicable where the corporate trustee is set up as a limited liability partnership or an incorporated trust.

Committee Observation

136. The Committee observed that companies incorporated under the Companies Act are subject to a well-established governance and regulatory framework.

Clause 46

137. The SG proposed amending sub-clause (3) to specify application to only the trustees in default.

138. CHAK proposed amending sub-clause (3) to exclude from liability property disposal carried out in good faith pursuant to a resolution passed by two-thirds majority of the trust's ultimate appointing authority or Annual General Meeting. In CHAK's view, this would safeguard democratic governance within institutional trusts, thus allowing them to adapt land and property usage to changing healthcare needs.

Committee Observation

139. The Committee observed that there is need to protect innocent trustees from liability arising out of the acts or omissions of a trustee in default.

Clauses 46(3), 49(3) and 58(10)

140. The State Department for Justice, Human Rights and Constitutional Affairs proposed reviewing the clauses and related offence provisions in the Bill to ensure that the prescribed penalties are proportionate to the respective offences.

Committee Observation

141. The Committee observed that the clauses, as drafted, allow the court the discretion to determine the proportionality.

Clauses 47 and 48

142. NCCK proposed that regulations be made to specify the format and standards for record-keeping to assist smaller trusts in compliance.

Committee Observation

143. The Committee observed that the clause 48(2) sufficiently addresses the standard that a trustee ought to adhere to in record-keeping whereas the format may be prescribed in Regulations.

Clause 48

144. The SG proposed amending sub-clause (4) to require a trustee to obtain any approval under any written law prior to lodging an amendment to a trust deed or the list of assets.

145. While referring to clauses 38(8) and 40(4), CHAK proposed amending clause 48(5) to require the Registrar to issue a 30-day default notice before compounding any of the proposed administrative penalties for non-compliance. This would prevent penalizing public-benefit non-profit entities over administrative delays that occur due to widespread church consultation cycles.

Committee Observation

146. Relating to sub-clause (4), the Committee observed that an amendment to a trust deed or the list of trust assets may arise from a transaction requiring consent or approval under another written law and where such approval is required by law, the trustee should obtain it before lodging the relevant amendment with the Registrar.

147. The Committee observed that sub-clause (5), as drafted, seeks to ensure compliance necessary to promote good governance, accountability and timely compliance in the administration of trusts.

Clause 49

148. EACC proposed amending sub-clause (1) to expressly include the Anti-Corruption and Economic Crimes Act, Cap. 65, Leadership and Integrity Act, Cap. 185C and the Conflict of Interest Act, 2025 to provide for disclosure of trust information in a proceeding under the said statutes.

149. FRC proposed amending sub-clauses (2) and (3) to introduce expedited disclosure timelines for urgent money-laundering and terrorism financing investigations in line with FATF Recommendation 25 and Immediate Outcome 5 which requires rapid and efficient access to information.

Committee Observation

150. The Committee observed that sub-clause (1)(e) in the Bill adequately caters to all other applicable laws.

151. Regarding FRC's proposal, the Committee observed that a trust, being a reporting institution as per section 2 of the Proceeds of Crime and Anti-Money Laundering Act, Cap 59A, is required to comply with Part IV on anti-money laundering obligations which addresses the issue on expedited disclosure timelines.

Clause 51

152. The SG proposed modifying the clause to align with existing provisions of the Trustee Act, Cap. 167 to provide a trustee with the powers to invest.

Committee Observation

153. The Committee observed that a trustee's core fiduciary duty is to act in the best interests of the beneficiaries which ordinarily requires prudent management of trust property, not mere custodianship. The power to invest is a practical extension of the trustee's overarching duty of care and without it a trustee cannot properly discharge their fiduciary obligation.

Clause 54

154. The SG proposed amending sub-clause (1) to align the provision with other applicable written laws relating to the power of sale and lease.

155. KCCB proposed amending sub-clause (4) to grant charitable trustees a clear power of sale to address what the Council considered to be a gap in section 17(2) of the Trustee Act, Cap. 167.

Committee Observation

156. The Committee observed that there is need to align sub-clause (1) with any other applicable written laws.

157. Relating to proposed amendment to sub-clause (4), the Committee observed that the prohibition of charitable trusts from exercising a power of sale safeguards the permanence and integrity of the charitable endowment.

Clause 58

158. The SG proposed amending sub-clause (1) to align with any other applicable laws.

159. The SG also proposed deleting sub-clause (3).

160. The SG proposed amending sub-clause (6) to provide that a notice of power of attorney may include any other information as may be prescribed in Regulations.

Committee Observation

161. The Committee observed that there is need to align the exercise of the power of attorney with the provisions of other written laws which may provide the conditions of exercising such a power.

162. The Committee observed that the deletion of sub-clause (3) would allow a trustee to delegate a function to either a natural person or a legal person.

163. The Committee agreed with the proposal to amend sub-clause (6).

Clause 60

164. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending sub-clause (1)(b) to allow remuneration on the written consent of the enforcer or ascertained and competent beneficiaries.

Committee Observation

165. The Committee observed that it may be necessary to give an enforcer, if any, the power to authorize payment of remuneration of a trustee.

Clause 61

166. The SG proposed inserting a new sub-clause after (1) to provide for liability of a trustee who commits a breach of trust. The CBK submitted orally that the new sub-clause be amended to replace the word 'fine' with the words 'administrative penalty'.

Committee Observation

167. The Committee agreed with the proposal since it provides for an efficient deterrent mechanism against breach of trust.

Clause 62

168. NCCK proposed that the regulations provide for standard indemnity insurance arrangements for trustees of charitable trusts or that the Bill expressly permit trusts to purchase trustees' liability insurance from trust funds.

169. CHAK proposed amending sub-clause (1) to define 'gross negligence' to prevent likely leadership vacuums because senior church and healthcare leaders could refuse to volunteer trusteeships if exposed to what is, in its view, broad personal liability.

Committee Observation

170. The Committee observed that clause 62, as drafted, sufficiently addresses matters relating to liability.

Clause 63

171. The SG proposed amending sub-clause (1)(a) to include a certificate of registration as one of the records to be kept by a trust.

172. BRITAM submitted that sub-clause (2), as drafted, is vague and could result in difficulty in interpretation. Hence, BRITAM's proposal to clarify the period from which a trust should retain its documents.

Committee Observation

173. The Committee agreed with the SG's proposal.

174. The Committee observed that sub-clause (2) specifies the period within which a trust should keep its documents as seven years.

Clause 64

175. ICPAK proposed inserting new sub-clauses to provide clarity on who is responsible for preparing annual financial statements, the circumstances requiring an independent audit or review and the criteria for determining which trusts should be subject to mandatory external audit. In the Institute's view, this would establish clear accountability for financial reporting and would introduce a proportionate and risk-based assurance framework for trusts.

Committee Observation

176. The Committee observed that clause 76(1) of the Bill provides for the appointment of a trust agent to offer services to a trust which may include preparation of annual financial statements of a trust and auditing.

Part IX

177. While referring to clauses 2, 15(1), 48(2)(a), 48(2)(g) and 65(1), FRC proposed amending Part IX to expressly include protectors and objects of power within beneficial ownership registration requirements in line with FATF Criterion 25.4 which requires identification of settlors, trustees, protectors, beneficiaries and objects of power.

178. Musyimi and Company Advocates proposed that Part IX on beneficial owners of a trust be limited in application to non-charitable trusts because charitable trusts do not ordinarily have 'beneficial owners'.

179. KCCB proposed revising Part IX to provide a modified disclosure for charitable trusts that names the controlling trustees and office holders in place of owners because charitable religious trusts do not have owners, instead, its beneficiaries are the faithful and the public. Furthermore, in the Council's view, the company-ownership test does not fit and risks exposing personal data of beneficiaries contrary to the Data Protection Act, Cap. 411C and the proposed section 91 in the Bill.

Committee Observation

180. The Committee observed that the proposal by FRC is adequately addressed under clause 14 which provides for the power to appoint an enforcer and the requirement to notify the Registrar of such an appointment. The functions of an enforcer are ideally similar to those of a protector.

181. The Committee agreed that the beneficial ownership requirements under Part IX are not appropriately applicable to charitable trusts because such trusts are established for charitable purposes and, unlike non-charitable trusts, do not ordinarily confer beneficial ownership on identifiable persons.

Clause 65

182. NCCK proposed amending the clause to require that charitable trusts register their trustees and enforcers only with a declaration that the trust has no beneficial owners other than the public. Furthermore, that charitable trust be expressly exempted from the beneficial ownership requirements in in Part IX or, in the alternative, beneficial owners for charitable trusts be limited to trustees and enforcers.

183. CHAK proposed inserting a new sub-clause to recognize the unique, non-private nature of ecumenical organizations which lack individual shareholders or private beneficiaries.

Committee Observation

184. The Committee agreed that the beneficial ownership requirements are not appropriately applicable to charitable trusts because such trusts are established for charitable purposes and, unlike non-charitable trusts, do not ordinarily confer beneficial ownership on identifiable persons.

Clauses 65 to 69

185. The State Department for Justice, Human Rights and Constitutional Affairs proposed providing for a single point of filing for beneficial ownership where a trust and its underlying corporate vehicles are already reporting to the company registry.

Committee Observation

186. The Committee observed that the obligations provided in Part IX of the Bill are distinct from those under the Companies Act.

Clause 66

187. FRC proposed shortening the proposed period for submitting a copy of register of beneficial owners from twenty-four (24) to twelve (12) months in sub-clause (2) to prevent a transparency gap and to align with the FATF standards on timely access to beneficial ownership.

Committee Observation

188. The Committee agreed with the proposal, however, amending the proposal as proposed would conflict with the consequential amendments in clause 97(2)(b).

Clause 67

189. NCCK proposed amending sub-clause (1) to update the 21-day period to thirty days for charitable trusts.

Committee Observation

190. The Committee observed that the sub-clause (1), as drafted, seeks to ensure compliance necessary to promote good governance, accountability and timely compliance in the administration of trusts.

Clause 70

191. BRITAM proposed inserting a new sub-clause (4) to account for the special considerations that the court needs to have for the effective transfer of digital assets.

Committee Observation

192. The Committee observed that the power of the court is discretionary.

Clause 75

193. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending sub-clause (1) to extend the period of filling annual returns from thirty (30) to at least sixty (60) days from the anniversary of registration or incorporation and to empower the Registrar to grant a further extension on cause shown, mirroring the flexibility under clause 66(3).

194. ICPAK proposed amending sub-clause (2) to establish a minimum statutory level of financial disclosure while retaining flexibility for additional requirements to be prescribed through Regulations.

195. The SG proposed amending sub-clause (3) to increase the administrative penalty to three thousand for failure to comply with the requirements on filing of annual returns.

Committee Observation

196. The Committee observed that the thirty-day-period provided in sub-clause (1) would ensure the register reflects the current and accurate information.

197. The Committee observed that information relating to the minimum statutory financial disclosure would be better placed in the Regulations since Regulations are more flexible.

198. The Committee agreed with the proposal to amend sub-clause (3).

Clause 76

199. ICS proposed including in sub-clause (1), as an express function of a trust agent, advising the trust on governance issues. This is because governance advisory is a core competency of certified secretaries and its exclusion would remove the statutory basis for ICS members' involvement in trust governance thus narrowing the profession's footing in the Bill.

200. ICS proposed amending sub-clause (3) to expressly include a certified secretary's role in drafting of trust deeds, to prevent certified secretaries being relegated to purely administrative tasks of filing documents.

201. The SG proposed deleting the proviso in sub-clause (3).

202. ICPAK proposed amending sub-clause (3) to provide clarity on the role of an accountant acting as a trust agent and to ensure that professional services remain within the scope of the Accountants Act, Cap. 531 and applicable standards. The Institute added that this would strengthen the financial administration and compliance of trusts.

Committee Observation

203. The Committee observed that sub-clause (1)(a) adequately provides for offering advisory services which may include governance issues.

204. The Committee observed that sub-clause (3), as drafted, is sufficient.

Clause 77

205. The SG proposed amending sub-clause (1) by replacing the word 'Registrar' with the words 'Office of the Registrar'.

206. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending sub-clause (1) to require the Registrar and Deputy Registrar to have demonstrated experience or qualification in trust and succession law on top of company registration. The State Department further proposed providing for a distinct trusts division with its own rules of practice.

Committee Observation

207. The Committee observed that the sub-clause (1) already makes describes the Registrar of Trusts as an office within the Business Registration Service.

208. Furthermore, the Committee observed that the requirements and qualifications of a Registrar could be determined and applied administratively during recruitment.

Clause 78

209. LSK and LKK Advocates LLP proposed amending sub-clause (8) to require prior judicial authorization based on a documented lawful basis and subject to proportionality safeguards before trust information is disclosed to law enforcement agencies or other competent

authorities except where such disclosure is strictly required under applicable anti-money laundering reporting obligations. LSK and LKK added that Article 31 of the Constitution protects privacy and the clause 91 of the Bill already invokes the Data Protection Act, Cap. 411C. Furthermore, the ***Karume Case*** frames that disclosure of trust information arises within the trustee-beneficiary fiduciary relationship and not a conduit for State surveillance.

210. Musyimi and Company Advocates proposed the deletion of sub-clause (8)(c) because self-regulatory bodies do not have supervisory powers over the Registrar of Trusts.

Committee Observation

211. The Committee observed that although Article 31 of Constitution guarantees the right to privacy, it is not an absolute right and the disclosure contemplated in sub-clause (8) is subject to the Data Protection Act.

212. Furthermore, the Committee observed that the disclosure of information of a self-regulatory body seeks to ensure compliance with the obligation provided under the Proceeds of Crime and Anti-Money Laundering Act.

Clause 79

213. FRC noted that the Bill does not impose an explicit ongoing obligation on the Registrar to independently verify beneficial ownership information as indicated in clauses 24(1), 30(1), 33(1), 48(1), 66(1) and 79(1). Hence, proposed amending sub-clause (1) to provide the Registrar with explicit authority to verify ownership information using independent sources, identification databases and information-sharing mechanisms. This would comply with FATF Recommendation 25 which requires information to be adequate, accurate and up-to-date.

214. KCCB proposed that the clause be amended to extend the same right of appeal to court provided under clause 69(5) and to require the Registrar to grant a hearing before disqualifying any trustee in accordance with Article 47 of the Constitution on fair administrative action and provisions of the Fair Administrative Act, Cap. 7L.

Committee Observation

215. The Committee observed that despite the lack of a provision by the Registrar to independently verify the beneficial ownership information, clause 92 of the Bill creates an offence of lodging false or misleading document.

216. The Committee observed that the provisions of Article 50 of the Constitution on fair hearing are available to an aggrieved party.

Clause 80

217. NCCK submitted that the proposed electronic system should be user-friendly and accessible to trustees with limited technical capacity.

Committee Observation

218. The Committee observed that the proposal by NCCK could be realized administratively by the Registrar of Trusts.

Clause 83

219. The SG proposed amending sub-clause (3) to correct a typographical error.

220. KLRC submitted that sub-clause (3)(b) refers to the a 'Registry' and may cause confusion. Hence, proposed defining the 'Registry' to prevent ambiguity.

221. ICPAK proposed amending the clause to establish clear parameters for the Registrar's exercise of discretion to determine where no fee has been prescribed, including reasonableness, transparency, proportionality and public accessibility of such fees. This would reduce the potential for arbitrary or inconsistent charges and gives trustees and professional advisers certainty regarding the cost of compliance.

Committee Observation

222. The Committee agreed with KLRC's proposal to specify that the Registry be clarified in sub-clause (3) as the Registry of Trusts within the Business Registration Service.

223. The Committee observed that it is the practice to provide additional information relating to fees payable to the Registrar are best placed in Regulations due to flexibility of the regulations.

Clause 84

224. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending sub-clause (1) to clarify who can initiate dissolution of a trust. In addition, the State Department proposed amending sub-clause (2)(a) to clarify that a trust may cease to have a viable purpose even where the purpose has not technically been fulfilled.

225. The State Department proposed amending sub-clause (3)(b)(i) to require that an application for dissolution made on behalf of the trust takes into account the interest of beneficiaries and creditors and that arrangements for the discharge of liabilities and distribution of trust property have been made. Furthermore, the State Department proposed amending the sub-clause to include a requirement for an applicant to provide a statement of trust assets and liabilities, among others, to enable the Registrar assess whether dissolution would prejudice beneficiaries, creditors or other parties.

226. EACC proposed inserting a new sub-clause to enable the Registrar seek for or consider information relevant to determine whether a trust should be registered, where that information is ordinarily in the custody of a competent authority.

Committee Observation

227. The Committee agreed with the State Department's proposal relating to sub-clauses (1) and (2). However, relating to sub-clause (3), the Committee observed that a trust places a fiduciary duty on the trustees which is to be exercised by taking into account the interests of the beneficiaries.

Clause 85

228. The State Department for Justice, Human Rights and Constitutional Affairs submitted that a trust is not necessarily a separate legal person capable of receiving a notice and thus proposed amending sub-clause (2)(a) to clearly identify the trustees, settlors, beneficiaries and persons who lodged objections who ought to receive a notification of withdrawal of an application to dissolve a trust.

Committee Observation

229. The Committee observed that a notification to the trust amounts to notifying the trustee.

Clause 86

230. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending sub-clause (3) to specify the period within which the Registrar may restore a trust in the register where the dissolution was made by mistake.

Committee Observation

231. The Committee observed that sub-clause (3) covers the timelines within which the Registrar may restore a trust in the register.

Clause 89

232. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending sub-clause (2) to specify the factors the court should consider where the trust deed is silent including, among others, the settlor's intention to provide guidance to the court and promote consistency in decisions concerning the distribution of trust property.

233. NCCK proposed amending the clause to require that upon dissolution of a charitable trust, surplus assets be applied to another charitable trust with similar objects or to the Registrar for charitable purposes to prevent diversion of charitable assets.

Committee Observation

234. The Committee observed that the court has discretion and determines matters on a case-by-case basis.

Clause 90

235. The State Department for Justice, Human Rights and Constitutional Affairs proposed reviewing sub-clause (3) to provide for the retention or secure disposal in accordance with an approved records-management framework.

Committee Observation

236. The Committee observed that the proposal could be provided for in the Regulations as provided under sub-clause (5).

Clause 91

237. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending the clause to ensure the provision captures the broader data protection framework and to impose appropriate safeguards for information concerning beneficiaries, settlors, trustees, trust assets and other confidential trust information.

Committee Observation

238. The Committee observed that any person processing personal data under the Act shall ensure compliance with the Data Protection Act.

Clause 92

239. The State Department for Justice, Human Rights and Constitutional Affairs proposed reviewing the penalty imposed therein to ensure proportionality and consistency.

Committee Observation

240. The Committee observed that the clause, as drafted, allows the court the discretion to determine the proportionality.

Clause 94

241. The State Department for Justice, Human Rights and Constitutional Affairs proposed amending sub-clause (1) to recognize alternative dispute resolution mechanisms particularly where trust disputes concern administration rather than fundamental rights.

Committee Observation

242. The Committee observed that Article 159 of the Constitution on the exercise of judicial authority guarantees the promotion of alternative dispute resolution mechanisms.

Clause 95

243. Musyimi and Company Advocates submitted that the provision should recognize the Attorney General's accountability to Parliament in the exercise of delegated regulation-making powers and accordingly, require any regulations made under the Act to be laid before the National Assembly.

244. Whilst referring to clauses 48, 63, 64, 66 and 75, KCCB proposed amending clause 95 to provide for proportionate record-keeping, accounting and reasonable penalties for charitable trusts falling below a defined asset threshold. This is because most church trusts comprise small parishes or congregational bodies that lack professional administrative capacity and are primarily engaged in providing services to vulnerable and disadvantaged persons. In the Council's view, compliance obligations should be proportionate to the administrative and financial capacity of the entity upon which they are imposed.

Committee Observation

245. The Committee observed that the requirement for statutory instruments made by any regulation-making authority to be laid before the National Assembly is already adequately provided for in section 11(2) of the Statutory Instruments Act, Cap. 2A.

246. The Committee observed that the provisions of clause 95 are on making regulations whose purpose is to give effect to the provisions of the Act.

Clause 96

247. Musyimi and Company Advocates proposed amending the repeal, transitional and saving provisions to provide for the transition of records of registered trusts under the Registration of Documents Act, Cap. 285 to the Registrar of Trusts to ensure both historical and current records are included.

248. The SG proposed inserting a new clause after 96 to provide a consequential amendment to the Business Registration Service Act.

Committee Observation

249. The Committee observed that the proposal by Musyimi and Company Advocates is adequately covered by the provisions of sub-clause (2)(a).

250. The Committee observed that consequential amendments to the Business Registration Service Act are necessary to expand the functions of the Service to include administration of trusts.

Clause 97

251. The SG proposed amending sub-clause (2) by inserting the words 'and trustees' immediately after the words 'existing trusts'.

252. Musyimi and Company Advocates proposed amending sub-clause (2)(b) to delete the phrase 'or any such time as the Registrar may direct' and to clarify that where the Act requires promulgation of regulations relating to compliance then the compliance period of 24 months should run from the date of such promulgation.

253. Similarly, Musyimi and Company Advocates proposed revising sub-clause (3) to require the Registrar to issue new certificates of registration within specified timelines.

254. NCCK further proposed that the Registrar be required to publish clear guidance, ahead of commencement, on the practical steps and documentation existing incorporated church trusts will need to provide when the Registrar reissues certificates of incorporation under sub-clause (3) to avoid uncertainty during the transition.

255. NCCK added that sub-clause (3) be amended to fix a definite deadline for the Registrar to release certificates of incorporation and complete the transfer of records to the new Registrar of Trusts to ensure that existing church trusts and charitable trusts have certainty on when the transition would be operationally complete.

Committee Observation

256. Regarding the SG's proposal, the Committee observed that the obligation placed on existing trusts to ensure compliance with the requirements of the Act are automatically placed on the trustees.

257. Relating to the proposal to amend sub-clause (2)(b), the Committee observed that it may be necessary to give the Registrar such powers to avoid legislative rigidity.

258. The Committee observed that the power given to the Registrar under sub-clause (3) is a discretionary power which may not necessitate the inclusion of a specific timeline.

3.2.3 New Proposals

259. ICS proposed inserting a new clause 76A to provide for the appointment of a trust secretary, to align with the Companies Act, Cap 486 because incorporated trusts obtain legal personality equivalent to that of corporate bodies/companies. In the Institute's view, this would be consistent with *Mwongozo* which designates a corporate/governance secretary as the custodian of board governance, compliance and fiduciary oversight. Similarly, and noting the provisions of the Proceeds of Crime and Anti-Money Laundering Act, Cap. 59A, a regulated trust secretary would act as a professional gatekeeper to maintain accurate beneficial ownership records thereby assisting Kenya's exit from the FATF grey list. Furthermore, a trust secretary would ensure continuity of records across board transitions and protect trustees from administrative liability by driving compliance schedules.

Committee Observation

260. The Committee observed that though well-intentioned, the proposal to establish a trust secretary does not warrant the introduction of a new statutory office because record continuity, compliance oversight and accurate beneficial ownership data are adequately addressed in clauses 48, 15 and 79 of the Bill, respectively.

261. NCCK proposed introducing a new clause or schedule to provide a framework for religious charitable trusts.

Committee Observation

262. The Committee observed that clause 8(1) sufficiently caters to religious charitable trusts as it expressly identifies religion as a purpose for which a charitable trust may formed.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

263. Upon reviewing the Bill and the submissions received, the Committee made the following observations:

1) The Bill seeks to consolidate and reform the laws relating to the regulation of trusts. The legal framework currently regulating trusts comprises the Trustees (Perpetual Succession) Act, Cap. 164 which commenced in 1923 and the Trustee Act, Cap. 167 which commenced in 1929.

2) The Trustees (Perpetual Succession) Act provides for the incorporation of trusts, the types of trusts, the appointment of trustees, and the keeping and maintenance of a register by the Registrar. The Trustee Act, on the other hand, applies to trusts including executorships and administratorships, and provides for the powers of trustees including the power to invest in authorised investments, the power of sale, the power to raise money, and the power to insure as well as the appointment and discharge of trustees.

3) The consolidation of these two statutes is necessary to bring together related statutory provisions into a single, coherent legal framework. In addition, the existing laws, having been enacted almost a century ago, require updating to reflect the contemporary social and economic realities within which they operate.

4) The Bill is, therefore, a necessary reform of the law on trusts aimed to modernise its provisions, strengthen institutional and regulatory mechanisms, address emerging challenges, and ensure that the law remains relevant, effective and responsive to present and future needs.

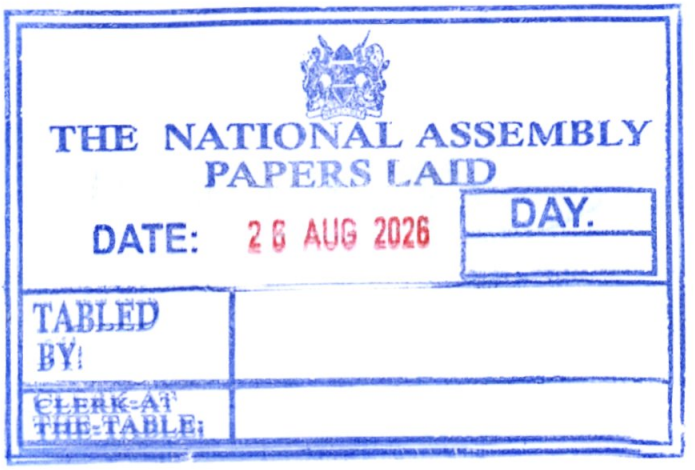
CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

264. The Committee, having considered the Trust Administration Bill *(National Assembly Bill No. 29 of 2026)* and the submissions from members of the public and stakeholders, recommends that the House **approves the Bill** with the amendments contained in the Schedule of Amendments forming Chapter Six of this Report.

SIGNED..... DATE..... 26/8/2026

HON. GEORGE GITONGA MURUGARA, CBS, MP
CHAIRMAN
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS



CHAPTER SIX

6 SCHEDULE OF AMENDMENTS

265. In view of the observations made, the Committee proposed the following amendments to the Bill:

LONG TITLE

THAT the long title of the Bill be amended by deleting the words "and reform" appearing immediately after the word "consolidate".

Justification: To provide that the primary object of the Bill is to merge the laws relating to trusts which are currently fragmented and regulated by the Trustee (Perpetual Succession) Act and the Trustees Act.

CLAUSE 2

THAT Clause 2 of the Bill be amended—

(a) by deleting the definition of "beneficial owner" and substituting therefor the following definition——

"beneficial owner" means the natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement;

Justification: To remove the cross-reference to the Companies Act in the definition of 'beneficial owner" and provide a definition that is suitable with respect to administration of trusts.

(b) in the definition of "trust deed", by inserting the words "and includes reference to a constitution or trust instrument" immediately after the word "thereof;

Justification: Not every trust is created by a deed in the traditional sense. Therefore, expanding the definition to capture "the instrument" or "constitution" under which the trust operates ensures the law applies functionally, not just formally.

(c) by inserting the following definitions in proper alphabetical sequence——

"Registry" means the registry of trust;

"reporting institution" has the meaning assigned to it under the Proceeds of Crime and Anti-Money Laundering Act.

Justification: To remove ambiguity on what the terms as used in the Bill could mean.

CLAUSE 3

THAT the Bill be amended by deleting Clause 3 and substituting therefor the following new Clause—

Application of the Act.

3. (1) This Act shall apply to a trust——

(a) registered or incorporated under this Act;

(b) created by an order of a Court; and

(c) created by or under any other written law.

(2) Nothing in this Act shall limit, invalidate or otherwise affect a trust or fiduciary obligation arising under customary law, equity, a will, court order or any written law, or the jurisdiction of a court to recognise, enforce, vary or supervise such trust or fiduciary obligation.

Justification: To expand the scope of application of the Act.

CLAUSE 4

THAT the Bill be amended by deleting Clause 4 and substituting therefor the following new Clause—

Creation of a trust.

4. A trust is created where——

(a) an identifiable property, or an interest in property, is transferred to, vested in or placed under the control of a trustee, or the owner declares that the property is held in trust;

(b) the property is held for the benefit of one or more beneficiaries or a class of beneficiaries, or for the furtherance of a specified lawful purpose; and

(c) the trustee is appointed to administer, control or dispose of the property in accordance with the terms of the trust deed, the operation of law or an order of a court.

Justification: To provide clarity and avoid ambiguity regarding how a trust may be created.

CLAUSE 5

THAT the Bill be amended by deleting Clause 5 and substituting therefor the following new Clause—

Recognition and enforceability of trusts.

5. (1) A trust may be in writing or implied.

(2) A trust which is written shall be registered or incorporated in accordance with this Act.

(3) A written trust shall not be enforceable unless it is registered or incorporated under this Act and the terms of the trust deed.

(4) A person claiming an interest under a written trust that has not been registered or incorporated under this Act may apply to the court for recognition of enforcement of the written trust.

Justification: To distinguish between validity, registration and enforceability of a trust.

CLAUSE 8

THAT the Clause 8 of the Bill be amended by deleting subsection (3).

Justification: To enable charitable trust to be self-reliant and generate income which is ordinarily applied exclusively towards the objects of the charitable trust.

CLAUSE 13

THAT Clause 13 of the Bill be amended by deleting the opening statement of subsection (1) and substituting therefor the following new opening statement—

(1) A settlor may, subject to the terms of the trust deed, this Act and any other written laws, have powers to—

Justification: To align with other statues containing provisions relating to trust administration.

CLAUSE 22

THAT Clause 22 of the Bill be amended—

(a) in subclause (2) by——

(i) inserting the words "if any" immediately after the words "initial enforcers of the trust" in paragraph (e);

Justification: To align with the discretionary power to appoint an enforcer.

(ii) deleting the word "cour" and substituting therefor the word "court" in paragraph (f).

Justification: To correct a typographical error.

(b) by inserting the following new subsection immediately after subsection (2)—

(2A) Paragraph (c) shall not apply to an application for registration of a charitable trust.

Justification: Unlike non-charitable trusts, charitable trusts do not confer beneficial ownership on identifiable persons.

CLAUSE 25

THAT Clause 25 of the Bill be amended——

(a) in subclause (1)——

(i) by inserting the words "is formed for an unlawful purpose or" immediately after the word "trust" in paragraph (a);

Justification: To include where a trust is formed for an unlawful purpose as a ground for refusal to register a trust.

(ii) by deleting paragraph (b);

Justification: Paragraph (a) covers the grounds under paragraph (b).

(iii) by deleting paragraph (d);

Justification: Removing vetting as a ground for refusal replaces subjective assessment with objective and verifiable criteria.

(b) by adding the following subclause immediately after subclause (2)——

(3) In making a determination under subsection (2), an applicant shall be given an opportunity to be heard or to regularize an application to meet the requirements for registration.

Justification: To guarantee the right of fair hearing.

CLAUSE 29

THAT Clause 29 of the Bill be amended by inserting the following new subsection immediately after subsection (2)—

(2A) Paragraph (d) shall not apply to an application for incorporation of a charitable trust.

Justification: Unlike non-charitable trusts, charitable trusts do not confer beneficial ownership on identifiable persons.

CLAUSE 31

THAT Clause 31 of the Bill be amended——

(a) in subclause (1)——

(i) by inserting the words "is formed for an unlawful purpose or" immediately after the word "trust" in paragraph (a);

Justification: To include where a trust is formed for an unlawful purpose as a ground for refusal to incorporate a trust

(ii) by deleting paragraph (b);

Justification: Paragraph (a) covers the grounds under paragraph (b).

(iii) by deleting paragraph (d);

Justification: Removing vetting as a ground for refusal replaces subjective assessment with objective and verifiable criteria.

(b) by adding the following subclause immediately after subclause (2)——

(3) In making a determination under subsection (2), an applicant shall be given an opportunity to be heard or to regularize an application to meet the requirements for registration.

Justification: To guarantee the right of fair hearing.

CLAUSE 36

THAT Clause 36 of the Bill be amended in subsection (1)—

(a) by deleting paragraph (b);

Justification: This requirement may be difficult to prove if a person is of sound mind.

(b) by inserting the words "or any other written law" immediately after the word "Regulations" in paragraph (d).

Justification: To align with other statutes which contain provisions relating to trust administration.

CLAUSE 37

THAT Clause 37 of the Bill be amended in subclause (1) by inserting the words "Subject to this Act and any other written law" immediately before the words "A person".

Justification: To align with other statutes which contain provisions relating to appointment of trustees.

CLAUSE 38

THAT Clause 38 of the Bill be amended in subclause (1) by inserting the words "and any other written law" immediately after the word "deed".

Justification: To align with other statutes which contain provisions relating to trust administration.

CLAUSE 39

THAT Clause 39 of the Bill be amended—

(a) in subclause (3), by inserting the words "subject to the Public Trustee Act" immediately after the words "court may";

Justification: To subject the appointment of the Public Trustee to act as a trustee with the provisions of the Public Trustee Act.

(b) in subclause (4), by deleting paragraph (e) and substituting therefor the following paragraph—

(e) the declaration of bankruptcy or insolvency of the trustee.

Justification: To clarify that a trusteeship ceases upon declaration of bankruptcy or insolvency.

CLAUSE 41

THAT Clause 41 of the Bill be amended in subsection (1) by deleting the expression "section 37" and substituting therefor the expression "sections 37 and 38".

Justification: To cater of instances of appointment of substitute or additional trustee where a trustee has been disqualified or otherwise ceases to be a trustee.

CLAUSE 46

THAT Clause 46 of the Bill be amended in subsection (3) by inserting the words "in default" immediately after the word "trustees".

Justification: To protect innocent trustees from liability arising out of the acts and omission of a trustee in default.

CLAUSE 48

THAT Clause 48 of the Bill be amended in subsection (4) by inserting the following proviso— Provided that a trustee shall obtain any approval required under any other written law prior to lodging the amendment.

Justification: To require a trustee to obtain any relevant consent or approval under another written law before lodging an amendment to the trust deed or list of assets with the Registrar.

CLAUSE 51

THAT clause 51 of the Bill be amended by——

(a) renumbering the existing provision as subclause (1);

(b) inserting the following subclause immediately after subclause (1)——

(2) Subject to the provisions of this Act, a trustee may make any investment relating to the assets of the trust.

(3) In exercising any power of investment, or otherwise, a trustee shall undertake appropriate legal and financial due diligence and shall seek the necessary advice from persons qualified to render such advice in relation to the investment in question.

(4) A trustee shall not invest assets of the trust unless the trustee is authorised to do so in the trust deed and the investment is—

(a) in accordance with the purposes, terms and duration of the trust;

(b) in accordance with the interests and circumstances of the beneficiaries;

(c) commensurate to the liquidity requirements of the trust;

(d) commensurate to the nature and extent of the risks associated with the investment;

(e) does not pose any actual or potential conflict of interest to the trust or the trustee; and

(f) prudent and in the best interest of the trust.

(5) A trustee shall, from time to time, review the investments of the trust and consider whether they should be varied considering diversification and potential risk of the investment.

(6) A trustee shall not be liable for breach of trust due to continuing to hold an investment which has ceased to be an investment authorized by the trust deed or by the general law.

(7) A trustee lending money on the security of any trust property on which the trustee can lend shall not be liable for breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the court that ——

(a) in making the loan, the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether the surveyor or valuer carried on business in the locality where the property is situate or elsewhere;

(b) the amount of the loan does not exceed two third parts of the value of the property as stated in the report;

(c) the loan was made under the advice of the surveyor or valuer expressed in the report.

(8) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorized investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(9) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the grounds that in making the loan the trustee dispensed either wholly or partly with the production or investigation of the lessor's title.

(10) A trustee shall not be chargeable with breach of trust only upon the grounds that in effecting the purchase, or in lending money upon the security, of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the court the title accepted be such as a person acting with prudence and caution would have accepted.

(11) The provision of this section shall apply to the transfer of existing and new securities and to investments made prior to the commencement of this Act.

Justification: To allow a trustee to act in the best interest of the beneficiaries by allowing them power to invest which is a practical extension of the trustee's overarching duty of care.

CLAUSE 54

THAT Clause 54 of the Bill be amended in subclause (1) by inserting the words "Subject to this Act and any other written law" immediately before the words "where a trustee".

Justification: To align the provision with other applicable laws relating to the power of sale and lease.

CLAUSE 58

THAT Clause 58 of the Bill be amended—

(a) in subsection (1), by inserting the words "any other written law" immediately after the words "this Act".

Justification: To align the exercise of the power of attorney with the provisions of other written laws which may provide conditions of exercising such a power.

(b) by deleting subsection (3);

Justification: To allow a trustee to delegate a function to either a natural person or a legal person.

(c) in subsection (6), by inserting the following paragraph immediately after paragraph (d)—

(e) any other information as may be prescribed in the Regulations.

Justification: To provide that the notice of donating a function by a trustee may include other information as may be prescribed.

CLAUSE 60

THAT Clause 60 of the Bill be amended in subsection (1) by inserting the words "or an enforcer" immediately after the word "beneficiary" in paragraph (b).

Justification: To give power an enforcer power to authorize the payment of remuneration of a trustee.

CLAUSE 61

THAT Clause 61 of the Bill be amended by inserting the following new subclause immediately after subclause (1)—

(1A) In addition to the liability under subsection (1), a trustee who commits or is a party to a breach of trust is liable—

(a) where the trustee is a natural person, to an administrative penalty not exceeding one million shillings;

(b) where the trustee is a body corporate, to an administrative penalty not exceeding five million shillings.

Justification: To provide an efficient deterrent mechanism against breach of trust.

CLAUSE 63

THAT Clause 63 of the Bill be amended in subsection (1) by inserting the words "registration or" immediately after the words "a certificate of" in paragraph (a).

Justification: To include a certificate of registration as one of the records to be kept by a trust.

CLAUSE 75

THAT Clause 75 of the Bill be amended in subsection (3) by deleting the words "five hundred" and substituting therefor the words "three thousand".

Justification: To enhance compliance with the provision by increasing the administrative penalty.

CLAUSE 83

THAT Clause 83 of the Bill be amended in subsection (3) by deleting the words "to the" appearing immediately after the word "donated" in paragraph (d).

Justification: To correct a typographical error.

CLAUSE 84

THAT Clause 84 of the Bill be amended—

(a) in subsection (1), by inserting the words "or other person authorized under the trust deed" immediately after the words "trustee of a trust"

Justification: To allow other persons authorized by a trust deed to initiate the dissolution.

(b) in subsection (2), by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) the purpose of the trust has been fulfilled or has otherwise ceased to exist in accordance with the trust deed of this Act;

Justification: To accommodate trusts whose purpose has ceased to exist.

NEW CLAUSE

THAT the Bill be amended by inserting the following new Clause after Clause 69—

Exemption of charitable trusts.

69A. The provisions of this Part shall not apply to a charitable trust.

Justification: Unlike non-charitable trusts, charitable trusts do not confer beneficial ownership on identifiable persons.

THAT the Bill be amended by inserting the following new clause immediately after clause 96—

Consequential amendment to Cap. 499B.

96A. The Business Registration Service Act is amended—

(a) in the long title, by inserting the word "trusts" immediately after the word "firms";

(b) in section 4, by inserting the word 'trusts' immediately after the word "bankruptcy".

Justification: To expand the functions of Business Registration Service to include administration of trusts.

Annexure **1**

Adoption Schedule

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT – 5TH SESSION-2026

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ADOPTION OF THE COMMITTEE REPORT ON ITS CONSIDERATION OF THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026) BY THE LEADER OF MAJORITY PARTY

We, the Members of the Departmental Committee on Justice and Legal Affairs have, pursuant to Standing Order 199, adopted this Report of the Committee on its Consideration of the Trust Administration Bill (National Assembly Bill No. 29 of 2026) by the Leader of Majority Party and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson .....
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chair .....
3. Hon. Gladys Boss, MGH, MP .....
4. Hon. Farah Maalim, EGH, MP .....
5. Hon. Silvanus Osoro Onyiego, CBS, MP .....
6. Hon. Tom Joseph Francis Kajwang', CBS, MP .....
7. Hon. Timothy Wanyonyi Wetangula, CBS, MP .....
8. Hon. (Dr.) Otiende Amollo, SC, EBS, MP .....
9. Hon. Michael Mwangi Muchira, MP .....
10. Hon. Aden Daud, EBS, MP .....
11. Hon. John Okwisia Makali, MP .....
12. Hon. Stephen M. Mogaka, MP .....
13. Hon. Timothy Kipchumba Toroitich, MP .....
14. Hon. Harold Kimuge Kipchumba, MP .....
15. Hon. CPA Suleka Hulbale Harun, MP .....

Annexure **2**

Minutes

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FIFTH SESSION-2026

DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 51ST SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS, HELD AT THE COMMITTEE ROOM 20, FIFTH FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS ON WEDNESDAY, 26TH AUGUST 2026 AT 10:30 A.M.

PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson
2. Hon. Gladys Boss, MGH, MP
3. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chairperson - *virtually*
4. Hon. Aden Daud, EBS, MP
5. Hon. Muchira Michael Mwangi, MP
6. Hon. Makali John Okwisia, MP
7. Hon. Mogaka Stephen M. MP
8. Hon. Toroitich Timothy Kipchumba, MP
9. Hon. Harold Kimuge, MP - *virtually*
10. Hon. CPA Sulekha Hulbale Harun, MP - *virtually*

ABSENT WITH APOLOGIES

1. Hon. Maalim Farah, EGH, MP
2. Hon. Onyiego Silvanus Osoro, CBS, MP
3. Hon. Francis Kajwang' Tom Joseph, CBS, MP
4. Hon. Timothy Wanyonyi Wetangula, MP
5. Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP

SECRETARIAT

1. Mr. Ahmed Salim - Clerk Assistant I/ Head of the Secretariat
2. Mr. Samuel Wanjiru - Clerk Assistant III
3. Mr. Abdikafar Abdi - Clerk Assistant III
4. Mr. Isaac Nabiswa - Legal Counsel I
5. Mr. Abdirahim Omar - Fiscal Analyst I
6. Ms. Esther Mbatha - Public Communication Assistant
7. Mr. John Nduaci - Assistant Serjeant at Arms

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Consideration and adoption of the draft report on the Trust Administration Bill (National Assembly Bill No. 29 of 2026) by the Leader of the Majority Party
5. Any Other Business
6. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/234/2026: PRELIMINARIES

The Meeting was called to order at twenty-four minutes to eleven o'clock with a Prayer by the Chairperson. The agenda of the Sitting was adopted, having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Aden Daud, EBS, MP.

MIN. NO. DDC/JLAC/235/2026: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 49th Sitting held on 20th August 2026 were adopted as a true reflection of the proceedings, having been proposed by Hon. Toroitich Timothy Kipchumba, MP and seconded by Hon. Aden Daud, EBS, MP.

Minutes of the 50th Sitting held on 25th August 2026 were adopted as a true reflection of the proceedings, having been proposed by Hon. Harold Kimuge, MP and seconded by Hon. Makali John Okwisia, MP.

MIN. NO. DDC/JLAC/236/2026: CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026) BY THE LEADER OF MAJORITY PARTY

Upon reviewing the Bill and the submissions received, the Committee observed that:

(i) The Bill seeks to consolidate and reform the laws relating to the regulation of trusts. The legal framework currently regulating trusts comprises the Trustees (Perpetual Succession) Act, Cap. 164 which commenced in 1923 and the Trustee Act, Cap. 167 which commenced in 1929.

(ii) The Trustees (Perpetual Succession) Act provides for the incorporation of trusts, the types of trusts, the appointment of trustees, and the keeping and maintenance of a register by the Registrar. The Trustee Act, on the other hand, applies to trusts including executorships and administratorships, and provides for the powers of trustees including the power to invest in authorised investments, the power of sale, the power to raise money, and the power to insure as well as the appointment and discharge of trustees.

(iii) The consolidation of these two statutes is necessary to bring together related statutory provisions into a single, coherent legal framework. In addition, the existing laws, having been enacted almost a century ago, require updating to reflect the contemporary social and economic realities within which they operate.

(iv) The Bill is, therefore, a necessary reform of the law on trusts aimed to modernise its provisions, strengthen institutional and regulatory mechanisms, address emerging challenges, and ensure that the law remains relevant, effective and responsive to present and future needs.

The Committee, having considered the Trust Administration Bill (National Assembly Bill No. 29 of 2026) and the submissions from members of the public and stakeholders, resolved to recommend that the House approves the Bill with the amendments contained in the Schedule of Amendments forming Chapter Six of the Report on the Bill.

Adoption of the Report

The Report on the Trust Administration Bill (National Assembly Bill No. 29 of 2026), by the Leader of the Majority Party, was adopted, having been proposed by Hon. Toroitich Timothy Kipchumba, MP and seconded by Hon. Aden Daud, EBS, MP.

MIN. NO. DDC/JLAC/237/2026: ADJOURNMENT

The meeting was adjourned at fifteen minutes past eleven o'clock. Next meeting to be held on notice.

SIGNED: ..... **DATE:** 26/8/026

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FIFTH SESSION-2026

DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 50TH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS, HELD AT THE COMMITTEE ROOM 20, FIFTH FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS ON TUESDAY, 25TH AUGUST 2026 AT 10:00 A.M.

PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson
2. Hon. Gladys Boss, MGH, MP
3. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chairperson - *virtually*
4. Hon. Aden Daud, EBS, MP
5. Hon. Muchira Michael Mwangi, MP
6. Hon. Makali John Okwisia, MP
7. Hon. Mogaka Stephen M. MP
8. Hon. Toroitich Timothy Kipchumba, MP
9. Hon. Harold Kimuge, MP - *virtually*
10. Hon. CPA Sulekha Hulbale Harun, MP - *virtually*

ABSENT WITH APOLOGIES

1. Hon. Maalim Farah, EGH, MP
2. Hon. Onyiego Silvanus Osoro, CBS, MP
3. Hon. Francis Kajwang' Tom Joseph, CBS, MP
4. Hon. Timothy Wanyonyi Wetangula, MP
5. Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP

SECRETARIAT

1. Mr. Ahmed Salim - Clerk Assistant I/ Head of the Secretariat
2. Mr. Samuel Wanjiru - Clerk Assistant III
3. Mr. Abdikafar Abdi - Clerk Assistant III
4. Mr. Isaac Nabiswa - Legal Counsel I
5. Mr. Abdirahim Omar - Fiscal Analyst I
6. Ms. Esther Mbatha - Public Communication Assistant
7. Mr. John Nduaci - Assistant Serjeant at Arms

IN ATTENDANCE

Office of the Attorney General and Department of Justice

1. Mr. Louis Mutuku - State Counsel, OAG
2. Ms. Maureen Odendo - Deputy Chief Parliamentary Counsel
3. Ms. Wachira Ngiyo - Deputy Chief State Counsel, State Law Office

Business Registration Service

1. Mr. Kenneth Gathuma - Director-General
2. Mr. Zacharia Mwangi - Senior Assistant Registrar of Companies
3. Mr. Benard Otiego - Assistant Registrar

Kenya Law Reform Commission (KLRC)

1. Mr. James Nombi - Ag. Chief Executive Officer
2. Ms. Rose Osendo - Head, Legal Affairs

The Central Bank of Kenya

1. Mr. Waweru Mathenge - General Counsel

Kenya Revenue Authority (KRA)

1. Mr. Maurice Oray - Deputy Commissioner - Policy & Tax Advisory
2. CPA Josephine Mugure - Chief Manager, Policy and Tax Advisory
3. Ms. Ing'ahizu Doris - Assistant Manager, Policy & Tax Advisory
4. Ms. May Muthama - Stakeholder Engagements Officer

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Meeting with stakeholders to consider the Trust Administration Bill (National Assembly Bill No. 29 of 2026) by the Leader of the Majority Party
5. Consideration and adoption of the draft report on the Trust Administration Bill (National Assembly Bill No. 29 of 2026) by the Leader of the Majority Party
6. Consideration and adoption of the draft report on the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) by Hon. Aden Daud Mohamed, EBS, MP
7. Any Other Business
8. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/228/2026: PRELIMINARIES

The Meeting was called to order at thirty minutes to eleven o'clock with a Prayer by the Chairperson. The agenda of the Sitting was adopted, having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Toroitich Timothy Kipchumba, MP.

MIN. NO. DDC/JLAC/229/2026: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The agenda was deferred to the next Sitting.

MIN. NO. DDC/JLAC/230/2026: MEETING WITH STAKEHOLDERS TO CONSIDER THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026) BY THE LEADER OF THE MAJORITY PARTY

The representative from the State Law Office, in his opening remarks, informed the Committee that, following the Committee's resolution during its meeting on 18th August 2026, the Office had finalised consultations with the Kenya Law Reform Commission, the National Council of Churches of Kenya (NCCK), the Central Bank of Kenya (CBK) and the Kenya Revenue Authority (KRA) on the proposed amendments.

The aforementioned agencies confirmed consensus on the proposed amendments. The Committee proceeded to consider and agreed on the proposed amendments, including on:

i. The long title and clause 2 on definitions by deleting "and reform" from the long title. and redefining the term "beneficial owner" to provide for the natural persons who ultimately owns or controls a legal person or arrangement, or on whose behalf a transaction is conducted. The definition is in line with the global standard set by the Financial Action Task Force (FATF).

Further, the agencies proposed a new definition for "reporting institution," tied to the Proceeds of Crime and Anti-Money Laundering Act.

ii. Clause 3 on Application of the Act to clarify that the Act applies to trusts registered/incorporated under it, created by court order, or created under other written law, while preserving customary law, equity, will-based, and court-supervised trusts.

iii. Clause 4 on creation of a trust to spell out the elements needed to create a trust including identifiable property, defined beneficiaries and purpose and an appointed trustee.

iv. Clause 5 on recognition/enforceability to require written trusts to be registered or incorporated to be enforceable, with a court-recognition route for unregistered or unincorporated written trusts.

v. Clause 8 on charitable trusts by deleting subclause (3) that barred charitable trusts from trading.

vi. Clauses 25 & 31 by inserting the words "formed for an unlawful purpose" as the ground for refusal and dropping two existing grounds (paragraphs (b) and (d)), and providing the applicant with the opportunity to be heard or to regularise an application to meet the requirements for registration.

vii. Clause 32 to clarify that incorporating a trust doesn't extinguish the underlying trust or convert beneficial interests into shares, and trustees remain bound by fiduciary. Further, the agencies submitted that changes in the status of a trustee on an incorporated trust should not affect the continued legal identity of the trust. The Committee, however noted that incorporation means that an organization gains a legal life of its own.

viii. Clause 51 to make provisions for investments by trustees by providing that they may invest trust assets, conduct due diligence, seek professional advice, and invest in line with the trust's purpose, beneficiaries' interests, liquidity needs, risk profile, and conflict-of-interest rules. Further, the provisions set out protections for trustees on mortgage lending and property valuation matters, and confirms the section applies retroactively to existing investments.

ix. Clause 61 to provide for administrative penalties for breach of trust of up to Ksh 1 million for individuals and Ksh 5 million for corporate trustees.

x. Clauses 75 to enhance the administrative penalty for failing to file annual returns from five hundred shillings to three thousand shillings.

xi. Clause 97 9(2)(b) to extends application to "existing trusts and trustees" in relation to compliance with the Act, upon enactment.

xii. New Clause 96A to amend the Business Registration Service Act to explicitly include "trusts" alongside "firms"

The Committee further considered the Memorandum from the State Department for Justice, Human rights and Legal Affairs and agreed on some of the proposed amendments, including to:

i. Clause 82(1) to provide that on application by the trustee or other person authorised under the trust deed, the Registrar may, subject to this Act, dissolve a trust. The current provision limits initiation of dissolution to the trustee. There may be circumstances where the trust deed authorises the settlor, protector or another person to initiate dissolution; and

ii. Clause 84 (2) by amending paragraph (a) to provide for dissolution where the purpose of the trust has been fulfilled or has otherwise ceased to exist in accordance with the trust deed or this Act. A trust may cease to have a viable purpose even where the purpose has not technically been fulfilled. The amendment accommodates trusts whose objects have become spent or ceased to exist.

MIN. NO. DDC/JLAC/231/2026: **CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON THE TRUST ADMINISTRATION BILL (NATIONAL**

ASSEMBLY BILL NO. 29 OF 2026) BY THE LEADER OF THE MAJORITY PARTY

The Committee, having considered the Trust Administration Bill (National Assembly Bill No. 29 of 2026) by the Leader of the Majority Party and the submissions from members of the public and stakeholders, recommended that the House approves the Bill with the amendments contained in the Schedule of Amendments forming Chapter Six of the Report on the Bill.

Adoption of the Report

The Committee resolved to sit on Wednesday, 26th August 2026 to consider and adopt its Report on its Consideration the Trust Administration Bill (National Assembly Bill No. 29 of 2026) sponsored by the Leader of the Majority Party.

MIN. NO. DDC/JLAC/232/2026: CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON THE LAW OF CONTRACT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2025) BY HON. ADEN DAUD MOHAMED, EBS, MP

The Committee, having been guided through the report on the Bill by the Legal Counsel, observed that:

i. the Law of Contract Act (Cap. 23) is an Act of Parliament that provides that English common law on contracts shall apply in Kenya. Section 2 of the Law of Contract Act provides that the common law of England relating to contracts as modified by the doctrines of equity and certain Acts of Parliament of the United Kingdom shall extend and apply to Kenya. Common law is a body of law developed in England which is derived from judicial decisions.

ii. an exclusion of liability clause is a contractual term by which one party seeks to exclude or limit liability for loss, damage, breach of contract, negligence or another legal responsibility. In English common law, such clauses are generally permitted because of the principle of freedom of contract and *pacta sunt servanda*. However, modern consumer protection statutes have restricted the use or reliance on exclusion clauses that are unfair or unconscionable such as the Unfair Contract Terms Act 1977 of the United Kingdom.

The Committee, having considered the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025 and the submissions from stakeholders, recommended that the House approves the Bill with the amendments contained in the Schedule of Amendments forming Chapter Six of this Report.

Adoption of the Report

The Report on the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) by Hon. Aden Daud Mohamed, EBS, MP was adopted, having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Toroitich Timothy Kipchumba, MP.

MIN. NO. DDC/JLAC/233/2026: ADJOURNMENT

The meeting was adjourned at thirteen minutes to one o'clock. Next meeting to be held on notice.

SIGNED: .....**DATE:** 26/8/2026

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FIFTH SESSION-2026
DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 48TH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS, HELD AT THE COMMITTEE ROOM 17, THIRD FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS ON TUESDAY, 18TH AUGUST 2026 AT 10:00 A.M.

PRESENT

1. Hon. Murugara George Gitonga, CBS, MP – Chairperson
2. Hon. Gladys Boss, MGH, MP
3. Hon. Onyiego Silvanus Osoro, CBS, MP
4. Hon. Francis Kajwang' Tom Joseph, CBS, MP
5. Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP
6. Hon. Aden Daud, EBS, MP
7. Hon. Mogaka Stephen M. MP
8. Hon. Toroitich Timothy Kipchumba, MP
9. Hon. Harold Kimuge, MP

ABSENT WITH APOLOGIES

1. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chairperson
2. Hon. Maalim Farah, EGH, MP
3. Hon. Timothy Wanyonyi Wetangula, MP
4. Hon. Makali John Okwisia, MP
5. Hon. Muchira Michael Mwangi, MP
6. Hon. CPA Sulekha Hulbale Harun, MP

SECRETARIAT

1.	Mr. Ahmed Salim	-	Clerk Assistant I/ Head of the Secretariat
2.	Mr. Abdirahim Omar	-	Fiscal Analyst I
3.	Mr. Samuel Wanjiru	-	Clerk Assistant III
4.	Mr. Abdikafar Abdi	-	Clerk Assistant III
5.	Ms. Vivienne Ogega	-	Research Officer III
6.	Mr. Isaac Nabiswa	-	Legal Counsel I
7.	Ms. Esther Mbatha	-	Public Communication Assistant
8.	Mr. Eugine Luteshi	-	Audio Assistant
9.	Mr. John Nduaci	-	Serjeant at Arms

IN ATTENDANCE

Business Registration Service

1. Mr. Kenneth Gathuma - Director-General
2. Mr. Zacharia Mwangi - Senior Assistant Registrar of Companies
3. Mr. Benard Otiego - Assistant Registrar

Office of the Attorney General and Department of Justice

1. Mr. Louis Mutuku - State Counsel, OAG
2. Ms. Maureen Odendo - Deputy Chief Parliamentary Counsel
3. Ms. Wachira Ngiyo - Deputy Chief State Counsel, State Law Office

The Institute of Certified Public Accountants of Kenya

1. CPA Njeru Jacob Mutegi - Council Member
2. Ms. Nancy Moraa - Public Policy & Research Officer
3. Ms. Livingstone Mulehi - Public Policy & Research Officer
4. Mr. Tony Juma - Public Policy & Research Officer

Kenya Law Reform Commission (KLRC)

1. Mr. James Nombi - Ag. Chief Executive Officer

The Central Bank of Kenya

1. Mr. Waweru Mathenge - General Counsel

National Council of Churches of Kenya

1. Rev. Canon Chris Kinyanjui - General Secretary
2. Ms. Tracy Chamia - Legal Counsel

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Meeting with stakeholders to consider the Trust Administration Bill (National Assembly Bill No. 29 of 2026), by the Leader of the Majority Party
5. Consideration and adoption of the report on the Criminal Procedure Code (National Assembly Bill No. 55 of 2025) sponsored by the Leader of the Majority Party
6. Any Other Business
7. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/217/2026: PRELIMINARIES

The Meeting was called to order at twenty-five minutes past ten o'clock with a Prayer by the Chairperson. The agenda of the Sitting was adopted, having been proposed by Hon. Harold Kimuge, MP and seconded by Hon. Otiende Amollo, SC, EBS, CBS MP.

MIN. NO. DDC/JLAC/218/2026: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The Agenda was deferred.

MIN. NO. DDC/JLAC/219/2026: MEETING WITH STAKEHOLDERS TO CONSIDER TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

The following agencies and organisations appeared before the Committee and submitted as follows:

Kenya Law Reform Commission (KLRC), Office of the Attorney General (OAG) and Business Registration Services (BRS)

The agencies noted that vide a Committee resolution made on Thursday, 6th August 2026, they were required to submit a harmonised joint Memorandum on the Bill. However, they requested the Committee for an additional fourteen days to submit the same.

They further noted that they had made some progress in their deliberations, particularly on the amendments proposed by the Kenya Revenue Authority.

The Committee resolved to afford the multi-agency team, led by the Office of the Attorney General, nine days and appear before the Committee on Thursday, 27th August 2026.

Central Bank of Kenya (CBK)

The CBK submitted that they supported the Bill with amendments. The Committee, however, directed the CBK to join the multi-agency team, led by the Office of the Attorney General, to consolidate their amendments, and appear before the Committee on Thursday, 27th August 2026.

The Institute of Certified Public Accountants of Kenya (ICPAK)

The Institute proposed amendment to the Bill as follows:

i. Clause 2 on definition to amend the definition of trust agent to read as follows: Trust Agent means an advocate of the High Court of Kenya, a certified public secretary, or certified accountant holding a valid practising certificate under the Accountants Act.
ii. Clause 64 on Accounting Records to provide for clear accountability for financial reporting and introduction of proportionate and risk-based assurance framework.
iii. Clause 75 on Annual Returns – the provision requires trust to file annual returns but leaves the content of the returns entirely to regulations. The absence of minimum statutory financial disclosures may limit effective oversight of the financial position, ownership and compliance status of trusts.
iv. Clause 76 on trust agent to sufficiently clarify the accounting, financial reporting and tax related functions that may be undertaken by a Certified Accountant in the Administration of a trust.
v. Clause 83 on fees payable to the registrar to establish clear parameters for the Registrar's exercise of discretion to determine fees where no fees have been prescribed.

National Council of Churches of Kenya (NCCK)

The NCCK proposed amendments to the Bill as follows:

(i) Under Part II on types of Trusts, the NCCK proposed the deletion of Clause 8(3) the Income Tax (Charitable Organisations and Donations Exemption) Rules, 2024 (LN 105/2024, paragraph 10, first schedule, Income Tax Act) already permit charitable trading, exempting purpose-related business income while taxing unrelated income separately. They submitted that a blanket ban is more restrictive than existing tax law and undermines sector sustainability.

(ii) Under Part IX on Beneficial Owners of a trust, Clauses 65-69, the NCCK, recognizing the importance of beneficial-ownership transparency for combating money laundering and terrorism financing, expressed concerns about the application of these requirements to charitable trusts, particularly religious trusts.

MIN. NO. DDC/JLAC/220/2026: ADOPTION OF THE REPORT ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 55 OF 2025) SPONSORED BY THE LEADER OF THE MAJORITY PARTY

The Committee, having considered the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 55 of 2025) and the submissions from members of the public and stakeholders, resolved to recommend that the House approves the Bill with the amendments contained in the Schedule of Amendments forming Chapter Six of the Report.

Adoption of the Report

The Report was adopted, having being proposed by Hon. Aden Daud, EBS, MP and seconded by Hon. Toroitich Timothy Kipchumba, MP.

MIN. NO. DDC/JLAC/221/2026: **ADJOURNMENT**

The meeting was adjourned at twenty-two minutes past twelve o'clock. Next meeting to be held on notice.

SIGNED: .....**DATE:** 20/08/2026

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FIFTH SESSION-2026
DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 46TH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS, HELD AT THE COMMITTEE ROOM 22, FIFTH FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS ON THURSDAY, 6TH AUGUST 2026 AT 10:00 A.M.

PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chairperson - *virtually*
3. Hon. Toroitich Timothy Kipchumba, MP - *virtually*
4. Hon. Muchira Michael Mwangi, MP
5. Hon. Aden Daud, EBS, MP
6. Hon. Makali John Okwisia, MP
7. Hon. Harold Kimuge, MP

ABSENT WITH APOLOGIES

1. Hon. Gladys Boss, MGH, MP
2. Hon. Maalim Farah, EGH, MP
3. Hon. Onyiego Silvanus Osoro, CBS, MP
4. Hon. Francis Kajwang' Tom Joseph, CBS, MP
5. Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP
6. Hon. Timothy Wanyonyi Wetangula, MP
7. Hon. Mogaka Stephen M. MP
8. Hon. CPA Sulekha Hulbale Harun, MP

SECRETARIAT

1.	Mr. Ahmed Salim	-	Clerk Assistant I/ Head of the Secretariat
2.	Mr. Walala Ronald	-	Principal Legal Counsel
3.	Mr. Samuel Wanjiru	-	Clerk Assistant III
4.	Ms. Fatuma Ruwange	-	Clerk Assistant III
5.	Mr. Isaac Nabiswa	-	Legal Counsel I
6.	Ms. Vivienne Ogega	-	Research Officer III
7.	Ms. Esther Mbatha	-	Public Communication Assistant
8.	Mr. Danton Kimutai	-	Audio Officer III
9.	Ms. Nadia Mutua	-	Student Volunteer, Loreto Convent Valley Road

IN ATTENDANCE

Financial Reporting Centre (FRC)

1. Mr. Naphtaly K. Rono - Chief Executive Officer
2. Mr. James Manyonge - Director, Legal Services
3. Ms. Lilian Marseli - Legal Officer

Institute of Certified Secretaries (ICS)

1. FCS Jacqueline Waihenya - Chairperson
2. CS Anne Mwasi - Council Member

3. FCS Jeremiah Karanja - Chief Executive Officer
4. FCS Isaac Nooru - Governance Expert

Kenya Law Reform Commission (KLRC)

1. Mr. James Nombi - Ag. Chief Executive Officer
2. Mr. Thuranira Gatuyu - Legal Counsel

Office of the Attorney General and Department of Justice

1. Mr. Samson D. Maundu - Principal Parliamentary Counsel
2. Ms. Shighadi Mwakio, HSC - Director, Business Registration Service (BRS)
3. Mr. Louis M. Mutuku - Senior State Counsel

Asset Recovery (ARA)

1. Mr. Mohamed Adow - Assistant Director, Legal Services
2. Ms. Esther Njoki - Assistant Director, Legal Services

Ethics And Anti-Corruption Commission (EACC)

1. Mr. David Kaboro - Deputy Director, Asset Recovery
2. Ms. Mishi Kirichi - Legal Officer

Kenya Revenue Authority (KRA)

1. Mr. Maurice Oray - Deputy Commissioner - Policy & Tax Advisory
2. CPA Josephine Mugure - Chief Manager, Policy and Tax Advisory
3. Ms. Ing'ahizu Doris - Legal Counsel
4. Ms. May Muthama - Communications Officer

Mission for Essential Drugs and Supplies (MEDS)

1. Dr. Wycliffe Nandama - Chief Executive Officer
2. Ms. Arunga Nancy - Legal Officer
3. Ms. Jacinta Mutegi - Head of Health

Kenya Conference of Catholic Bishops (KCCB)

1. Very Rev. Fr. James Waweru - General Secretary
2. Bishiop Cleophas Oseso - Bishop, Catholic Diocese of Nakuru
3. Ms. Wanjala Nasimiyu - Legal Officer

Christian Health Association of Kenya (CHAK)

1. Dr. Peter Rumunyu - Head of Health Programmes

National Council of Churches of Kenya (NCCK)

1. Rev. Canon Chris Kinyanjui - General Secretary

Institute of Certified Public Accountants of Kenya (ICPAK)

1. Mr. CPA Njeru Jacob Mutegi - Council Member
2. Ms. Winnie Nkatha - Public Policy and Research Officer
3. Mr. Tony Juma - Public Policy and Research Officer
4. Ms. Evelyne Maingi - Public Policy and Research Officer

Officers from the National Intelligence Service

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Meeting with stakeholders to consider the Trust Administration Bill (National Assembly Bill No. 29 of 2026), sponsored by the Leader of the Majority Party

5. Any Other Business
6. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/208/2026: PRELIMINARIES

The Meeting was called to order at eighteen minutes past ten o'clock with a Prayer by the Chairperson. The agenda of the Sitting was adopted, having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Harold Kimuge, MP.

MIN. NO. DDC/JLAC/209/2026: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The agenda was deferred.

MIN. NO. DDC/JLAC/210/2026: MEETING WITH STAKEHOLDERS TO CONSIDER TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026

The following agencies and organisations appeared before the Committee and submitted as follows:

National Intelligence Service (NIS)

The Service proposed amendments to the following provisions of the Bill:

i. Clause 2 to broaden the definition of the term *"Competent Authority"* to include Ministries, Departments and Agencies responsible for lands, virtual assets, intellectual property, and Assets Recovery Rationale. The wider definition will ensure the Bill comprehensively covers all aspects of trust property;
ii. Clause 2 (read with Clause 14(1) & (2)) to provide for an adequate definition of the term "enforcer", along with qualifications and a supervisory body overseeing enforcers. Providing clear criteria will ensure enforcers have the requisite capacity and independence to act in beneficiaries' best interests;
iii. Clause 8(3) to lift the restriction on charitable trusts trading, allowing them to engage in trading activities provided profits are applied solely toward the trust's charitable purposes;
iv. Clause 15(1) to insert a new sub-clause (f) obligating the enforcer to liaise with the relevant competent authority to investigate any breach of trust that contravenes any law in Kenya;
v. Clauses 17(4)(a) & (b), 39(10), 41(4), 48(5), 66(4), 67(2) to enhance the fines prescribed across these clauses. The current fines may be insignificant relative to prevailing inflation rates and thus not commensurate with the offences; and
vi. Clause 25 to introduce a new clause after Clause 25 to provide for appeal or review (to a tribunal or the High Court) of a registrar's decision refusing to register a trust. The absence of an appellate mechanism undermines the right to fair administrative action; this safeguard would let applicants challenge refusal decisions.

Financial Reporting Centre (FRC)

The Cenntre proposed amendment to the Bill as highlighted below:

i. Clauses 24(1), 30(1), 33(3), 48(1), 66(1) and 79(1) to provide the Registrar with explicit authority to independently verify beneficial ownership data.
ii. Clauses 46(3), 49(3), 17(4), 37(3), 39(10), 40(5), 41(4), 66(4), 67(2) and 93) to enhance the administrative penalties for transparency breaches, which may be too low to deter high-value trusts.
iii. Clauses 49(2) and 49(3) to introduce expedited disclosure timelines for urgent investigations and allow competent authorities to request immediate access when necessary. The 14-day trustee response period may delay urgent money laundering/terrorist financing (ML/TF) investigations;
iv. Part IX to expressly include protectors and objects of power within beneficial ownership registration requirements;

v. Clause 66 (2) to shorten the transition period for submission of beneficial ownership register to provide for immediate disclosure for high-risk trusts or twelve months upon commencement of the Act;

vi. Clauses 22, 29, 33(2), 48) to define the term "details" as used in the Bill and prescribe minimum requirements (full name, nationality, date of birth, address, identification documents). The Bill uses the undefined term "details" regarding trustees, settlors, beneficiaries, and beneficial owners without specifying required identifiers; and

vii. Clause 3 to expand the scope and introduce mandatory declaration or registration requirements for foreign trusts with Kenyan links, including ownership of local assets and financial relationships.

Institute of Certified Secretaries (ICS)

The Institute proposed amendment to the Bill as follows:

i. Clause 76(1) to reinstate "advising the trust on governance matters" as an express function alongside formation and lodgement functions. The justification is that governance advisory is a core competency of Certified Secretaries; and

ii. Insertion of a new Clause 76A to provide for the appointment of a Trust Secretary by the incorporated or registered trusts, whose assets exceed a prescribed asset threshold.

The Trust Secretary will, among other functions, guide trustees on statutory duties and governance compliance, maintain registers (beneficial owners, charges, trust deeds, asset registers and ensure timely statutory filings, including annual returns and beneficial ownership updates.

Office of the Attorney General and Department of Justice

The Office of the Attorney General submitted that it was involved in the preparation of the Bill, and that the Bill did not raise significant constitutional issues.

The Office recommended an amendment to clause 39(3) to insert the words "subject to the Public Trustee Act" after the words "The court may". The purpose of the amendment is to ensure consistency between the provisions of the Bill and the Public Trustee Act regarding the manner the court may appoint the Public Trustee as a trustee of a trust that has no trustees.

Assets Recovery Agency

The Officials from the Assets Recovery Agency appeared before the Committee and orally expressed support of the Bill in its entirety. In addition, the Agency did not propose amendments.

Ethics and Anti-Corruption Commission (EACC)

The Commission proposed amendment to the Bill, under the following provisions:

i. Clause 6, on invalidation of a Trust, by inserting a new sub-clause to provide that any person, including a competent authority may apply to court for an order declaring a trust invalid or void;

ii. Clause 22 by inserting a new sub-clause (5) to empower the Registrar to consider representations or reports from a competent authority when processing a trust registration application. This will enable the Registrar to access and weigh information relevant to whether a trust should be registered, where that information is held by a competent authority;

iii. Clause 35 to expressly include the Anti-Corruption and Economic Crimes Act (Cap 65) and the Conflict of Interest Act, 2025, alongside the existing reference to the Proceeds of Crime and Anti-Money Laundering Act (Cap 59A). The additional statutes contain express provisions for recovery and forfeiture of illegally acquired property;

iv. Clause 49 to insert a new sub-clause after (c) permitting disclosure of trust information "in order to comply with" the Anti-Corruption and Economic Crimes Act, Leadership

and Integrity Act, Anti-Bribery Act, and Conflict of Interest Act. The amendment seeks to provide for disclosure of trust information in proceedings brought under the statutes; and

v. Clause 84 to insert a new sub-clause (8) to enable the Registrar to consider representations or reports from a competent authority in respect of an application for dissolution of a trust.

Mission for Essential Drugs and Supplies (MEDS), Kenya Conference of Catholic Bishops (KCCB) and Christian Health Association of Kenya (CHAK)

In their Joint Memorandum, the Organisations proposed the following amendments to the Bill:

i. Clause 8 on the definition of Charitable to add "advancement of healthcare or relief of public distress". The current definition of charitable purposes lists poverty relief, education, religion, human rights, fundamental freedoms, and environmental protection;
ii. Clause 8(3) to provide that a charitable trust shall be a non-trading entity provided that it may undertake trading or other revenue-generating activities where such activities are undertaken in, or incidental to, furtherance of its charitable purposes. Further, any profits/income are applied exclusively toward the advancement of its charitable objects. This will enable charities to generate independent and to reduce reliance on unpredictable funding and ensure long-term viability; and
iii. Deletion of Clause 13(2) noting that it conflicts with Clause 12 (3). Clause 13(2) states that the grant of powers to a settlor shall not confer the right to act as trustee. This conflicts with Clause 12(3), which allows a settlor to also be a trustee, beneficiary, or enforcer, but not the sole beneficiary of a trust for which he/she is a settlor.

In addition to the Joint Memorandum, the Kenya Conference of Catholic Bishops (KCCB) proposed further amendments, including:

i. Clause 2 to define "beneficial owner" tailored to trusts identifying the parties to trust including settlor, trustees, protector or enforcer and the beneficiaries;
ii. Part IX of the Bill to provide a modified disclosure for charitable trusts that names controlling trustees/office-holders in place of "owners.";
iii. Clause 11(3), read with Clause 36(4), on the requirement for a resident trustee, by providing for the requirement to be satisfied by a resident trust agent or local contact person;
iv. Clauses 25 and 31 to define the grounds of refusal and vetting criteria, and insert an express right of appeal to the High Court, with the Registrar required to act proportionately; and
v. Clauses 48, 63, 64, 66 and 75 to provide for proportionate record-keeping, accounting, and penalty requirements in Regulations under Clause 95 for charitable trusts below a defined asset threshold.

The Christian Health Association of Kenya (CHAK) proposed, among others, an amendment to clause 2 to insert a definition of the term: "gross negligence" to mean a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or loss.

Clause 62(1) bars any indemnity or limitation of trustee liability except for "gross negligence," which is undefined and legally broad, exposing senior church leaders serving as volunteer trustees to personal asset risk for good-faith errors.

National Council of Churches of Kenya (NCCK)

The Council reiterated its key concern on the requirement for disclosure of beneficial ownerships, whose implementation may not be practical for charitable trusts. Charitable

trusts should therefore, only register trustees and enforcers, with a declaration that the trust has no beneficial owners other than the public.

Further, the Council proposed that Part IX of the Bill be amended to expressly exclude charitable trusts, or define "beneficial owner" for charitable trusts as the trustees and enforcer.

Committee Observations

The Committee made the following observations:

a) Kenya remains on the Financial Action Task Force (FATF) grey list due to identified several key weaknesses, including gaps in regulation of non-profit organisations and beneficial ownership disclosure. Enactment of the Law will therefore govern the operation of trusts, ensure compliance with FATF requirements and this will facilitate the removal from the grey list.

b) Although Articles 47 and 48 of the Constitution of Kenya guarantees every person the right to fair administrative action and the right to access justice, the Committee noted that there may be a need to provide for an appeal mechanism for persons aggrieved by the decision of the Registrar. The Committee resolved to explore the option of Appeal to the High Court or to a Tribunal.

c) There was need for graduated penalties for offences prescribed in the Bill to ensure that the same is proportionate to the severity of the offence and the offender's capacity to bear it, given the varying assets threshold among Trusts.

d) Noting the definition, from Section 3(1) of the Companies Act (Cap 486), of the term "beneficial owner", being a natural person who ultimately owns or controls an entity, the Committee noted that there may be a need to provide a definition specific to Trusts. Trusts including Charitable trusts benefit the public or a section of the public and may not have 'beneficial owners' in the conventional sense.

e) On the Bill imposing the trading restrictions, the Committee observed that Charitable Trusts enjoy preferential treatment including tax exemptions. Allowing the Trusts to engage in trading activities may present a commercial risk including incurring losses and the need for compliance with tax authorities.

f) Regarding the provision requiring at least one trustee to be a citizen of or resident in Kenya where the trustees are natural persons, the Committee noted that this will ensure accountability, transparency, and accurate beneficial ownership reporting to the Registrar of Trusts.

Noting the proposed amendments by the Kenya Law Reform Commission and the Kenya Revenue Authority, the Committee tasked the Office of the Attorney General to convene a meeting with the two agencies and where agreeable, harmonise the amendments. The Agencies were directed to report back to the Committee during its Meeting on the Bill, scheduled for Tuesday, 18th August 2026 at 10:00 am. Further, officials from the Institute of Certified Public Accountants of Kenya (ICPAK) were requested to appear before the Committee on the set date to present their views on the Bill.

MIN. NO. DDC/JLAC/207/2026: ADJOURNMENT

The meeting was adjourned at seven minutes to two o'clock. Next meeting to be held on Thursday, 13th August 2026 at 10:00 am.

SIGNED: ..... **DATE:** 13/08/2026

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)

Annexure **3**

The Trust Administration Bill (National Assembly Bills No. 29 of 2026)

SPECIAL ISSUE

Kenya Gazette Supplement No. 124 (National Assembly Bills No. 29)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2026

NAIROBI, 20th May, 2026

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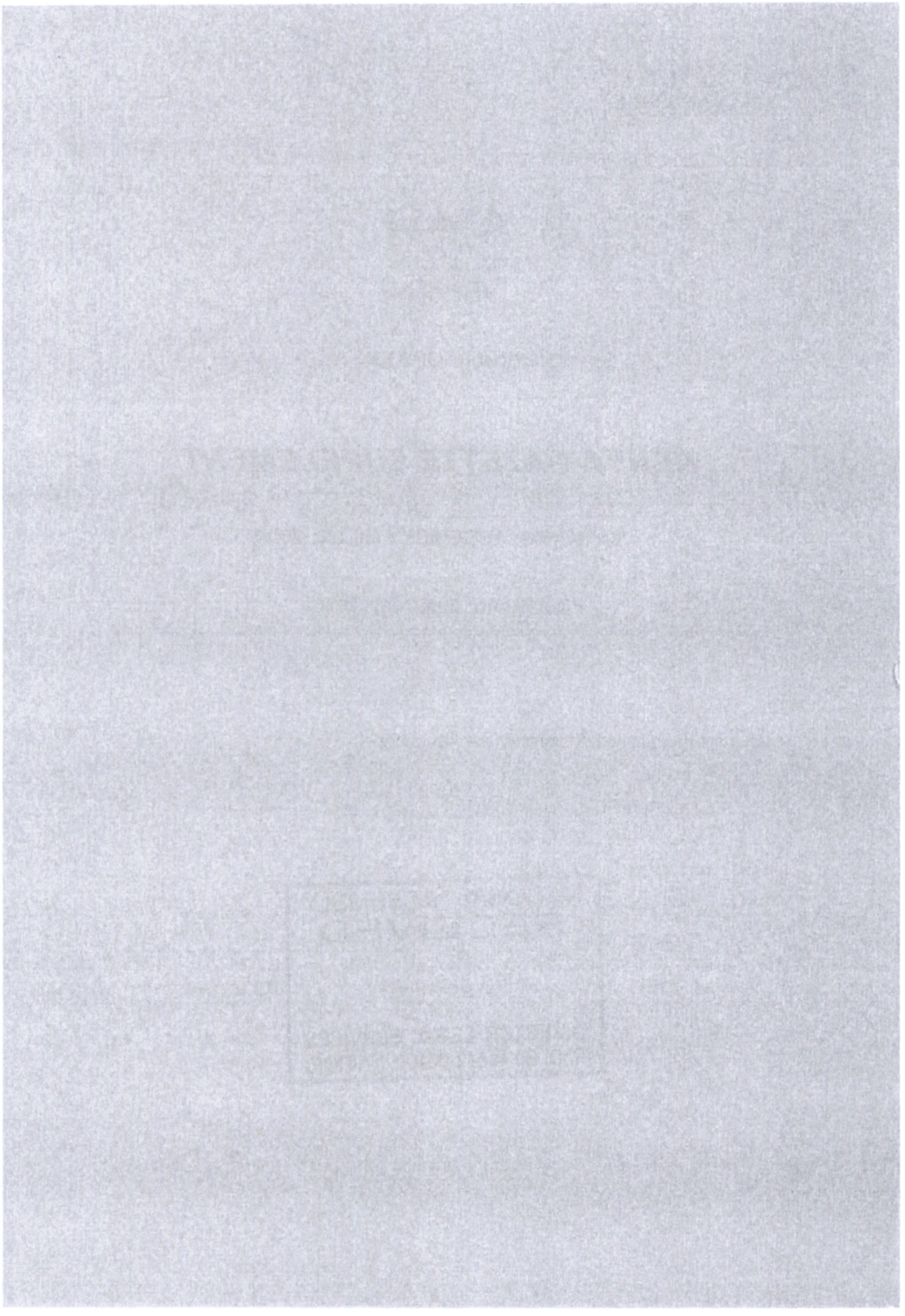
NATIONAL ASSEMBLY
RECEIVED
11 JUN 2026
DIRECTOR LEGAL SERVICES
P. O. Bo 41842-00100, NAIROBI

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI



THE TRUST ADMINISTRATION BILL, 2026

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THE TRUST ADMINISTRATION BILL, 2026

A Bill for

AN ACT of Parliament to consolidate and reform laws relating to the registration, incorporation, management and regulation of trusts and trustees and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I — PRELIMINARY

Short title.

1. This Act may be cited as the Trust Administration Act, 2026.

Interpretation.

2. In this Act unless, the context otherwise requires—

"beneficiary" means a person entitled to benefit under a trust and includes a discretionary beneficiary in whose favour a discretion to distribute property held on trust may be exercised;

"beneficial owner" has the meaning assigned to it under section 3(1) of the Companies Act; Cap. 486.

"competent authority" means the Attorney-General, any criminal investigation agency established by law, a law enforcement agency or any authority that supervises and monitors the financial sector, including, the Central Bank of Kenya, the Financial Reporting Centre and the Kenya Revenue Authority;

"corporate trustee" means an entity registered in Kenya and licensed under this Act to act as a trustee;

"designated non-financial business or professionals" has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act; Cap. 59A.

"discretionary beneficiary" means a person who benefits under a trust at the discretion of the trustee but does not have a fixed, vested, or contingent interest in the trust property;

"discretionary trust" means a trust where the beneficiaries or the benefits of the trust become ascertainable once the trust deed sets-out the criteria or at the discretion of the trustees;

"enforcer" means a person appointed as such under section 14(1);

"financial institution" has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act;

"founder" means a person who provides or donates property or makes a testamentary disposition on a trust or to a trust with an intention to establish a trust and "donor" has a corresponding meaning;

"personal representative" has the meaning assigned to it under the Law of Succession Act; Cap 160.

"Registrar" means the person designated as the Registrar of Trusts under section 77 of this Act;

"settlor" means a person who establishes a trust in accordance with this Act and includes a founder or a donor;

"trust" means a trust created in accordance with section 4 of this Act;

"trust agent" means an advocate of the High Court of Kenya, a certified secretary or a certified accountant authorized to act on behalf of the trust;

"trust deed" means a document that sets out the objects of a trust and the rules, regulations, terms and conditions regulating its affairs thereof;

"trustee" means a person, including the founder, donor or settlor of a trust, who is authorized to act as a trustee in terms of this Act, including a person whose authorization to act as a trustee is in force at the commencement of this Act; and

"trust property" or "property" means money or any other movable, immovable, corporeal or incorporeal property, including any rights, interests or claims in that property which is administered by a trustee in accordance with the provisions of a trust deed.

Application of the Act.

3. This Act shall apply to all trusts created and trustees appointed under this Act or any other written law in relation to obligations and duties of trustees.

PART II — TRUST AND TRUST FORMATION

Creation of a trust

Creation of trust.

4. A trust is created where there is a legal arrangement in terms of which ownership of property of a person is transferred, conveyed or assigned in whole or in part, to the trustee, to be administered and controlled, or disposed of in accordance with the terms of a trust deed, operation of law, or by order of the court for the benefit of the person or class of persons or for the achievement of a specific object.

Registration or incorporation of written trust.

5. (1) A written trust shall be valid and enforceable if it has been registered or incorporated in accordance with the terms of the trust deed and this Act.

(2) Unless a written trust is registered or incorporated, no document evidencing the existence of a trust in writing shall be received as evidence in any transaction affecting the property to which the document relates, except with the consent of the court and upon such terms and conditions as the court may impose:

Provided that nothing in this Act shall make any document inadmissible in any criminal proceeding.

Invalidation of a trust.

6. (1) Without limiting the grounds on which a trust may be declared invalid under this Act or any other applicable law, a trust may be declared invalid if—

(a) it is created for a purpose or purports to do anything which is illegal in Kenya;

(b) it has no identifiable or ascertainable beneficiary unless the trust is for non-charitable purposes;

(c) it is established by duress, fraud, misrepresentation or in breach of a fiduciary duty;

(d) the terms are so uncertain as to render performance impossible;

(e) the settlor had no legal capacity to create the trust; or

(f) the trust has not been registered or incorporated in accordance with section 5.

(2) A trust shall not become void by virtue of—

(a) the settlor's bankruptcy;

(b) liquidation of the settlor's property; or

(c) proceedings or a suit against the settlor by the creditors.

(3) The Court may declare a trust to be void where it is proven that the trust was made for fraudulent purposes, including to evade creditors of the settlor.

(4) Where a trust is created for two or more purposes of which some are lawful and others are unlawful, —

(a) if those purposes cannot be separated, the trust shall be invalid; and

(b) where the purposes can be separated, the Court may declare that trust is valid as to each purpose that is lawful.

(5) Where a trust is partially invalid, the Court may determine the property that is trust property and the property that is not trust property.

Irrevocable trusts.

7. (1) A trust shall be deemed to be an irrevocable trust unless the trust deed contains an express power of revocation.

(2) A revocable trust shall be deemed to be irrevocable if an express power of revocation has not been exercised by the settlor during the lifetime of the settlor.

Types of Trusts

Charitable trusts.

8. (1) A charitable trust is a trust formed for the exclusive purpose of the relief of poverty, the advancement of education, religion, human rights and fundamental freedoms, the protection of the environment or any other purpose beneficial to the general public.

(2) A trust shall be deemed to be charitable if—

(a) the charitable objects may be pursued in Kenya or elsewhere;

(b) the objects are beneficial to the general public or a section of the public;

(c) the trust is discretionary; and

(d) the trustee has power to defer distribution of the assets of the trust to any charity or other beneficiary of the trust for a period not exceeding the duration of the trust as may be provided under the trust deed.

(3) A charitable trust shall be a non-trading entity.

Non-charitable purpose trust.

9. (1) A non-charitable purpose trust is a trust established to fulfil a specific purpose that does not qualify as charitable under the law.

(2) A non-charitable purpose trust may be created for a specific purpose notwithstanding the absence of any beneficiary.

(3) A non-charitable purpose trust is valid if—

(a) the purpose, whether partly charitable or not, for which the trust is created is specific, capable of fulfillment and is not illegal; and

(b) the terms of the trust provide for the disposition of surplus assets of the trust upon its termination.

Family trust.

10. (1) A family trust is a trust, whether living or testamentary, partly charitable or non-charitable, that is registered or incorporated by any person or persons, whether jointly or as an individual, for the purposes of planning or managing their personal estate.

(2) A family trust shall be—

(a) made in contemplation of beneficiaries, whether such intended beneficiaries are directly related to the settlor or not;

(b) made for the purpose of preservation or creation of wealth for generations; and

(c) a non-trading entity.

(3) Notwithstanding subsection (2), a family trust shall not be invalid for the reason that the settlor or joint settlors are also beneficiaries to the trust.

Limitation of the number of trustees.

11. (1) A charitable and a non-charitable purpose trust shall have at least three natural persons as trustees or one corporate trustee.

(2) A family trust shall have at least one trustee.

(3) A trust shall, where the trustees are natural persons, have at least one trustee who is a Kenyan citizen or a resident of Kenya, as prescribed in the Regulations.

Parties to a trust

Settlor.

12. (1) Subject to this Act, a settlor who has the legal capacity to contract, may create a trust by providing trust property to that trust or by making a testamentary disposition to that trust.

(2) A settlor shall be deemed to have the legal capacity to create a trust if, at the time he or she transfers or otherwise vests trust property in a trust, he or she is not a minor and is of sound mind.

(3) A settlor may also be a trustee, a beneficiary or an enforcer but shall not be the sole beneficiary of a trust for which he or she is a settlor.

Powers of a settlor.

13. (1) A settlor may, subject to the terms of the trust deed and this Act, have powers to—

(a) revoke, vary or amend the terms of the trust;

(b) direct or approve the advancement, distribution or application of income or capital of the trust property;

(c) give directions to the trustee in connection with the purchase, retention, sale, management, lending, pledging or charging of the trust property or the exercise of any powers or rights arising from such property;

(d) appoint or remove any trustee, enforcer or beneficiary or any other person who holds a power, discretion or right, or who acts in connection with the trust or with trust property;

(e) appoint or remove a trust agent; or

(f) restrict the exercise of any powers or discretions of a trustee.

(2) The grant of powers under this section shall not confer on the settlor the right to act as a trustee.

(3) In exercising the powers under this section, a settlor may delegate any of the powers to a trustee or any other person.

(4) A trustee or any other person who exercises the powers granted by the settlor under subsection (3) shall comply with the terms of the trust deed and this Act.

Enforcer of a trust.

14. (1) Subject to the terms of a trust deed, a settlor or, in the absence of a settlor, a beneficiary may appoint one or more persons as an enforcer or enforcers of a trust.

(2) Where a person is appointed as an enforcer under subsection (1), that person or the trustee shall, in the specified manner, notify the Registrar within twenty-one days from the date of appointment.

Functions of an enforcer.

15. (1) The functions of an enforcer may, subject to subsection (2), include —

(a) enforcing the terms of the trust deed;

(b) inquiring into the status of implementation of the trust;

(c) requiring the trustee to take remedial action, where there is breach of the terms of the trust deed;

(d) reporting to the settlor or the beneficiaries any financial or other breaches by the trustees; and

(e) pursuing legal action against the trustees, whether criminal or civil.

(2) A person shall not perform the functions of an enforcer set out in subsection (1) if that person is also a trustee.

(3) An enforcer shall not—

(a) directly or indirectly profit from the enforcer's appointment;

(b) cause or permit any other person to profit directly or indirectly from the enforcer's appointment; or

(c) on the enforcer's own account, enter into any transaction with the trustees or relating to the trust property which may result in such profit.

Access to documents by enforcer.

16. An enforcer shall have access to any documents, trust deed, accounts or any other information necessary for the performance of his or her functions.

Cessation of appointment of enforcer.

17. (1) An enforcer shall cease to be an enforcer of a trust where he or she—

(a) resigns by notice in writing to the appointing authority and the trustee;

(b) is removed from the role by court;

(c) is removed from the role by the appointing authority;

(d) dies;

(e) is appointed as a trustee of the trust; or

(f) ceases to be an enforcer by virtue of the coming into effect of a provision in the terms of the trust under which the enforcer is removed from office or otherwise ceases to hold office.

(2) Where an enforcer ceases to be an enforcer under subsection (1), a trustee shall notify the Registrar, in the specified manner, within twenty-one days of the cessation.

(3) Where there is a change of an enforcer of a trust, a trustee shall lodge with the Registrar a copy of the notice of any change of enforcers within twenty-one days from the date of the change as prescribed by the Regulations.

(4) A trustee who fails to comply with the provisions of subsection (2) or (3) of this section shall be liable to an administrative sanction of—

(a) five thousand shillings, where the trustee in default is a natural person; or

(b) ten thousand shillings, where the trustee in default is a body corporate.

Protection from personal liability.

18. An enforcer or a person acting as an officer, employee or agent of the enforcer or performing any duty on behalf of the enforcer shall not be liable to damages for anything done or omitted to be done in the discharge or of the duties of the enforcer under this Act or under the terms of the trust, unless it is proved that the act or omission constituted or arose from the person's own fraud, dishonesty or willful misconduct.

Beneficiaries of a trust.

19. (1) A beneficiary of a trust shall be—

(a) identifiable by name; or

(b) ascertainable by reference to—

(i) a class; or

(ii) a relationship with another person, whether living or not, at the time of the creation of the trust.

(2) Subject to subsection (1), the terms of a trust may expressly provide for the addition or exclusion of a person as beneficiary or for the exclusion of a beneficiary from benefit under the trust.

(3) The terms of a trust may impose an obligation or condition on a beneficiary as a requirement for receiving benefits under the trust.

(4) A settlor or a trustee of a trust may also be a beneficiary of the trust.

Class of beneficiaries.

20. Where a trust is created in favour of a class of beneficiaries —

(a) the class shall be deemed to close when it is no longer possible for any person to become a member of that class; and

(b) where the interests in a class relate to income, and no member of the class exists, the income shall be accumulated and retained until the member of the class comes into being.

Disclaimer of beneficial interest.

21. Subject to the terms of the trust deed, a beneficiary may, in writing to the trustees, disclaim his or her interest or any part of it, under the trust whether or not he or she has received any benefit from the trust.

PART III — REGISTRATION OF A TRUST

Registration of a Trust.

22. (1) A person who wishes to register a trust shall lodge with the Registrar an application for registration of a trust in a prescribed manner.

(2) The application for registration of a trust under subsection (1) shall be accompanied by—

(a) a trust deed;

(b) the prescribed fee;

(c) a copy of the register of beneficial owners as prescribed in the Regulations;

(d) statement of initial trust property in the form prescribed by the Regulations;

(e) statement of the initial enforcers of the trust, giving a written acceptance to act as enforcers in respect of the trust property, in the form prescribed by the Regulations;

(f) a copy of the court order if the trust was created by an order of the cour; and

(g) such other information or documents as may be prescribed by the Regulations or any other written law.

(3) An application lodged with the Registrar under subsection (1) shall—

(a) indicate the nature and type of trust;

(b) give details on the date the trust was established;

(c) state the purpose of the trust;

(d) provide details of the settlor;

(e) state the details and description of the beneficiaries;

(f) indicate details of the initial trustees;

(g) indicate details of the initial enforcers, if any;

(h) state the details and description of the beneficial owners;

(i) indicate the proposed registered address of the trust or the address of the trust agent; and

(j) provide any other details as may be prescribed in the Regulations.

(4) If the application for registration is submitted by a trust agent on behalf of the settlor or trustees, the trust agent shall include their name and address and their acceptance to act as such on behalf of the settlor or trustees.

Contents of a trust deed.

23. (1) A trust deed shall—

(a) set out terms and conditions for creating and managing a trust;

(b) set out the process of appointment and removal of trustees;

(c) state that the trustees have agreed to act as trustees of the trust;

(d) indicate the type of trust and its purposes;

(e) specify the trust property;

(f) contain information of the initial trustees, including names, addresses and their roles;

(g) contain information of the trustee or enforcer, if applicable, including written acceptance to act as such;

(h) where applicable, indicate whether the trustee must provide security in terms of the trust instrument or is exempted from payment of security;

(i) identify the beneficiaries by name or a clear description of the class of beneficiaries of the trust; and

(j) contain any other information that may be prescribed in the Regulations or any other written law.

(2) A trust deed shall be executed by the settlor or his representative and the trustees and the signature shall be attested by a witness who shall provide details including their occupation and postal address.

Issuance of Certificate of Registration.

24. (1) If satisfied that an application for registration of a trust complies with the requirements of this Act, the Registrar shall register the trust.

(2) Upon registration, the Registrar shall issue to the applicant a certificate of registration that contains—

(a) name of the trust, ending with the words 'Registered Trust';

(b) a unique identification number assigned to the trust;

(c) the date of registration;

(d) the type of trust; and

(e) any other information as may be prescribed.

(3) The Registrar shall sign the certificate of registration and authenticate it with the Registrar's official seal or as may otherwise be prescribed in the Regulations.

Refusal to issue a certificate.

25. (1) The Registrar shall refuse to register a trust under this Act if satisfied that—

(a) the trust is likely to be operated for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Kenya;

(b) it would be contrary to the national security or public interest for the entity to be so registered;

(c) the trust does not meet the requirements stipulated under this Act; or

(d) upon a charitable or non-charitable trust being subjected to a vetting process, adverse findings have been found.

(2) Where the Registrar refuses a registration under subsection (1) of this section, the Registrar shall, in writing and within fourteen days of making a determination, notify the applicant of his or her decision and the reasons for the refusal.

Revocation of certificate.

26. The Registrar may, pursuant to a court order, revoke a registration of a trust under this Act.

Effect of registration.

27. (1) A certificate of registration of a trust is conclusive evidence that—

(a) the requirements relating to registration, under this Act have been complied with; and

(b) the trust has been registered as an unincorporated trust as at the date stated on the certificate.

(2) The certificate of registration shall not confer the trust legal personality.

PART IV —INCORPORATION OF A TRUST

Name of incorporated trust.

28. The Registrar may, upon application, reserve a name pending incorporation of a trust.

(2) The Registrar may not reserve a trust by a name if—

(a) it is identical to that of any other name appearing in the Registrar's index of names;

(b) the use of the name would contravene any law or constitute an offence;

(c) the name consists of abbreviations, characters or initials not authorised by or under this Act or the Regulations made thereunder;

(d) the Registrar, after taking into account the relevant criteria, is of the opinion that the name is misleading, offensive or undesirable;

(e) the name appears in the Registrars index of names, that has been revoked or dissolved; or

(f) the name does not meet the criteria prescribed in the Regulations.

Requirements for incorporation.

29. (1) Upon reservation of a name under section 28 of this Act, a person may apply for incorporation of a trust and the application shall—

(a) be accompanied by a copy of the reserved name of the trust;

(b) indicate details of the trustees;

(c) specify the nature and type of trust;

(d) state the date the trust was created;

(e) provide details of the settlor;

(f) state the details or description of the beneficiaries;

(g) state the details or description of the beneficial owners;

(h) indicate the details of the enforcer, if any;

(i) state the purpose of the trust; and

(j) indicate the proposed registered address of the trust; or

(k) in the case of a family trust, indicate the proposed registered address of the trust or the address of the trust agent.

(2) An application for incorporation of a trust shall accompanied by—

(a) the trust deed;

(b) the prescribed fee;

(c) statement of initial trust property in the form prescribed by the Regulations;

(d) a copy of the register of beneficial owners; and

(e) such other information or documents as may be prescribed by the Regulations or required under this Act.

(3) If the application for incorporation is submitted by a trust agent on behalf of the settlor, trustees, the trust agent shall include their name and address.

Issuance of Certificate of Incorporation.

30. (1) Upon incorporation, the Registrar shall issue to the trust a certificate of incorporation that complies with this section and shall state—

(a) the name of the trust ending with the word "Incorporated Trust";

(b) a unique identification number;

(c) the date of incorporation; and

(d) the type and nature of trust.

(3) The Registrar shall sign the certificate of incorporation and authenticate it with the Registrar's official seal or as may otherwise be prescribed in the Regulations.

(4) The certificate of incorporation is conclusive evidence that the requirements of this Act relating to incorporation have been complied with and the trust is duly incorporated.

Refusal to incorporate.

31. (1) Without limiting the provisions of this subsection, the Registrar shall refuse to incorporate a trust under this section if satisfied that—

(a) the trust is likely to be operated for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Kenya;

(b) it would be contrary to the national security or public interest for the entity to be so registered;

(c) the trust does not meet the requirements stipulated under this Act; or

(d) upon a charitable or non-charitable purpose trust being subjected to a vetting process adverse findings have been found.

(2) Where the Registrar refuses to incorporate a trust under this section, the Registrar shall, in writing and within fourteen days of making a determination, notify the applicant of his or her decision and reasons for the refusal.

Effect of incorporation.

32. From the date of incorporation of a trust, the Trust shall become a body corporate by the name described in the certificate capable of—

(a) having perpetual succession;

(b) suing and being sued;

(c) acquiring, owning, holding and developing or disposing of property in its name; and

(d) doing such other acts a body corporate may lawfully do.

Incorporation of a registered trust.

33. (1) A registered trust may apply to the Registrar for a certificate of incorporation in the manner prescribed in the Regulations.

(2) A registered trust shall provide the details required in section 29 of this Act in an application for incorporation.

(3) The Registrar, shall, upon being satisfied that the trust has met the requirements of this Act in relation to incorporation, issue the trust with a certificate of incorporation.

(4) The certificate of incorporation shall be in accordance with the provisions of section 30 of this Act and may contain any other particulars that the Registrar may determine.

(5) Upon being issued with a certificate of incorporation, the trust shall cease to exist as a registered

trust and shall become a body corporate by the name described in the certificate.

PART V— PROPERTY OF A TRUST

Property of a trust.

34. (1) A trustee shall deal or manage the property of a trust in accordance with the terms of the trust deed, without any deviation or derogation, unless explicitly authorised by the terms of the trust deed, by a court of law or a written law.

(2) Where a trust is revoked or declared invalid, the property under the trust shall be dealt with in accordance with the terms of the trust deed or by a determination of the court if there is no provision in the trust deed to this effect.

Property acquired illegally.

35. Any property acquired illegally or through unlawful means shall not form part of the property of the trust and such property may be subject to recovery and forfeiture under the Proceeds of Crimes and Anti-Money Laundering Act or any other enabling law in relation to the offence committed in the process of acquiring the property.

Cap. 59A.

PART VI— TRUSTEES

Qualification and disqualification to act as a trustee.

36. (1) A person shall qualify to act as a trustee if that person—

(a) is above the age of eighteen years;

(b) is of sound mind;

(c) is not disqualified under any other written law from appointment as such; and

(d) meets any other requirement as may be prescribed in the Regulations.

(2) A person shall be disqualified for appointment as a trustee if that person—

(a) is disqualified from acting as a director or secretary of a company in accordance with the Companies Act;

Cap. 486.

(b) is disqualified from acting as a liquidator or administrator under the Insolvency Act;

Cap. 53.

(c) has been declared mentally incapacitated under the Mental Health Act;

Cap. 248.

(d) has been convicted of a criminal offence which attracts imprisonment for a term exceeding six months;

(e) has been convicted of corruption or an economic crime; or

(f) is an undischarged bankrupt or, in the case of a corporate trustee, is declared insolvent.

(3) An entity shall qualify to act as a corporate trustee if that entity —

(a) is a company incorporated under the Companies Act whose main object is to provide corporate trustee services;

(b) is not disqualified under any other written law from appointment as such;

(c) is licensed to act as such under any other relevant written law; or

(d) meets any other requirement as may be prescribed in the Regulations.

(4) A corporate trustee shall be required to have a local contact person who is a natural person and a resident of Kenya, as prescribed in the Regulations.

(5) For purposes of subsection (2), the words "corruption" and "economic crime" have the meaning assigned to them under the Anti-Corruption and Economic Crimes Act. Cap. 65.

Appointment of trustee.

37. (1) A person may act as a trustee of a trust if appointed as a trustee—

(a) under the terms of the trust deed;

(b) through a court order; or

(c) under the Public Trustee Act. Cap. 168.

(2) A trustee shall notify the Registrar of his or her appointment within twenty-one days of the appointment in the form prescribed in the Regulations and shall be accompanied by—

(a) a written consent by the trustee to act in that capacity and be bound by the terms of the trust deed; and

(b) the prescribed fee.

(3) If a trustee fails to comply with subsection (2), the trustee shall be liable to pay an administrative penalty of—

(a) seven thousand shillings, if the trustee in default is a natural person; or

(b) fourteen thousand shillings, where the trustee in default is a body corporate.

Power of appointing substitute or additional trustees.

38. (1) Where a trustee has been disqualified to act as a trustee under section 36 of this Act or has otherwise ceased to be a trustee under this Act or any other applicable law, the powers of appointment of additional trustees shall be exercised in accordance with the trust deed.

(2) Where the trust deed does not provide for the process of appointment of additional trustees—

(a) the existing trustee may appoint additional trustees; or

(b) the beneficiaries or the enforcer, if any, shall make an application to court to appoint such additional trustees.

(3) Where a trustee—

(a) in the case of a natural person, is dead or incapable of acting;

(b) in the case of a corporation, has been dissolved;

(c) desires to be discharged from all or any of the trusts or powers conferred on him or her;

(d) refuses to act in accordance with the trust deed;

(e) has been removed under a power contained in the trust deed; or

(f) in the case of a charitable trust or where a limit has been provided in the trust deed, the number goes below the minimum required number of trustees,

an additional trustee may be appointed in accordance with subsection (4).

(4) An additional trustee referred to under subsection (3) may be appointed by—

(a) the settlor or in their absence, the enforcer, if any;

(b) the person nominated for the purpose of appointing new trustees by the trust deed;

(c) the surviving or continuing trustees; or

(d) the Court.

(5) A new trustee appointed under this section shall have the same power, authority and discretion and may in all respects act as if he or she had been appointed a trustee under the trust deed.

(6) Where an incapacitated trustee is the sole beneficiary, no appointment of a new trustee in his or her place shall be made by the continuing trustees or trustee, under this section, unless leave has been given by court.

(7) A trustee appointed through a court order shall—

(a) have the same power, authority, and discretion and may in all respect act as if they had been appointed a trustee under the trust deed; or

(b) act in accordance with the orders of the court.

(8) The trustees shall notify the Registrar of the appointment of a new trustee within twenty-one days of the appointment in the form prescribed in the Regulations and shall be accompanied by—

(a) a written consent by the trustee to act in that capacity and be bound by the terms of the trust deed; and

(b) the prescribed fee.

(9) If the trustee fails to comply with subsection (8), the trustee shall be liable to an administrative penalty not exceeding thirty thousand shillings.

Resignation of trustee.

39. (1) Unless the trust deed provides otherwise, a trustee may resign by issuing a written notice of resignation to his co-trustees or in the case of a sole trustee, to the beneficiaries.

(2) A resignation under subsection (1) shall have no effect if it—

(a) is given to facilitate a breach of trust; or

(b) is contrary to the provisions of the trust deed.

(3) The court may appoint the public trustee to act as a trustee of a trust where there is no trustee capable of acting as a trustee and the trust deed does not provide for the mechanism of appointing a trustee.

(4) A trustee shall cease to be a trustee of a trust immediately upon—

(a) his or her removal by the Court;

(b) the trustee's resignation becoming effective;

(c) being disqualified to act as a trustee under section 36 of this Act;

(d) the coming into effect of a provision in the terms of a trust deed under which the trustee is removed from office or otherwise ceases to hold office; or

(e) the institution or commencement of bankruptcy or insolvency proceedings against the trustee.

(5) A person who ceases to be a trustee under this section shall upon cessation—

(a) vest the trust property in the new or continuing trustee or the trust, in the case of an incorporated trust; and

(b) surrender documents of title, accounts and records relating to the trust and held by him or her in his or her capacity as a trustee.

(6) A person who fails to comply with the provisions of subsection (5) commits an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings or a prison term of one year, or to both.

(7) A trustee may apply to court for orders compelling persons who have ceased to be trustees to produce anything in their possession that was in their custody by virtue of their trusteeship.

(8) A trustee who resigns in order to facilitate a breach of trust shall be liable for that breach as if he or she had not resigned.

(9) The trustees shall notify the Registrar of the resignation of the trustees within twenty-one days of the resignation in the form prescribed in the Regulations.

(10) A trustee who fails to comply with subsection (9) shall be liable to an administrative penalty of—

(a) seven thousand shillings, if the trustee in default is a natural person; or

(b) fourteen thousand shillings, where the trustee in default is a body corporate.

Removal of a trustee.

40. (1) Any person that has a legitimate interest in a trust may apply to court for the removal of a trustee and if the court is satisfied that the removal of the trustee is in the interest of the trust and the beneficiaries of the trust, the court may issue an order for removal of that trustee.

(2) Despite subsection (1), a trustee may be removed in accordance with the terms of the trust deed.

(3) Before removing a person as a trustee under subsection (2), the trustee shall be given a twenty-one-day written notice of the intention to remove the trustee.

(4) If a trustee is removed, the trustees of the trust shall file a notice of removal of the trustee with the Registrar within twenty-one days of such removal in the manner prescribed in the Regulations.

(5) If the trustee fails to comply with subsection (4) the trustee shall be liable to an administrative penalty of—

(a) seven thousand shillings, if the trustee in default is a natural person; or

(b) fourteen thousand shillings, where the trustee in default is a body corporate.

Death or dissolution of a trustee.

41. (1) Where a power or function of a trustee is vested in two or more trustees jointly and one of those trustees dies or in the case of a body corporate, is dissolved, the surviving trustees may exercise such powers or perform such functions to allow the trustee or them to maintain and preserve the trust and trust property, for a period not exceeding thirty days, pending the appointment of a new trustee in accordance with section 37 of this Act, in the place of the trustee who died or was dissolved.

(2) If a sole trustee or the last surviving or continuing trustee dies or in the case of a body corporate, is dissolved, and the trust deed does not provide for the replacement of

such trustee, any beneficiary or an enforcer may apply to court to make an order for the appointment of a new trustee.

(3) The trustees shall notify the Registrar of the replacement within twenty-one days of the appointment in the form prescribed in the Regulations.

(4) If the trustee fails to comply with the provisions of subsection (3), the trustee shall be liable to an administrative penalty of—

(a) seven thousand shillings, if the trustee in default is a natural person; or

(b) fourteen thousand shillings, where the trustee in default is a body corporate.

Effect of change of trustee.

42. A change in the trustees of a trust shall not affect the existence, rights or obligations of the trust.

PART VII— DUTIES AND GENERAL POWERS OF TRUSTEES

Duty of trustee to exercise reasonable care, skill and diligence.

43. (1) In carrying out the powers conferred to a trustee, a trustee shall exercise care, skill and diligence as it is reasonable in the circumstances, having regard to—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions performed by a trustee in relation to the trust;

(b) any special knowledge or experience that he or she has or holds himself or herself out as having; and

(c) when he or she acts as a trustee in the course of a business or profession, any special knowledge or experience that may reasonably be expected of a person acting in the course of that kind of business or profession.

(2) Despite the generality of subsection (1), a trustee shall, in exercise of his or her powers—

(a) know the terms of the trust deed;

(b) act in accordance with the terms of the trust instrument;

(c) act honestly and in good faith;

(d) hold or deal with trust property and act for the benefit of the beneficiaries or to further the permitted purpose of the trust;

(e) avoid a conflict between his or her interests and the interests of the trust or any of the beneficiaries of the trust;

(f) where a trust has more than one beneficiary, treat all beneficiaries impartially and in accordance with the terms of the trust instrument; and

(g) not take remuneration or reward in his or her capacity as trustee except the remuneration and expenses contemplated in section 60 of this Act.

Duty of trustee to act within powers.

44. (1) A trustee shall execute, administer the trust and exercise his or her function in accordance with the provisions of this Act, and terms of the trust deed and only in the interest of the beneficiaries or advancement of the charitable or non-charitable purpose, as the case may be.

(2) The trustees shall, at all times, act jointly in the exercise of their powers and performance of their functions in accordance with the terms of the trust deed.

(3) Where the trust deed does not provide for the manner in which the trustees shall exercise their powers and perform their functions relating to decision making, amendment of the trust deed, dissolution of a trust or variation of an entitlement under the trust, the trustees may make an a application to court for guidance or for any such orders as the court may deem fit in the circumstances.

(4) A corporate trustee may—

(a) act in connection with a trust by a resolution of its board of directors; or

(b) by resolution, appoint an officer or employee or a committee of officers or employees or both, to act on its behalf in connection with the trust.

(5) A corporate trustee shall be required to lodge with the Registrar a notice of appointment of any person in subsection (4)(b) within twenty-one days of such appointment.

(6) If the corporate trustee fails to comply with subsection (5) the corporate trustee shall be liable to an administrative penalty of fifty thousand shillings.

Duty of trustee not to profit from trusteeship.

45. Subject to the terms of the trust deed, a trustee shall not—

(a) derive, directly or indirectly, any profit from his or her trusteeship;

(b) cause or permit any other person to derive any profit from his or her trusteeship; or

(c) on his or her own account, enter into any transaction with his or her co-trustees relating to the trust property, which may result in any drawing of profit, except–

(i) with the approval of the Court; or

(ii) as permitted by the provisions of this Act.

Duty to preserve the trust property.

46. (1) A trustee shall, subject to the terms of the trust deed and the provisions of this Act, preserve the value of the trust property vested in him or her.

(2) A trustee shall not dispose off trust property or any part of it in such a manner as to frustrate or adversely affect the purpose of the trust and the interest of the beneficiaries.

(3) If a trustee fails to comply with subsection (2) each of the trustees commits an offence and is liable on conviction—

(a) if the offender is a natural person, to a fine not exceeding five million shillings or an imprisonment of five years or to both; and

(b) if the offender is a body corporate, to a fine not exceeding twenty million shillings.

Duty to keep trust property separate.

47. (1) A trustee shall keep trust property separate from the trustee's own property and separately identifiable from other property of which he or she is a trustee.

(2) A trustee shall—

(a) indicate clearly in the books of the trust the trust property which he or she holds in his or her capacity as trustee;

(b) ensure that any account or investment of a trust kept by a financial institution is identifiable as a trust account or trust investment; and

(c) in the case of trust property other than property referred to in paragraph (b), make such property identifiable as the trust property in the prescribed manner.

Duty to keep records.

48. (1) Every trustee shall keep adequate, accurate, and up-to-date records of the trust and all matters relating to the administration of the trust.

(2) The information referred to in the records shall include—

(a) the information relating to the settlor, each trustee including foreign trustees if any, each enforcer, each beneficiary, and each beneficial owner as prescribed in the Regulations;

(b) information relating to a trust agent of the trust;

(c) the trust deed and any other documents that contain terms of the trust;

(d) the certificate of registration or incorporation;

(e) any amendment of a trust deed and details of its effect on the trust property;

(f) records of the trust property that identify the assets, liabilities, income and expenses relating to the trust property and beneficial ownership of the trust property;

(g) any foreign trust administered by the trustees, including—

(i) details of the foreign trust such as the settlors, trustees, beneficiaries, protectors or enforcers, if any;

(ii) information on the beneficial owners of the foreign trust;

(iii) property of the trust within Kenya; and

(iv) records of transactions that have any connection with Kenya;

(h) all transactions, advisory communications and matters relating to trust accounts including trust investments;

(i) prescribed details relating to financial institutions and reporting institutions—

(i) with which the trust has business relationships with and the nature of that business relationship;

(ii) which the trust uses as agents to perform any of the trustee's functions relating to the trust property; and

(iii) from which the trust obtains any services in respect of the trustee's functions relating to the trust property;

(j) any written contracts entered into during the tenure of the trustee;

(k) any records of resolutions of the trustees made during tenure of the trustee;

(l) any management records and books of accounts prepared during the tenure of the trustee;

(m) documents of appointment, removal and discharge of trustees, including any court orders appointing or removing trustees;

(n) any reports of material irregularities and how the trustee dealt with those material irregularities;

(o) a register of charges and security rights created under the Movable Property Security Rights Act or any other law; and Cap. 499A.

(p) any other document necessary for the administration of the trust.

(3) The trustees shall ensure that the records are kept for at least seven years from—

(a) the date of termination or dissolution of the trust; or

(b) the date they cease being trustees of a trust.

(4) A trustee shall lodge with the Registrar a copy of any amendment to the trust deed or the list of assets within twenty-one days after making the amendment.

(5) A trustee who fails to comply with subsection (4) shall be liable to an administrative penalty of—

(a) seven thousand shillings, if the trustee in default is a natural person; and

(b) fourteen thousand shillings, if the trustee in default is a body corporate.

Access to information.

49. (1) The trustees shall not use or disclose their trust information except—

(a) upon written request of—

(i) an enforcer;

(ii) a beneficiary, subject to the terms of the trust deed; or

(iii) a settlor, if such power is specifically reserved under the trust deed;

(b) in order to comply with the Proceeds of Crime and Anti-Money Laundering Act; Cap. 59A.

(c) in order to comply with the Prevention of Terrorism Act; Cap. 59B.

(d) in order to comply with a court order; or

(e) in order to comply with any other written law.

(2) The trustees shall provide full and accurate information required in subsection (1) within fourteen days of receipt of the request.

(3) Where a trustee fails to comply with the requirements under this section, each trustee who is in default, commits an offence and upon conviction is liable—

(a) if the offender is a natural person, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both; and

(b) if the offender is a body corporate, to a fine not exceeding three million shillings.

Power to apply income for maintenance and to accumulate surplus income during minority

50. (1) A trustee may, at their discretion, make payments to a parent or guardian of a beneficiary who is a minor for the purposes of the maintenance, education or benefit of the minor from income arising from the property of the trust for which the minor is entitled.

(2) Any income not otherwise applied in accordance with subsection (1) may be accumulated and paid to the beneficiary upon the attainment of the age of eighteen years.

Power to manage and control trust property.

51. A trustee may, subject to the provisions of this Act or the terms of the trust deed, take possession, control, maintain, repair or improve trust property.

Power to delegate functions.

52. (1) A trustee may delegate his or her functions if permitted by this Act or by the terms of the trust deed.

(2) In exercising the power under subsection (1), the trustee may—

(a) delegate the management of the trust property to, and appoint, a manager who the trustee reasonably considers to be competent and qualified to manage the trust property;

(b) delegate the power to invest trust property to, and appoint an investment manager who the trustee reasonably considers to be competent and qualified to invest the trust property; and

(c) authorise any such manager or person to retain any commission or payment usually payable for services of the description rendered.

Power to appropriate.

53. Subject to the terms of the trust deed and the duties of the trustee under this Act, a trustee may, without the consent of any beneficiary, appropriate trust property in or towards satisfaction of the interest of a beneficiary in such manner and in accordance with such valuation as he or she considers fit.

Power of sale and lease.

54. (1) Where a trustee is authorised by the trust deed or by law to pay or apply capital money subject to the trust for any purpose or in any manner, the trustee shall have and shall be deemed always to have had the power to raise the money required by sale, conversion, calling in, leasing or mortgage of all or any part of the trust property for the time being in their possession.

(2) Where a trust for a sale or a power of sale of a property is vested in a trustee, he or she may sell or concur with any other person in selling all or any part of the property either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.

(3) A trustee may lease out trust property on terms that are favourable to the trust.

(4) Notwithstanding anything to the contrary contained in a trust deed, subsection (1) does not apply to trustees of property held for charitable purposes.

(5) No sale made by a trustee shall be impeached by a beneficiary upon the grounds that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory unless it also appears that the consideration for the sale was thereby rendered inadequate.

(6) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(7) No purchaser, upon any sale made by a trustee, may make any objection against the title upon any of the grounds specified in this section.

Power to borrow.

55. Where a trustee is authorised by the trust deed, or by law to pay or apply capital money subject to the trust, the trustee shall have power to raise the money required by charging all or any part of the trust property for the time being in possession.

Power to distribute trust property.

56. A trustee shall distribute the trust property in accordance with the trust deed or this Act.

Power to sue and settle claim.

57. A trustee may sue or be sued in his or her capacity and may settle any action or claim brought by or against the

trustee or in any way relating to the trust or the trust property.

Power of Attorney.

58. (1) A trustee may, subject to the provisions of this Act and the terms of the trust deed, by a power of attorney, delegate for a period not exceeding three years, the performance of any trust or function vested in him or her as trustee, alone or jointly.

(2) A power of attorney under this section is renewable in accordance with the terms of the trust deed for a further period of three years.

(3) A trustee who delegates a function by the power of attorney under this section shall only delegate that power to a natural person.

(4) For the purposes of this section, a trustee who delegates a function by the power of attorney under this section shall be referred to as the "donor" and the person to whom the function is delegated shall be referred to as the "donee".

(5) Without prejudice to any applicable law, within twenty-one days of giving power of attorney under this section, the donor shall give a written notice or as may be prescribed to—

(a) every other person who, under the terms of the trust deed, has power, alone or jointly, to appoint a new trustee;

(b) every co-trustee; and

(c) the Registrar.

(6) The notice under subsection (5) shall state—

(a) the date of commencement and duration of the power of attorney;

(b) the name and address of the donee;

(c) the reason for giving the power of attorney; and

(d) the functions delegated.

(7) Any information that may be prescribed in the failure to comply with subsection (5) or (6) shall not invalidate anything done by the donee.

(8) The donor is bound by and liable for all acts and omissions of the donee, done or purportedly done under the power of attorney as if they were his or her own acts and omissions.

(9) The donee shall not delegate any of the delegated powers under the power of attorney.

(10) Where a trustee fails to comply with the provisions of subsection (5), each trustee who is in default, commits an offence and on conviction is liable—

(a) if the offender is a natural person, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both; and

(b) if the offender is a body corporate, to a fine not exceeding two million shillings.

Power to insure.

59. A trustee may insure any property which is subject to the trust against risks of loss or damage due to any event and pay the premiums out of the trust funds.

PART VIII — REMUNERATION, INDEMNITY AND LIABILITY OF A TRUSTEE

Remuneration and expenses.

60. (1) A trustee may, in respect of the execution of his or her official duties, receive remuneration as authorised by—

(a) the terms of the trust deed;

(b) the consent in writing of every beneficiary;

(c) an order of the court; or

(d) any other written law.

(2) A trustee may pay from the trust property and may reimburse himself or herself from the trust property, for all expenses and liabilities properly incurred in connection with the trust—

(a) in accordance with the terms of the trust deed or any other agreement; or

(b) with the approval of the enforcer, co-trustees or the beneficiaries.

Liability.

61. (1) Subject to the provisions of this Act and the terms of a trust deed, a trustee who commits or is party to a breach of trust is liable for—

(a) any loss or depreciation in value of the trust property resulting from the breach; and

(b) any profit which would have accrued to the trust had there been no breach.

(2) A trustee shall not set off a profit accruing from one breach of trust against a loss or depreciation in value resulting from another.

(3) A trustee is not liable for a breach of trust committed by another person prior to his or her appointment.

(4) A trustee is not liable for a breach of trust committed by a co-trustee, unless—

(a) the trustee becomes aware or ought to have become aware of the commission of such breach or of the intention of his or her co-trustee to commit a breach of trust; and

(b) the trustee actively conceals such breach or such intention or fails within a reasonable time to take proper steps to protect or restore the trust property or prevent such breach.

(5) Where two or more trustees are liable in respect of a breach of trust, they shall be liable jointly and severally.

(6) A trustee who becomes aware of a breach of trust to which subsection (3) applies shall take all reasonable steps to have the breach remedied.

Indemnity.

62. (1) A trust deed shall not—

(a) limit or exclude the trustee's liability for any breach of trust arising from the trustee's dishonesty, willful misconduct or gross negligence; or

(b) give a trustee any indemnity against the trust property for liability for any breach of trust arising from the trustee's dishonesty, willful misconduct or gross negligence.

(2) Subsection (1) shall apply to a trust created before or after the commencement of this Act.

(3) The beneficiaries may—

(a) relieve a trustee of liability for any breach of trust; or

(b) indemnify a trustee against liability for any breach of trust done in good faith.

(4) Subsection (3) shall not apply if a beneficiary—

(a) is a minor or person who has been declared to be of unsound mind under the Mental Health Act;

(b) does not have full knowledge of all the material facts; or

(c) is improperly induced by the trustee to act under subsection (3).

Register and records to be kept by the trust.

63. (1) A trust shall keep—

(a) a certificate of incorporation issued under this Act;

(b) a register of prescribed information relating to each settlor, trustee, beneficiaries, enforcers and beneficial owners;

(c) a copy of any statement and notices lodged with the Registrar under this Act;

(d) a copy of the trust deed and any amendment thereto;

(e) a list of trust property;

(f) a register of charges and security rights created under the Movable Property Security Rights Act; and

(g) any other documents that the Registrar may, from time to time, require to be kept.

(2) A trust shall keep the documents in subsection (1) for a minimum period of seven years.

(3) A trust and each trustee that fails to comply with this section commits an offence and is liable on conviction—

(a) if the offender is a natural person, to a fine not exceeding five hundred thousand shillings; and

(b) if the offender is a body corporate, to a fine not exceeding two million shillings.

Accounting records.

64. (1) Every trust shall keep such accounting and other records as may be prescribed in the Regulations to—

(a) show and explain the accounting transactions;

(b) disclose with reasonable accuracy the financial position of the trust;

(c) enable income and expenditure account and a balance sheet to be prepared, from time to time, that gives a true and fair view of the state of affairs of the trust; and

(d) comply with the prescribed financial accounting standards.

(2) A trust shall retain its accounting records for not less than seven years after completion of the matters to which they relate.

(3) A trust shall keep its accounting records in a manner that can be open to inspection as provided for under this Act.

(4) If a trust fails to comply with this section, the trustee commits an offence and is liable upon conviction—

(a) if the offender is a natural person, to a fine not exceeding one hundred thousand shillings; and

(b) if the offender is a body corporate, to a fine not exceeding five hundred thousand shillings.

PART IX — BENEFICIAL OWNERS OF A TRUST

Register of beneficial owners.

65. (1) Every trust shall compile and keep a register of its beneficial owners.

(2) A trust shall enter in the register of beneficial owners information relating to the beneficial owners as prescribed in the Regulations.

Lodgement of the register.

66. (1) A trust shall lodge with the Registrar a copy of the register of beneficial owners referred to under subsection (1).

(2) All trusts incorporated before the commencement of this Act shall lodge with the Registrar a copy of the register of beneficial owners within twenty-four months of coming into force of this Act.

(3) The Registrar may, on the application of the trustee or for any other reason the Registrar deems fit, extend the period referred to in subsection (2).

(4) A trustee who fails to comply with the provisions of this section shall be liable to an administrative penalty of—

(a) ten thousand shillings, if the trustee in default is a natural person; and

(b) twenty thousand shillings, if the trustee in default is a body corporate.

Changes to the beneficial ownership.

67. (1) A trust shall update any changes to the beneficial ownership of the trust and shall lodge with the Registrar a copy of the changes to its register of beneficial owners within twenty-one days after making the change.

(2) A trustee who fails to comply with provisions of this section shall be liable to an administrative penalty of—

(a) ten thousand shillings if the trustee in default is a natural person; and

(b) twenty thousand shillings if the trustee in default is a body corporate.

Records of beneficial owners.

68. Every trust shall keep records of its beneficial owner's information for at least seven years from the date which a person ceases to be a beneficial owner.

Breach of this Part.

69. (1) The Registrar shall give a directive to a trust that is in breach of this Part, specifying—

(a) the statutory requirement of which the trustee is in breach;

(b) the action that the trustee is required to take;

(c) the timelines within which the trust should comply; and

(d) the consequence for failure to comply with the directive by the Registrar.

(2) The Registrar shall, where the trustees fail to comply with the directive issued under subsection (1), issue a notice, addressed to the trustees, that upon the expiry of thirty days, the trustees may be disqualified.

(3) Where the trustees fail to comply within the time prescribed in subsection (2), the Registrar shall publish in the *Gazette* an intention to have the trustees disqualified from acting as trustees of the trust.

(4) At the end of the period specified in the gazette notice under subsection (3), the Registrar may, unless cause to the contrary is shown by the trustees, disqualify the trustees for a maximum period of three years and *Gazette* the names of the disqualified trustees.

(5) Any person dissatisfied with the decision of the Registrar to disqualify a trustee under subsection (4) may appeal to court for such orders as the court may deem expedient.

PART X – POWERS OF THE COURT IN RELATION TO VESTING ORDERS

Vesting orders.

70. (1) A court may issue a vesting order in relation to property of a trust where—

(a) the trust does not have any person capable of acting in relation to the trust property; or

(b) the court appoints a trustee in relation to a trust where the trust did not have any trustee; or

(c) the court deems fit to issue such orders.

(2) A vesting order under subsection (1) shall have the same effect as if the persons who would have had the powers to execute any document, had duly executed any document required to effect the transfer of the property.

(3) The court may, in any case where it has powers to issue vesting orders, direct or appoint a person to execute any document required for the transfer or conveyance of the property of a trust.

Power to appoint person to convey.

71. Where a minor is beneficially entitled to any property, the court may, with a view to the application of the capital or income thereof for the maintenance, education or benefit of the infant, make an order appointing a person to convey or transfer the property.

PART XI – PROVISIONS RELATING TO THE CHANGE OF NAME, FILING OF ANNUAL RETURNS AND APPOINTMENT OF TRUST AGENT

Change of name of a trust.

72. (1) A trust may, on application to the Registrar, change its name as may be prescribed in the Regulations.

(2) On receiving an application of change of the name of the trust and on being satisfied that the new name complies with the requirements of this Act, the Registrar shall enter the new name on the register in place of the former name.

(3) Upon registering the new name, the Registrar shall issue a certificate of change of name to the trust.

(4) A change of a trust's name shall have effect from the date on which the certificate of change of name is issued.

(5) The change of name shall not affect any rights or obligations of the trust or invalidate any legal proceedings by or against it.

(6) Any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Power to direct change of name by the Registrar.

73. (1) The Registrar may direct a trust to change its name if it has been registered or incorporated by a name that is the same as or, in the opinion of the Registrar, is—

(a) too similar to a name appearing at the time of the registration or incorporation in the Registrar's index of names;

(b) too similar to a name that has been reserved; or

(c) contravenes the provisions of this Act or the Regulations made hereunder.

(2) In giving a direction under subsection (1), the Registrar shall require the trust to comply with the direction within the time specified in the directive.

(3) If the trust fails to comply with a direction given to it under this section, the trust and each trustee who is in default, commits an offence and shall be liable on conviction—

(a) if the offender is a natural person, to a fine not exceeding five hundred thousand shillings; and

(b) if the offender is a body corporate, to a fine not exceeding two million shillings.

(4) Any person with a legitimate interest may, in writing, apply to the Registrar to give a direction to a trust, to change its name on any of the grounds specified under subsection (1).

Trust may apply to court for order to quash the direction under s.73.

74. (1) A trust dissatisfied with the decision by the Registrar to issue a directive may apply to court for remedy.

(2) In considering an application under subsection (1), the Court may take into consideration the effect of sustaining similar names in the index of registered names held by the Registrar.

Annual returns.

75. (1) A trust shall file its annual returns with the Registrar within thirty days of the anniversary of its registration or incorporation under this Act.

(2) The annual returns referred to under subsection (1) shall contain information prescribed in the Regulations.

(3) If a trust fails to comply with the requirements of subsection (1), the trust or any trustee of the trust in default is liable to pay to the Registrar an administrative penalty of five hundred shillings for each year of default.

Trust agent.

76. (1) A trust agent is a person who has been appointed by the trustee to offer services to a trust including—

(a) trust formation and set up including offering advisory services, preparing registration or incorporation documents and ensuring the trust complies with the relevant laws and regulations;

(b) providing a registered office address for a family trust; or

(c) lodging statutory documents on behalf of the trust.

(2) A trustee shall notify the Registrar of any appointment or termination made of a trust agent appointed for the purposes of lodging statutory documents on behalf

of a trust or appointed to provide address or keep records on behalf of the trust within twenty-one days of appointment.

(3) A trust agent appointed for purposes of subsection (2) shall be an advocate of the High Court of Kenya, a Certified Secretary or a Certified Accountant:

Provided that nothing in this section shall be construed as permitting an unqualified person to draw documents required to be drawn by an advocate under the Advocates Act.

(4) A trust agent shall keep records of all transactions with the trust for a period of not less than seven years from the time they cease acting as a trust agent of the trust.

(5) A trust agent shall, upon request by a competent authority, disclose such information within fourteen days of such a request.

PART XII—REGISTRAR AND REGISTER OF TRUSTS

Designation of the Registrar and other officers.

77. (1) There shall be a Registrar of Trusts which shall be an office within the Business Registration Service.

(2) The Registrar of Trusts shall be responsible for the setting up of the registry and maintenance of the Register of Trusts as required under this or any other law.

(3) There shall be a Deputy Registrar of Trusts and such other Assistant Registrars of Trusts as may be necessary for the proper performance of the functions of the Office.

(4) The Registrar may authorise the Deputy Registrar or an Assistant Registrar to perform and exercise such functions and powers as the Registrar may from time to time specify.

(5) Functions and powers of the Registrar performed or exercised in accordance with an authority conferred under subsection (4) shall be deemed to have been performed or exercised by the Registrar.

The Register and functions of the Registrar.

78. (1) The Registrar shall keep a Register of trusts.

(2) The Register shall contain—

(a) the information relating to trusts that is contained in documents lodged or filed with, or delivered to, the Registrar under this or any other Act; and

(b) certificates of registration and incorporation of trusts issued by the Registrar.

(3) The Registrar shall keep records of dissolved trusts for at least seven years.

(4) The Registrar shall record and keep the information contained in documents lodged with the Registrar in such form (including electronic form) as may be prescribed in the Regulations.

(5) The Registrar shall ensure that all records kept by the Registrar are in such form as will enable all the information contained in the records to be readily retrieved for inspection and copied.

(6) If the records are kept in electronic form, the Registrar shall ensure that they are capable of being reproduced in hard copy form.

(7) The Registrar shall perform such other functions conferred on the Registrar by this Act or any other law.

(8) The Registrar may disclose the information maintained in subsection (2)—

(a) to the trustees of a trust, enforcer, beneficiary or settlor where the settlor has reserved powers under the trust deed;

(b) to competent authorities upon written request or any other means as the Registrar may specify;

(c) to self-regulatory bodies regulating or supervising for money laundering, terrorism financing and proliferation of weapons of mass destruction;

(d) to any person or institution designated as a reporting entity under the Proceeds of Crime and Anti-Money Laundering Act;

(e) to any other person permitted by any written law in Kenya; or

(f) where the Court orders such information to be disclosed.

Power to issue directives by the Registrar.

79. (1) The Registrar may issue a directive to an existing trust to provide information that is required to be kept by the Registrar under this Act and is not available in relation to the trust.

(2) The directive requiring an existing trust to provide information shall stipulate the timelines within which to comply with the notice and shall indicate all the information required to be furnished with the Registrar.

(3) The Registrar shall, where the trustees fail to comply with the directive issued under subsection (2), issue a notice, addressed to the trustees that upon the expiry of thirty days, the trustees may be gazetted for disqualification.

(4) Where the trustees fail to comply within the time prescribed in subsection (3), the Registrar shall publish in the *Gazette* an intention to have the trustees of the trust disqualified from acting as trustees of the trust.

(5) At the end of the period specified in the notice under subsection (4), the Registrar may, unless cause to the contrary is previously shown by the trustees, disqualify the trustees for a maximum period of three years and *Gazette* the names of the disqualified trustees.

Electronic lodgment of documents with Registrar.

80. The Registrar may require any document to be lodged under this Act to be lodged electronically subject to such conditions, if any, as the Registrar may impose from time to time.

Registrar's official seal.

81. The Registrar shall have an official seal for the authentication of documents in connection with the performance of the Registrar's functions.

Rectification.

82. (1) A trustee may apply to the Registrar for rectification of the register, in respect of which an entry in a register—

(a) has been omitted;

(b) is incorrect; or

(c) has been included in error.

(2) Upon receipt of the application under subsection (1), the Registrar may require the applicant to produce such documents or furnish such information as the Registrar

deems necessary in order to determine whether the register should be rectified.

(3)The Registrar shall give notice of that application to such other person as Registrar may identify being a person who appears to the Registrar to be concerned or to have an interest in the trust.

(4)Upon expiry of the period prescribed under the notice in subsection (3), the Registrar may proceed to rectify the register where no objection is received from persons notified in subsection (3).

(5)The Registrar may, without an application being made under subsection (1), rectify the register where, in the view of the Registrar an entry—

(a) has been omitted;

(b) is incorrect; or

(c) has been included in error:

Provided that the Registrar shall consider fair administrative action before rectifying the register.

(6)A person aggrieved by the decision of the Registrar under this section may appeal to the High Court for determination.

(7) Nothing in this section shall be construed as permitting the rectification, amendment, or alteration of the substantive content of the trust deed.

Fees payable to the Registrar.

83. (1) There shall be prescribed fees payable to the Registrar in respect of—

(a) the performance of a function imposed on the Registrar by this or any other Act; or

(b) the provision by the Registrar of services or facilities for a purpose connected with the performance of any of the Registrar's functions under this Act;

(c) the receipt of documents lodged with the Registrar for registration or incorporation under this or any other Act; and

(d) the provision of copies of documents or parts of documents forming part of the Register.

(2) In respect of the performance of functions, or the provision of services or facilities, by the Registrar—

(a) for which fees are not provided for by the Regulations; or

(b) in circumstances other than those for which fees are provided for by Regulations,

the Registrar may determine from time-to-time what fees, if any, are chargeable.

(3) The Registrar shall be responsible for ensuring that—

(a) fees received by the Registrar;

(b) such moneys as may accrue to, or vest in the Registry in the course of the exercise of its powers or the performance of it functions under this Act or any other written law;

(c) such monies may be payable to the Registry pursuant to this Act or any other written law;

(d) such gifts as may be donated to the to the Registry pursuant to this Act or any other written law;

(e) such money as may be appropriated by Parliament for the Registry pursuant to this Act or any other written law; and

(f) money from any other source granted, donated or lent to the Registry,

are managed or utilised for the purposes of this Act in accordance with the Public Finance Management Act. Cap. 412A.

PART XIII— DISSOLUTION OF A TRUST

84. (1) On application by the trustee of a trust, the Registrar may dissolve a trust. Dissolution of a trust.

(2) An application for dissolution of a trust is effective only if—

(a) the purpose of the trust has been fulfilled in accordance with the trust deed;

(b) the trustee demonstrates that it is impossible to achieve the purpose of the trust in accordance with the terms of the trust deed; or

(c) a court has ordered that the trust be dissolved.

(3)An application under this section shall be—

(a) in the prescribed form;

(b) made on behalf of the trust by—

(i) the trustees accompanied by a resolution, outlining the reasons and confirming that all conditions for dissolution as set out in the trust deed have been met; or

(ii) the settlor, where such powers have been reserved under the trust deed; or

(c) made in compliance with a court order; and

(d) accompanied by any other information as may be prescribed in the Regulations.

(4)The Registrar may not dissolve a trust under this section until after three months from the date of the publication of a notice in the *Gazette*—

(a) stating that the Registrar may exercise the power under this section in relation to the trust; and

(b) inviting any person to show cause why the trust should not be dissolved.

(5) Subject to subsection (4), the Registrar shall publish in the *Gazette*, a notice that the trust has been dissolved.

(6) On publication of the notice under subsection (5), the trust shall be deemed dissolved.

(7) Notwithstanding the provisions of subsection (6)—

(a) any liability incurred by a trustee of the trust shall continue to accrue to that trustee and may be enforced as if the trust had not been dissolved; and

(b) nothing in this section shall affect the power of the Court to liquidate a trust which is dissolved under this section.

Withdrawal of an application to dissolve.

85. (1) An applicant may, at any time before a trust is dissolved under section 84 of this Act, withdraw an application for dissolution.

(2)Upon receipt of the notice of withdrawal under subsection (1), the Registrar shall—

(a) notify the trust that the application to dissolve the trust has been withdrawn; and

(b) where a notice of intention to dissolve the trust had been published, publish a notice in the *Gazette* indicating that the application to dissolve has been withdrawn.

Restoration where dissolution was by mistake.

86. (1) The Registrar may restore the name of a trust to the Register if satisfied that the dissolution of the trust is as a result of a mistake of the Registrar.

(2) For purposes of subsection (1), "a mistake of the Registrar" excludes a mistake that is made on the basis of wrong, false or misleading information given by the applicant in connection with the application for dissolution of the name of the trust from the Register.

(3) The Registrar shall act within a reasonable time after identification of a mistake to have the name of the trust restored in the register.

(4) The Registrar may restore the name of a trust to the Register by publishing in the *Gazette*, a notice declaring the restoration and which shall take effect on the date of publication of the notice.

Restoration by Court.

87. (1) An application may be made to the Court to restore the name of a trust that has been dissolved.

(2) An application under subsection (1) may be made by—

(a) the trustee;

(b) beneficiaries of the trust; or

(c) any person who would appear to the Court to have a legitimate interest in the trust.

Effect of restoration.

88. (1) Where the name of a trust is restored to the Register under this Act, the trust shall be deemed to be in existence as if its name had not been dissolved and shall maintain the same legal status as before the dissolution.

(2) The trust shall not be liable for any liability arising from an obligation to file any document with the Registrar during the time within which it was dissolved.

Dealings with property upon dissolution.

89. (1) Upon dissolution of a trust, the property held by the trust or the trustees shall be dealt with in accordance with the provisions of the trust deed or applicable law.

(2) Where the trust deed does not have provisions in relation to the property in the event of dissolution, the Court shall make a determination on how the property shall be dealt with.

PART XIV — MISCELLANEOUS PROVISIONS

Electronic filing and keeping of records.

90. (1) Any filing required to be made with the Registrar under this Act may be filed electronically.

(2) Any record required to be kept by the Registrar or any other person under this Act may be kept in electronic form.

(3) The Registrar is under no obligation to keep the originals of documents lodged in electronic form so long as the information contained in them has been recorded in the Register.

(4) The Registrar may not certify copies of records provided in electronic form as true copies unless the applicant expressly requests that certification.

(5) Regulations may prescribe the mode of electronic lodgement or manner in which electronic records may be kept.

Compliance to the Data Protection Act
Cap. 411C.

91. Any person processing personal data under this Act shall comply with the Data Protection Act.

Lodging of false or misleading documents.

92. A person who—

(a) lodges or causes to be lodged with the Registrar, a document containing information; or

(b) makes a statement to the Registrar for any purpose that the person knows, or has reason to suspect,

that is false or misleading in a material respect commits an offence and on conviction is liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding two years, or to both.

General penalty.

93. A person who is convicted of an offence, under this Act, for which no penalty is specifically provided for, shall be liable to a fine not exceeding one million shillings.

Dispute resolution.

94. (1) Any dispute in relation to a trust shall be determined in accordance with the dispute resolution mechanisms set out in the trust deed.

(2) Where the trust deed does not prescribe a method of dispute resolution, the dispute shall be determined by the High Court.

PART XV— PROVISIONS ON DELEGATED POWERS

Regulations.

95. (1) The Attorney General may make Regulations, not inconsistent with the provisions of this Act, containing provisions as may be necessary to give effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations made under this Act may prescribe—

(a) manner and form of lodgment of any document required to lodged under this Act;

(b) fees for services offered under this Act;

(c) requirements to be met by corporate trustees;

(d) disqualification of trustees;

(e) manner and form of documents issued by the Registrar;

(f) manner of access to information required to be shared under this Act;

(g) procedure and requirements for electronic lodgments;

(h) beneficial ownership information;

(i) licensing of corporate trustees; and

(j) any other information required to be prescribed by the Registrar under this Act.

PART XVI— REPEAL, TRANSITIONAL AND SAVINGS PROVISIONS

Consequential amendment to Cap. 285.

96. Section 4 of the Registration of Documents Act is amended in subsection (1) by inserting the following paragraph immediately after paragraph (vii)—

(viii) a trust deed or deed of appointment of trustees registered under the Trust Administration Act.

Repeal.

97. (1) Upon the coming into effect of this Act, the following Acts are repealed—

(a) the Trustees (Perpetual Succession) Act; and Cap. 164.

(b) the Trustees Act. Cap. 167.

(2) Despite the repeal of the laws in subsection (1)—

(a) a trust, which has been duly incorporated under the Trustees (Perpetual Succession) Act (now repealed) and is in existence at the commencement of this Act or created as a result of registration of the deed under the Registration of Documents Act shall be deemed to be a Trust under this Act; Cap. 285.

(b) all existing trusts shall be required to comply with the requirements of this Act within twenty-four months of coming into effect of this Act or any such time as the Registrar may direct;

(c) all rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before coming into operation of this Act were vested in, imposed on or enforceable by or against the existing trust, shall be transferred to, vested in, imposed on or be enforceable by or against the trust under this Act;

(d) the settlor, trustee, beneficiary or enforcer of any existing trust shall on the date of the commencement of this Act be deemed to be the settlor, trustee, beneficiary or enforcer under this Act.

(3) The Registrar may issue an existing trust with a new certificate of incorporation for trusts incorporated before the coming into effect of this Act and recall all certificates issues under the repealed Trustees (Perpetual Succession) Act.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide a comprehensive legislative framework for strengthening the law relating to the regulation and management of trusts and providing actions for the breaches of compliance with transparency requirements for legal persons and legal arrangements.

The structure of the Bill is as follows:

PART I (Clauses 1-3) of the Bill provides for preliminary matters including, the short title and interpretation of technical terms used in the Bill and the intended application of the Act.

Part II (Clauses 4 -21) of the Bill deals with the creation and formation of a trust. In this regard, **Clause 4** provides for when a trust is created and imposes a requirement that it must be in writing and **Clause 6** provides for the grounds for the invalidation of a trust.

The Part further specifies the types of trust which include charitable trusts, non-charitable purpose trust and family trusts; and specifies the parties to a trust who include the settlor, beneficiary, trustee and an enforcer.

Part III (Clauses 22-27) of the Bill deals with the registration of a trust. It spells out the requirements for registration, the contents of the trust deed and the effect of registration of the trust.

PART IV (Clauses 28-33) of the Bill deals with the incorporation of a trust. In this regard, **Clause 28** requires the reservation of the name of the incorporated trust and spells out the requirements for incorporation and the effect of registration of the trust

PART V (Clauses 34-35) of the Bill contains provisions relating to the property of a trust.

PART VI (Clauses 36-42) of the Bill contains provisions relating trustee. It *inter alia* provides for the qualifications and disqualification to act as a trustee, resignation, removal and death of a trustee and the effects of change of a trustee.

PART VII (Clauses 43-59) of the Bill deals with the duties and general powers of a trustee in relation to their trusteeship, the trust property and the beneficiaries.

PART VIII (Clauses 60-64) of the Bill provides for remuneration, indemnity and liability of a trustee. **Clause 60** allows for the remuneration of a trustee in in respect of the execution of his or her official duties while **Clauses 61 and 62** of the Bill respectively provide circumstances where a

trustee may be held personally liable for any violation and the limitation of their indemnity.

PART IX (Clauses 65-69) of the Bill deals with beneficial owners of a trust and therefore obligates the trustee to maintain a register of beneficial owners containing such information as shall be prescribed.

PART X (Clauses 70-71) of the Bill contains provisions on the powers of the Court in relation to vesting orders where, inter alia, the trust does not have any person capable of acting in relation to the trust property and other orders to uphold the interests of the trustee and beneficiaries.

PART XI (Clauses 72-76) of the Bill contains provisions relating to the change of name, filing of annual returns and appointment of trust agent.

PART XII (Clauses 77-83) of the Bill provides for the designation of the Registrar of Trusts. The Registrar shall be responsible for the setting up of the registry and maintaining the Register of Trusts**. Clause 79** of Bill further provides for the powers the Registrar to issue directives and impose sanctions for non-compliance with such directives.

Additionally, **Clause 83** of Bill provides for the fees payable to the Registrar in the performance of the functions under Act.

PART XIII (Clauses 84-89) of the Bill deals with the dissolution of a trust. It provides for the grounds and the procedure for the dissolution of a trust and allows for the withdrawal of an application for dissolution.

The Part further contains provisions on restoration of a trust and the effect of restoration.

PART XIV (Clauses 90-94) of the Bill contains miscellaneous provisions which includes provisions on electronic filing and keeping of records; compliance to the Data Protection Act, lodging of false or misleading documents, and the power to make regulations for purposes of the Act.

PART XV (Clause 95) of the Bill contains provisions on delegated powers.

PART XVI (Clauses 96-97) of the Bill deals with repeals, savings and transitional provisions.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill delegates legislative power to the Attorney General to make regulations for the carrying into effect the provisions of the Bill. The Bill does not limit any fundamental rights or freedoms.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

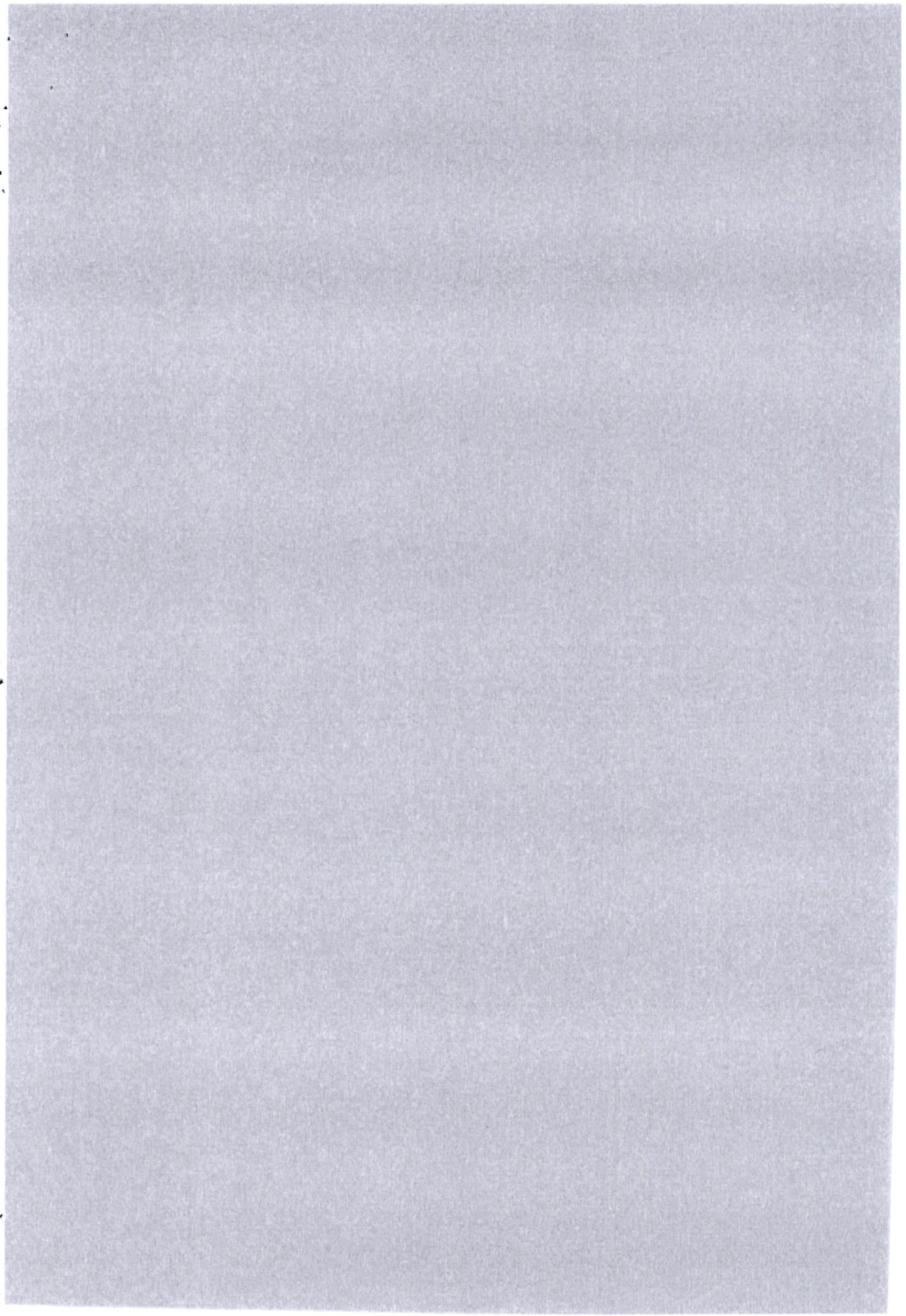
The enactment of this Bill may occasion additional expenditure of public funds.

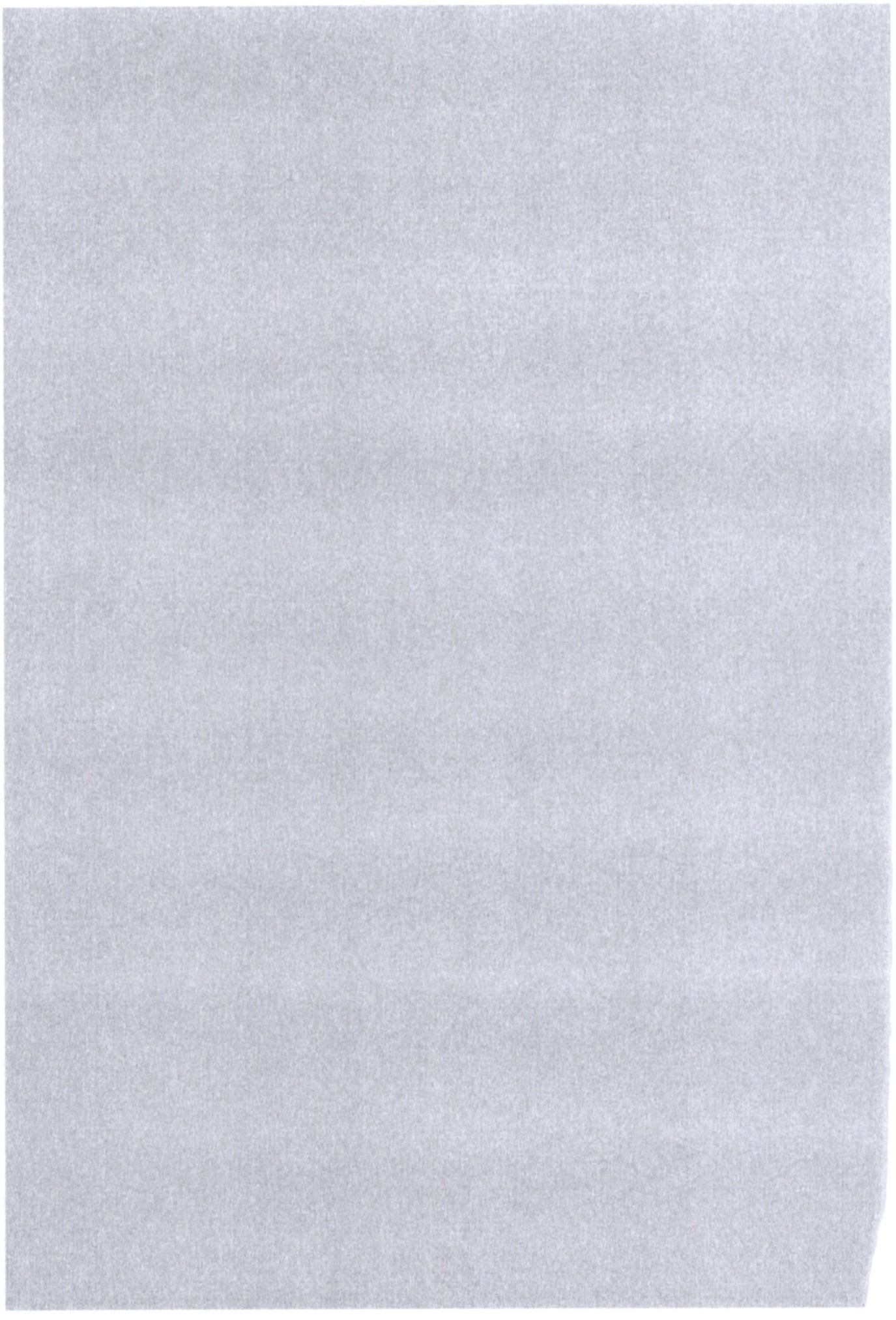
Statement as to whether the Bill concerns counties

This Bill does not concern counties in terms of Article 110 (1) (a) of the Constitution.

Dated on the 17th May, 2026.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.





Annexure **4**

Advertisement inviting the Public to Submit memoranda on the Bill

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – FIFTH SESSION (2026)

THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

(1) THE ARCHITECTS BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2026) AND

(2) THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026);

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1)(b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the **Architects Bill (National Assembly Bill No. 3 of 2026)** and the **Trust Administration Bill (National Assembly Bill No. 29 of 2026)** have been read a First Time and referred to **Departmental Committee on Housing, Urban Planning and Public Works** and the **Departmental Committee on Justice and Legal Affairs**, respectively, for consideration and reporting back to the House:

IT IS NOTIFIED that—

(1) The **Architects Bill (National Assembly Bill No. 3 of 2026)** is a Bill sponsored by **Hon. Wanami Wamboka, MP,** that seeks to provide for the training, registration, and licensing of architects and architectural technicians, and the regulation of architectural practice.

(2) The **Trust Administration Bill (National Assembly Bill No. 29 of 2026)** is a Bill sponsored by the **Leader of the Majority Party** that seeks to repeal and replace the Trustees (Perpetual Succession) Act, Cap 164 and the Trustees Act, Cap. 167 to provide a comprehensive legislative framework for strengthening the law relating to the regulation and management of trusts and providing actions for breaches of compliance with transparency requirements for legal persons and legal arrangements. In particular, the Bill contains, among other, provisions on the—

(a) creation and formation of a trust, types of trusts, parties to trusts and grounds for the invalidation of a trust;

(b) requirements for registration and incorporation of a trust, the contents of a trust deed, the effect of registration of the trust, and the property of a trust;

(c) qualifications of a trustee, mode of disqualification from acting as a trustee, resignation, removal and death of a trustee, and the effect of change of a trustee;

(d) duties, general powers, remuneration, indemnity and liability of a trustee in respect of the execution of official duties

(e) obligation of trustees to maintain a register of beneficial owners of a trust;

(f) powers of the Court in relation to vesting orders relating to trust property and upholding the interests of the trustee and beneficiaries;

(g) change of name, filing of annual returns and appointment of trust agents.

(h) designation of the Registrar of Trusts responsible for maintaining the Register of Trusts, issuing directives and imposing sanctions for non-compliance;

(i) fees payable to the Registrar in the performance of the functions under Bill; and

(j) procedure for the dissolution of a trust, the restoration of a trust and the effect of restoration.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and National Assembly Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees:

S/No.	BILL	COMMITTEE
1.	The Architects Bill (National Assembly Bill No. 3 of 2026)	Housing, Urban Planning and Public Works
2.	The Trust Administration Bill (National Assembly Bill No. 29 of 2026)	Justice and Legal Affairs

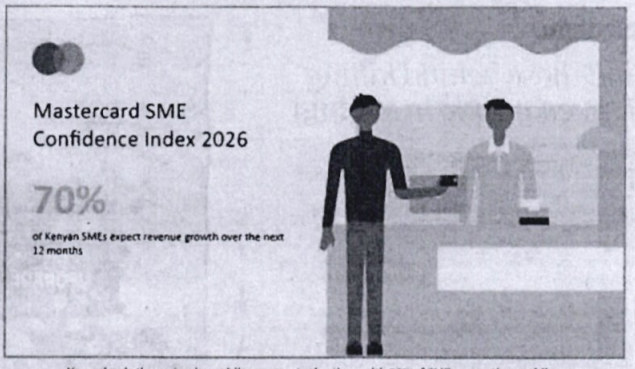
Copies of the Bills are available at the National Assembly Table Office, Main Parliament Building, and on ***www.parliament.go.ke/the-national-assembly/house-business/bills***.

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the **Office of the Clerk, Main Parliament Building, Nairobi;** or emailed to ***cna@parliament.go.ke*** to be received on or before **Thursday, 2nd July 2026 at 5.00 p.m.**

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
Thursday 18th June 2026

"For the Welfare of Society and the Just Government of the People"

Mastercard SME Confidence Index: Kenyan SMEs look ahead with confidence as 70% expect revenue growth



- *Kenya leads the region in mobile payment adoption, with 95% of SMEs accepting mobile money*
- *SME owners point to simple, user-friendly payment methods (80%) and better data and insights (70%) as their top requirements for growth*
- *Almost half of SMEs (44%) sought external funding in the past year to fuel their growth ambitions*

Nairobi, Kenya; 18 June 2026: Kenya's small and medium enterprises (SMEs) are looking to the year ahead with confidence, with 66% optimistic about their business outlook and 70% expecting their revenue to grow over the next 12 months. A Mastercard study shows that Kenyan SMEs are drawing on their position as early adopters of mobile money to stay agile and keep growing through a period of economic change.

The **Mastercard SME Confidence Index** is a multi-market study that captures the sentiment, priorities and growth outlook of SMEs across Eastern Europe, the Middle East and Africa.
Kenya has long been a frontrunner in mobile money, and that leadership is clear in the findings. Almost all SMEs (95%) now accept mobile payments, which make up 41% of all transaction volume and outpace both card (29%) and online (39%) acceptance. This deep digital fluency is giving businesses the flexibility to adapt quickly and serve their customers wherever they choose to pay.

"Kenyan SMEs are some of the most digitally fluent on the continent, and their optimism reflects a wider story unfolding across Africa. Businesses here are showing the rest of the region what is possible when entrepreneurs embrace digital tools and build on them with ambition. As they look to scale, our role is to help them turn that momentum into lasting growth, through the right payment solutions, insights and access to finance," said **Gabriel Swanepoel, division president, Africa, Mastercard.**

This optimism is reflected in how Kenyan entrepreneurs are planning for growth. Almost half (44%) sought external funding in the past year, and most of those are looking for credit to expand their business rather than simply sustain it.

"SMEs are the engine of Kenya's economy, and their confidence in the year ahead speaks volumes about their resilience and ambition. Kenyan businesses have built one of the most advanced mobile payment cultures in the world, and they are now ready for the next step, turning everyday transactions into the data, insights and access to capital that help them grow. At Mastercard, we are proud to work alongside our partners to give these businesses the tools to scale and thrive," said **Shehryar Ali, senior vice president and country manager, East Africa, Mastercard.**

Confidence through a changing economy
Kenyan SMEs have navigated a demanding year with characteristic resilience. While inflation was cited by 77% of businesses as the most significant pressure on their operations, sentiment about the future remains firmly positive. Technological progress and digitalization stood out as a key positive driver for 62% of businesses, and that momentum is carrying through into their plans for the year ahead, with 70% projecting revenue growth and 66% feeling confident about what comes next.

From connectivity to customer intelligence
With such a strong foundation in digital payments already in place, Kenyan SMEs are setting their sights on the next competitive advantage. They identify simple, seamless and user-friendly payment methods (80%) and access to better data, analytics and insights (70%) as their top requirements for future growth. The appetite is shifting from accepting payments to understanding customers, so businesses can anticipate changing needs and sharpen their omnichannel strategies.

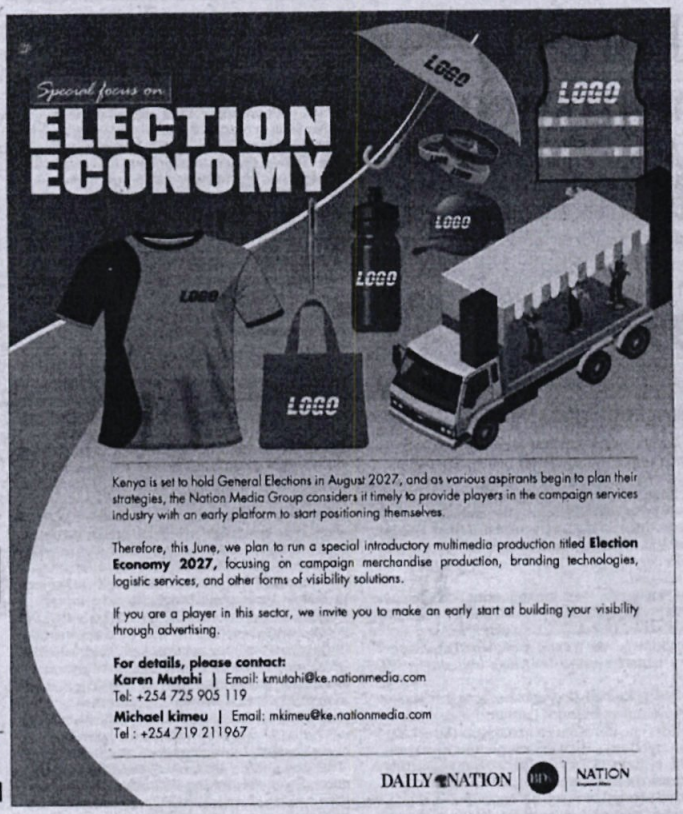
A strong appetite for growth capital
Kenyan entrepreneurs are actively seeking the capital to match their ambitions. Almost half (44%) sought external funding in the past year, and of those, far more are looking for credit to grow their business (46%) than to maintain it (13%). With many businesses still managing expenses outside formal commercial tools, there is a clear opportunity to connect them with dedicated business cards and structured credit that can provide the working capital they need to turn growth projections into reality.

Supporting SMEs through partnerships
Mastercard is committed to working with partners across Kenya to give SMEs the tools and resources they need to put these ambitions into action.
Key initiatives include:

- A collaboration with Safaricom to enhance payment acceptance across the MPESA ecosystem, supporting more than 636,000 merchants.
- The expansion of Tap to Pay, enabling smartphone-based acceptance, alongside tokenisation-based wearables for secure transactions
- Collaborations with KCB Bank, I&M Bank, NMB Bank and Diamond Trust Bank (DTB) to scale digital payments and financial services.

These efforts are contributing to measurable impact, including a 45% increase in Mastercard's acceptance network across Africa, helping more SMEs participate in the digital economy.
As Kenya's SMEs build on their confidence and digital strength, the Mastercard SME Confidence Index points to both their resilience and their readiness to seize new opportunities. By combining digital innovation, partnerships and capability building, Mastercard remains focused on supporting SMEs as they scale and contribute to a more inclusive and dynamic digital economy.

About Mastercard
Mastercard powers economies and empowers people in 200+ countries and territories worldwide. Together with our customers, we're building a resilient economy where everyone can prosper. We support a wide range of digital payments choices, making transactions secure, simple, smart and accessible. Our technology and innovation, partnerships and networks combine to deliver a unique set of products and services that help people, businesses and governments realize their greatest potential.
www.mastercard.com



Kenya is set to hold General Elections in August 2027, and as various aspirants begin to plan their strategies, the Nation Media Group considers it timely to provide players in the campaign services industry with an early platform to start positioning themselves.

Therefore, this June, we plan to run a special introductory multimedia production titled **Election Economy 2027,** focusing on campaign merchandise production, branding technologies, logistic services, and other forms of visibility solutions.

If you are a player in this sector, we invite you to make an early start at building your visibility through advertising.

For details, please contact:
Karen Mutahi | Email: kmutahi@ke.nationmedia.com
Tel: +254 725 905 119
Michael kimeu | Email: mkimeu@ke.nationmedia.com
Tel : +254 719 211967

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courierservices@ke.nationmedia.com

Mwananchi Courier Services Tanzania
Plot No. 33/34, Mandela Road, Tabata
P.O. Box 19754 Dar es Salaam, Tanzania
Tel: +255 743 121 217

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – FIFTH SESSION (2026)

THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:
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(a) creation and formation of a trust, types of trusts, parties to trusts and grounds for the invalidation of a trust;

(b) requirements for registration and incorporation of a trust, the contents of a trust deed, the effect of registration of the trust, and the property of a trust;

(c) qualifications of a trustee, mode of disqualification from acting as a trustee, resignation, removal and death of a trustee, and the effect of change of a trustee;

(d) duties, general powers, remuneration, indemnity and liability of a trustee in respect of the execution of official duties

(e) obligation of trustees to maintain a register of beneficial owners of a trust;

(f) powers of the Court in relation to vesting orders relating to trust property and upholding the interests of the trustee and beneficiaries;

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S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
Thursday 18th June 2026

"For the Welfare of Society and the Just Government of the People"

Annexure 5

Letter from the Clerk of the National Assembly inviting key stakeholders to a meeting to submit views on the Bill

THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842 - 00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254 20 284800 Ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote:
REF: NA/DDC/JLAC/2026/055

28th July, 2026

Hon. Winfridah Boyani Mokaya, CBS
Chief Registrar of the Judiciary / Secretary
Judicial Service Commission
Supreme Court Building
NAIROBI

Hon. Shadrack John Mose, CBS
Solicitor General
Office of the Attorney-General and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Hon. Judith Nayiai Ramaita-Pareno
Principal Secretary
State Department for Justice, Human Rights & Constitutional Affairs
Office of the Attorney-General and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Mr. James Nombi
Ag. Commission Secretary / CEO
Kenya Law Reform Commission
Reinsurance Plaza, 3rd Floor
Taifa Road
NAIROBI

Mr. Joseph Ndiku
Ag. Commission Secretary / CEO
Kenya National Commission on Human Rights
1st Floor, CVS Plaza
Lenana Road
NAIROBI

Mr. Abdi A. Mohamud, EBS, MBS
Secretary/Chief Executive Officer
Ethics and Anti-Corruption Commission (EACC)
Integrity Centre
Jakaya Kikwete/Valley Road Junction
NAIROBI

Mr. Noordin M. Haji, MGH, CBS, OGW, 'nsc' (AU)
Director General
National Intelligence Service
NAIROBI

Mr. Naphtaly Kipchirchir Rono
Director General
Financial Reporting Centre (FRC)
Old Mutual Tower 13th Floor, Upper Hill Road
NAIROBI

Mr. Mark M. Ogonji, EBS, OGW, 'ndc' (K)
Ag. Director General
Asset Recovery Agency
22nd Floor, UAP Old Mutual Towers, Upper Hill
NAIROBI

Ms. Immaculate Kassait
Data Commissioner
Office of the Data Protection Commissioner (ODPC)
Britam Towers 12th Floor Hospital Road, Upperhill
NAIROBI

Mr. Adan Mohamed, EGH
Commissioner General
Kenya Revenue Authority
Times Tower Building, Haile Selassie Avenue
NAIROBI

Dr. Kamau Thugge, CBS
Governor
Central Bank of Kenya
Haile Selassie Avenue
NAIROBI

CPA Dr. Grace Kamau
Chief Executive Officer & Secretary to Council
Institute of Certified Public Accountants of Kenya (ICPAK)
CPA Center, Ruaraka, Thika road
NAIROBI

FCS Jeremiah N. Karanja, MBS
Chief Executive Officer
Institute of Certified Secretaries (ICS)
Kilimanjaro Road, Upper Hill
NAIROBI

Mr. Raimond Molenje
Chief Executive Officer
Kenya Bankers Association
13th Floor, International House, Mama Ngina Street
NAIROBI

Mr. Tom Gichuhi
Executive Director
The Association of Kenya Insurers (AKI)
Mimosa Road, Muchai Drive, Off Ngong Road
NAIROBI

Ms. Florence W. Muturi
Chief Executive Officer
Law Society of Kenya (LSK)
Lavington, Opposite Valley Arcade, Gitanga Road
NAIROBI

FA Fred Mburu
The Fund Managers Association
10th Floor, KOFISI Square
104 Riverside Drive
NAIROBI

Rev. Canon Chris Kinyanjui
General Secretary
National Council of Churches of Kenya
Jumuia Place, Lenana Road
NAIROBI

Sheikh Abdullahi Salat Omar
Secretary General
Supreme Council of Kenya Muslims (SUPKEM)
Islamia House, Njugu Lane
NAIROBI

Ms. Nora Mbagathi
Executive Director
Katiba Institute, House No. 5
The Crescent, Off Parklands Road
NAIROBI

Dr. Wycliffe Nandama
Chief Executive Officer
MEDS Center
Mombasa Road, Next to Mastermind
Opposite Nation Printing Press
NAIROBI

Very Rev. Fr. Jude Waweru
General Secretary
Kenya Conference of Catholic Bishops
Waumini House, Next to Westlands Mall
NAIROBI

Dr. Chrisostim Barasa
Chief Executive Officer
Christian Health Association of Kenya
Musa Gitau Road, Off Waiyaki Way
Westlands
NAIROBI

Ms. Constantine Kandie
Organizing Secretary
Association of Certified Trustees Kenya (ACT-Kenya)
NHIF Building, Ground Floor, Upper Hill
Along Ragati Road, Off Ngong Road
NAIROBI

Dear Mr. Mohamed

RE: **INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)**

The Departmental Committee on Justice and Legal Affairs is established pursuant to Standing Order 216 of the National Assembly Standing Orders, and is mandated to ***inter alia, 'study and review all legislation referred to it.'***

As you are aware, the Trust Administration Bill (National Assembly Bill No. 29 of 2026), sponsored by Leader of Majority Party, is before the Committee for consideration and reporting to the House. The Bill seeks to repeal and replace the Trustees (Perpetual Succession) Act, Cap 164 and the Trustees Act, Cap. 167 to provide a comprehensive legislative framework for strengthening the law relating to the regulation and management of trusts and providing actions for breaches of compliance with transparency requirements for legal persons and legal arrangements.

Article 118(1)(b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative business of Parliament and its Committees. Due to the great public interest in the Bill, the Committee resolved to meet critical stakeholders to make submissions on the Bill.

In this regard, the Committee invites you, or your representatives, for a meeting on **Thursday, 6th August 2026,** at **10:00 am** in **Committee Room 22, 5th Floor, Bunge Tower**. The agenda of the meeting is to receive your views on the Bill.

You are requested to prepare your written submissions in a matrix format that indicates the specific clause, proposed amendment and justification. Twenty-two (22) hard copies of the submissions to be availed to the meeting, soft copies of which may be sent to the Committee through the Office of the Clerk of the National Assembly via email: cna@parliament.go.ke.

Hard copies of the Bill are available at the National Assembly Table Office, Main Parliament Building, while an electronic copy may be accessed on the Parliament website: www.parliament.go.ke/the-national-assembly/house-bills for reference.

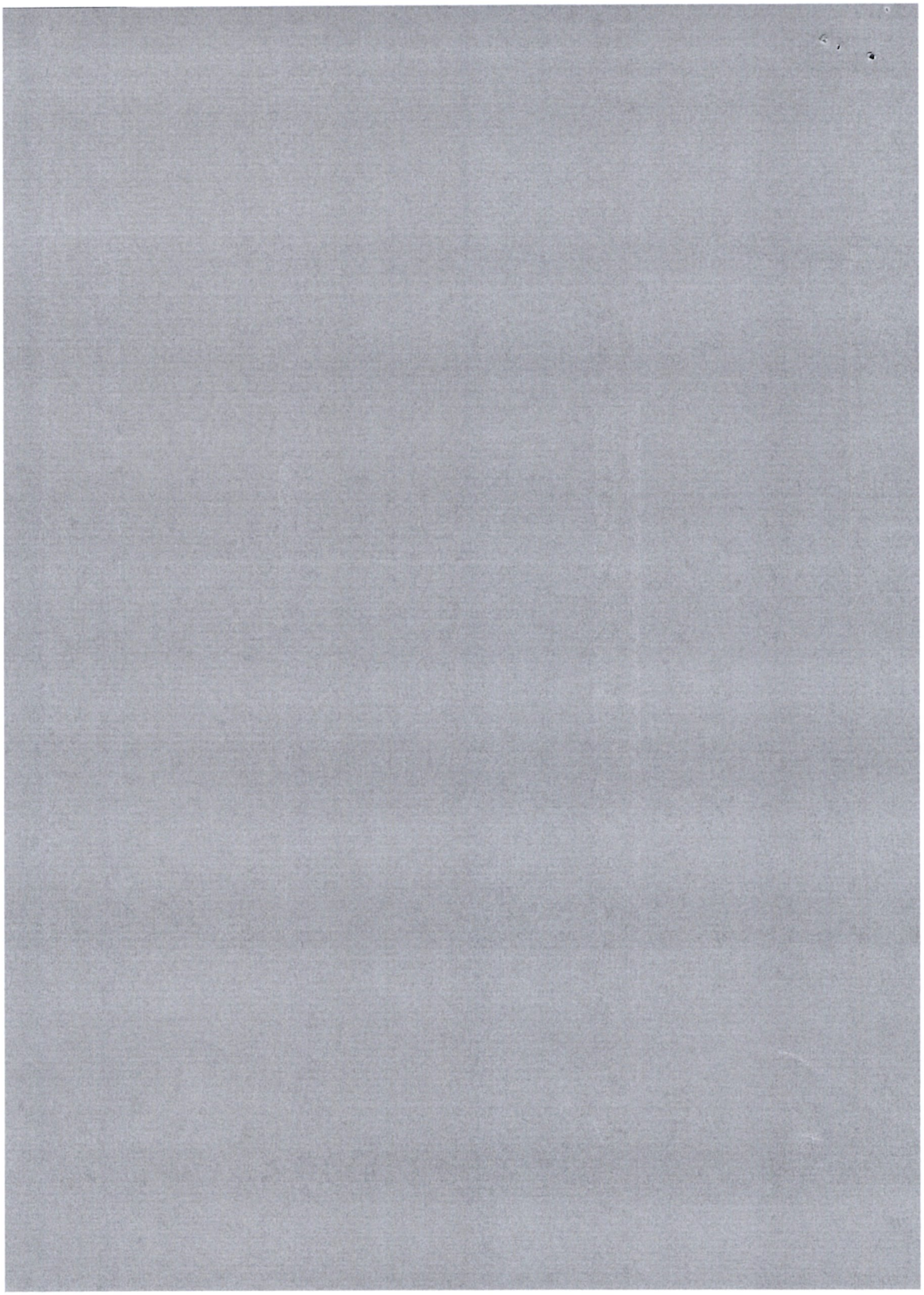
Our liaison officers on this subject are Mr. Abenayo Wasike, H.O.D., of Cellphone No. 0721352053 / Email Address abenayo.makokha@parliament.go.ke and Mr. Ahmed Salim Abdalla, Lead Clerk, of Cellphone No. 0710204056 / Email Address ahmed.salim@parliament.go.ke.

Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: - **Hon. Dorcas Agik Oduor, SC, OGW, EBS**
The Attorney General
The State Law Office and the Department of Justice
Sheria House, Harambee Avenue
NAIROBI

CPA. Dr. Aurelia Rono
Principal Secretary
The State Department for Parliamentary Affairs
Office of the Prime Cabinet Secretary
Kenya Railways, Block A, Haile Selassie Avenue
NAIROBI



Annexure 6

Memoranda by Stakeholders

(1)

DDC & 30/6/26

LKK Law LLP
Lee Kwesiga Kiprono

Lee, Kwesiga & Kiprono Advocates LLP
Waumini House, East Wing, 3rd Floor
P. o. Box 19200-00501 Nairobi, Kenya
+254111422384
info@lkklawllp.com

Mr. Salim
Please deal
01/07/26

29 June 2026

The Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842–00100
NAIROBI

Abenayo Waoike
to deal
1/7/26

For the attention of: The Departmental Committee on Justice and Legal Affairs

Dear Sir / Madam,

RE: MEMORANDUM OF VIEWS ON THE TRUST ADMINISTRATION BILL, 2026 (NATIONAL ASSEMBLY BILLS NO. 29)

1. INTRODUCTION

a) Lee, Kwesiga & Kiprono Advocates LLP ("the Firm") is a full-service law firm with an established practice in trust and estate planning, corporate and commercial law, and private client work. We submit these views pursuant to the invitation for public participation on the Trust Administration Bill, 2026 ("the Bill").

b) The Firm welcomes the Bill's objective of consolidating and modernising the law relating to the registration, incorporation, management and regulation of trusts, and of aligning Kenya with international transparency standards. We support that objective.

c) Our concern, respectfully, is one of balance. Several provisions of the Bill, taken together, unduly erode the autonomy of the settlor the foundational actor in any trust by exposing private family arrangements to interference by third parties, to wide administrative discretion, and to the State. This memorandum addresses seven such provisions and proposes targeted amendments.

2. GENERAL OBSERVATION

A trust is, at its core, the legal expression of a settlor's wishes as to how their own property shall be held and applied. The recurring difficulty with the Bill is that it repeatedly subordinates those wishes whether to undefined third parties, to the discretion of the Registrar, or to the State in ways that go

Lee Mutunga
Kimberly Kwesiga
Pin: P051888306R
Michael Kiprono

DIRECTORATE OF DEPARTMENTAL COMMITTEES
RECEIVED
01 JUL 2026

NATIONAL ASSEMBLY
RECEIVED
29 JUN 2026
CLERK'S OFFICE
P. O. Box 41842, NAIROBI.

beyond what legitimate regulatory and anti-money-laundering objectives require. The amendments proposed below are intended to restore that balance while preserving the Bill's legitimate aims.

3. SPECIFIC SUBMISSIONS

The following table sets out, for each provision, the issue identified, the amendment proposed, and the justification.

Provision	Issue	Proposed amendment	Justification
Section 5(2)	Renders any unregistered written trust inadmissible in transactions affecting the property, so a settlor's documented intention can be defeated for a purely procedural default.	Confine inadmissibility to disputes over title or priority; preserve admissibility to prove the settlor's intention, and exempt testamentary, resulting and constructive trusts.	In *Albert Kigera Karume & 2 others v George Ngugi Waireri & 3 others* [2020] KEHC 9609 (KLR), the settlor's transfer of his assets into a private trust, and the trust document recording his intentions, were central to the Court upholding the structure. A rule excluding such documents frustrates proof of the settlor's true wishes the very freedom the trust device exists to serve.
Sections 13(d) & 40	Section 13(d) reserves to the settlor the power to appoint and remove trustees, yet section 40(1) lets "any person with a legitimate interest" obtain a trustee's removal from court on the open-ended ground that it is "in the interest of the	(a) Define "legitimate interest" to mean a beneficiary, co-trustee, the settlor or an enforcer, expressly excluding the general public and strangers to the trust. (b) Confine removal to proven breach of trust, statutory disqualification, or	A trust gives effect to the settlor's settled intentions; under section 7 a trust is irrevocable by default, so the settlor has made a final disposition of their own property and chosen its custodians. In *Albert Kigera Karume & 2 others v George Ngugi Waireri & 3 others* [2020]

Provision	Issue	Proposed amendment	Justification
	trust and the beneficiaries." The term is undefined and could extend to members of the public; the grounds for removal are too broad; and the court route can be invoked by a stranger to displace the very trustees the settlor deliberately chose.	loss of legal capacity. (c) Make the section subject to the settlor's reserved powers under section 13(d), and provide that the court's discretion shall not be exercised so as to defeat the settlor's wishes in an irrevocable trust, save on the grounds in (b).	KEHC 9609 (KLR), removal was ordered only after findings of breach of the trust deed, wastage of assets and failure to account and on the application of beneficiaries who were the settlor's own children, not strangers. That proven-breach threshold should be codified so the court's protective jurisdiction cannot be turned into a vehicle for third parties to reopen the settlor's choices.
Section 36	The disqualifications in section 36(2) (a conviction attracting over six months' imprisonment, an economic crime, undischarged bankruptcy) bar even a settlor from acting as trustee of their own family trust — although sections 10(3) and 12(3) otherwise permit a settlor to be both beneficiary and trustee —	Disapply section 36(2) to a settlor acting as trustee of their own family trust (or permit it on full written disclosure to the beneficiaries); reserve the disqualifications for corporate and charitable trustees who hold others' or public funds.	A settlor settling their own property for their own family is not the third-party fiduciary the disqualification regime targets. *Njenga Karume* illustrates the trust's central role in succession and inter-generational wealth; a blanket, permanent bar engages the proportionality limits of Articles 27 and 40 of the Constitution.

Provision	Issue	Proposed amendment	Justification
	hindering legitimate generational-wealth planning over the settlor's own property.		
Section 49	Trust information may be disclosed not only to beneficiaries and the settlor but to "competent authorities" (police, KRA, CBK, FRC) through the AML/CFT and "any other written law" gateways, without judicial oversight. Read with section 78(8), this exposes private family arrangements to broad, warrantless access.	Require a court order — or judicial authorisation on a documented lawful basis with proportionality safeguards before disclosure to law-enforcement or competent authorities, beyond strictly mandated AML reporting.	Article 31 protects privacy, and section 91 of the Bill already invokes the Data Protection Act. *Njenga Karume* frames trust disclosure as an incident of the trustee–beneficiary fiduciary relationship a beneficiary's entitlement to information flowing from that relationship not a conduit for State surveillance. Access by third parties should be gated by the courts.

A further drafting point is noted for the Committee's consideration: section 36(2)(d)'s "six months" threshold sweeps in minor and spent convictions with no rehabilitation cut-off, which engages the proportionality and non-discrimination guarantees of Article 27.

4. SUMMARY OF PRAYERS

The Firm respectfully prays that the Committee recommends that the Bill be amended to:

a) amend section 5(2) to confine the inadmissibility of an unregistered written trust to disputes over title or priority, and to exempt testamentary, resulting and constructive trusts;

b) amend sections 13(d) and 40 to define "legitimate interest" as a beneficiary, co-trustee, the settlor or an enforcer (excluding the general public), to confine removal of a trustee to proven breach of trust, statutory disqualification or loss of legal capacity, and to provide that the court's discretion shall not be exercised so as to defeat the settlor's wishes in an irrevocable trust save on those grounds;

c) disapply the disqualifications in section 36(2) to a settlor acting as trustee of their own family trust, reserving them for corporate and charitable trustees; and

d) amend section 49 to require a court order, or judicial authorisation on a documented lawful basis, before disclosure of trust information to law-enforcement or competent authorities beyond strictly mandated AML reporting.

5. CONCLUSION

The Firm thanks the Committee for the opportunity to contribute to this important reform. We would be pleased to expound on any of these views, in writing or before the Committee, should that assist its deliberations.

Yours faithfully,

For and on behalf of
LEE, KWESIGA & KIPRONO ADVOCATES LLP

Lee Mutunga
Partner

(2)

Clerk of the National Assembly
Office of the Clerk
Main Parliament Building
P.O Box 41842 - 00100
Nairobi, Kenya.
Email: cna@parliament.go.ke

2nd July 2026

Memorandum on the Trust Administration Bill (National Assembly Bill No. 29 of 2026)

Reference is made to the Invitation to Submit Memoranda dated 18th June 2026. We are pleased to submit our comments on the Trust Administration Bill for your consideration in response to the invitation.

Mission for Essential Drugs and Supplies (MEDS) is a faith-based, not-for-profit organization based in Nairobi, Kenya. It operates as a Registered Charitable Trust established through an ecumenical partnership between the Kenya Conference of Catholic Bishops (KCCB) and the Christian Health Association of Kenya (CHAK). MEDS' primary mandate is to ensure a reliable supply chain for high-quality affordable health products and technologies (HPTs), and to provide quality assurance and health systems strengthening services.

Since its establishment in 1986, MEDS has significantly influenced the medical supply chain in Kenya and the broader Sub-Saharan region. It serves over 2,300 clients by providing dependable, high-quality, affordable essential drugs and medical supplies.

MEDS is also dedicated to capacity-building initiatives for healthcare professionals, ensuring rigorous quality control measures, and delivering various pharmaceutical services. The organization aims to be a leading faith-based entity promoting healthy living for all.

The proposed statutory changes, particularly the treatment of charitable trust as non-trading entity may significantly affect operations of existing charitable trusts by disrupting revenue-generating activities and limiting ability to sustainably pursue our charitable objectives. Through these submissions, we advocate for the Bill to expressly recognize that charitable trusts may undertake trading activities in furtherance of their charitable purposes. We recommend that the Bill clarify that such activities do not affect a trust's charitable status, provided that all profits or surpluses are applied exclusively towards its charitable objects and are not distributed for private benefit. Please find enclosed our detailed memorandum for your ease of reference.

We would be pleased to provide any clarification that may be required regarding our submissions and would welcome the opportunity to meet with the Justice and Legal Affairs Committee and other relevant stakeholders to discuss our recommendations in greater detail. Should you require any further information, please contact us via email info@meds.or.ke or telephone number +254 719 086 401.

Yours sincerely,

NATIONAL ASSEMBLY
RECEIVED
03 JUL 2026
CLERK'S OFFICE
P. O. Box 41842, NAIROBI.

DIRECTORATE OF DEPARTMENTAL COMMITTEES
RECEIVED
06 JUL 2026

Authorised Representative
Mission for Essential Drugs and Supplies

Authorised Representative
Kenya Conference of Catholic Bishops

Authorised Representative
Christian Health Association of Kenya

Memorandum on the Trust Administration Bill, 2025

NO.	PROVISION	ISSUE	PROPOSAL	JUSTIFICATION
1.	Clause 8 *Charitable trusts* A charitable trust is a trust formed for the exclusive purpose of relief of poverty, the advancement of education, religion, human rights and fundamental freedoms, the protection of the environment or any other purpose beneficial to the general public	While healthcare services are integral charitable purpose, the current definition has categorized them under the umbrella of human rights	We propose the inclusion of "healthcare" expressly as a separate limb as follows: "advancement of healthcare or relief of public distress"	Healthcare services are integral and should be explicitly listed as a charitable purpose. There are several charitable health facilities that are registered and incorporated as trusts. It is therefore appropriate for healthcare to be explicitly provided for in the law.
2.	Clause 8 (3) A charitable trust shall be a non-trading entity	The bill does not recognize trading activities that are incidental to charitable purposes. Therefore, charitable trusts that supplement donor funding with trading and investment activities or operate revenue-generating activities to finance part of their charitable purpose are placed at a disadvantage, especially in the context of declining donor funding to key initiatives aimed at relief of public distress such as health, education etc	Amend the clause as follows – "a charitable trust shall be a non-trading entity provided that a charitable trust may undertake trading or other revenue-generating activities where such activities are undertaken in furtherance of, or are incidental to, its charitable purposes, and any profits or income derived are applied exclusively towards the advancement of its charitable objects"	The Bill does not recognize that charitable trusts may undertake trading activities as a legitimate means of advancing and sustaining their charitable purposes. In practice, many charitable trusts generate income through commercial activities such as the sale of goods, provision of services and other revenue-generating activities. These activities are not undertaken for private profit or commercial gain but rather to generate resources that enable the trust to carry out its charitable programs, ensure financial sustainability and expand the delivery of public benefit programs. Where such trading activities are directly connected to the trust's charitable objectives, they should be recognized as an integral part of the trust's charitable operations rather than treated as ordinary commercial enterprises. The absence of an express statutory provision recognizing such activities creates legal uncertainty. It may lead to inconsistent interpretation by regulators, expose charitable trusts to the risk of losing their charitable status and discourage innovative

NO.	PROVISION	ISSUE	PROPOSAL	JUSTIFICATION
				approaches to achieving charitable objectives. Further, it places charitable trusts that operate sustainable social enterprise models at a disadvantage by potentially restricting their ability to generate independent income, thereby reducing self-sufficiency and increasing their reliance on donations, grants and other unpredictable sources of funding. This is inconsistent with modern principles of charitable governance which encourages charities to develop sustainable funding mechanisms to ensure long-term viability and effectiveness. To address this gap, the Bill should expressly provide that a charitable trust may undertake trading activities or other revenue-generating activities, provided that such activities are carried out in furtherance of the trust's charitable purposes and that all profits are wholly applied towards trust's charitable objectives. Accordingly, the Bill should make it clear that the undertaking of trading activities does not in itself detract from the charitable nature of a trust. Rather, where such revenue-generating activities are undertaken solely in furtherance of a charitable purpose and any resulting surpluses are applied exclusively towards the trust's charitable objects and are not distributed for private benefit.
3.	Clause 13 (2) *Powers of a settlor* The grant of powers under this section shall not confer on the settlor the right to act as a trustee	Conflict with Clause 12 (3) 12 (3) A settlor may also be a trustee, a beneficiary or an enforcer but shall not be the sole beneficiary of a trust for which he or she is a settlor	Delete 13(2)	Conflicting provisions resulting in confusion as to whether a settlor can be a trustee or not

Britam
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MEMORANDUM ON THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

FROM: **Britam Trust Fund Registered Trustees**

TO: Clerk of the National Assembly
P.O. Box 41842-00100,
Nairobi.
Email: cna@parliament.go.ke

Introduction

We write on behalf of Trust Fund Registered Trustees in response to the Invitation to Submit Memoranda issued by the National Assembly on 18th June 2026 in respect of the Trust Administration Bill (National Assembly Bill No. 29 of 2026). We welcome the opportunity to participate in the legislative process pursuant to the principles of public participation contemplated under Article 118 of the Constitution of Kenya and the National Assembly Standing Orders. As stakeholders involved in the establishment and administration of trusts in Kenya, we have reviewed the Bill and respectfully submit our comments, proposed amendments and justifications for consideration by the relevant Committee and the National Assembly.

Proposed Amendments

Current Section of the Trust Administration Bill	Current Wording	Proposed Wording	Justification
Section 36 (3) (a)	An entity shall qualify to Act as a Corporate Trustee if that entity- (a) is a company incorporated under the Companies Act and whose main object is to provide Corporate Trustee Services;	An entity shall qualify to Act as a Corporate Trustee if that entity- (e) is a body corporate, duly incorporated under the law by which it is governed and whose main object is to provide Corporate Trustee Services;	The draft provision in the bill limits the structure of the corporate trustee to a company. However, the law provides for other forms of body corporates which are equally capable of providing corporate trustee services. These include Limited

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06 JUL 2026
CLERK'S OFFICE
P. O. Box 41842, NAIROBI.

DIRECTORATE OF DEPARTMENTAL COMMITTEES
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07 JUL 2026

Britam
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		(f) is an incorporated Trust under this Act , the Trustee (Perpetual Succession) Act or registered under the Registration of Documents Act and deemed to be Trusts under this Act	Liability Partnerships, Partnerships, Incorporated Trusts under Trustee(Perpetual Succession) Act and the Registration of Documents Act

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Section 44 (4) (a)	A corporate Trustee may- (a) act in connection with a trust by a resolution of its board of directors;	A corporate Trustee may- (a) act in connection with a trust by a resolution of its board of directors or board of trustees in the case of Incorporated Trusts and in the case of a Limited Liability Partnership, by a Resolution of the partners;	The draft provision in the bill limits action through a resolution of the board of directors, which will not be applicable where the corporate trustee is set up as a Limited Liability Partnership or an incorporated trust. This proposed amendment is linked to the proposed amendment to section 36 (3) (a)
Section 63 (2)	A trust shall keep the documents in subsection (1) for a minimum period of seven years.	A trust shall keep the documents in subsection (1) for a minimum period of seven years from the date on which the document is created.	The draft provision is vague and the obligations thereunder are difficult to interpret. The amendment makes it easier to interpret the time period during which the obligation to keep records is applicable.
Section 70	Add subsection 70 (4) on digital assets	(4) Where trust property includes a digital asset, the Court may make any ancillary order necessary to give effect to the vesting order, including an order- (a) directing a custodian,	The proposed subsection accounts for the special considerations that the court needs to have for the effective transfer of digital assets.

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		exchange, wallet provider, registrar, platform operator or other intermediary to recognise the vesting order and record the person named in the order as the lawful controller or owner of the asset; (b) requiring the delivery of encryption keys, authentication credentials, recovery phrases, passwords or access devices, where lawful and reasonably necessary for administration of the trust; (c) authorising the recovery, migration or preservation of digital assets; or (d) making any other order necessary for the effective administration or preservation of trust property.	

Yours faithfully,
For and on behalf of
Britam Trust Fund Registered Trustees

Susan Mathenge
Trust Manager

Musyimi & Company
Advocates, Notaries Public & Commissioners for Oaths

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PIN No. P051172266W

(4)

For the attention of the Clerk.

Our Ref: C83-8/GEN/COM/KK/2025 Your Ref: Date: 2nd July 2026

'BY EMAIL'

Office of the Clerk of the National Assembly,
Main Parliament Building,
P.O. Box 41842-00100,
Nairobi.
Tel: +254737409059/+254722801275
Email: cna@parliament.go.ke

(1) DDC
Please deal.
09/07/26

Attention: Mr. Samuel Njoroge (CBS)

Dear Sir,

Subject: **Comments on the Trust Administration Bill 2026**

The above-captioned matter refers.

Find attached hereto a copy of our comments dated 2nd July 2026 on the Trust Administration Bill 2026.

A hard copy of the same will also be delivered to your offices.

(2) Abenayo Wasike, HoD
For the attention of JLAC.
10/07/26

Yours Sincerely,
Musyimi & Company Advocates

Kimathi Kamencu
kimathikamencu@musyimilaw.com
/em

NATIONAL ASSEMBLY RECEIVED 08 JUL 2026 DEPUTY CLERK S. KIOKO P.O. Box 41842 - 00100, NAIROBI

NATIONAL ASSEMBLY RECEIVED 08 JUL 2026 CLERK'S OFFICE P. O. Box 41842, NAIROBI.

DIRECTORATE OF DEPARTMENTAL COMMITTEES RECEIVED 10 JUL 2026

PART OF THE BILL	COMMENT
Part II – Trust and Trust Formation	**Cl. 7(1)** should have added to it "or by its very character is revocable". **Cl. 7(2)** should be phrased so as to provide for 2 conditions when a trust is deemed irrevocable. The second condition would be: *i.* *[as exists in clause]* ii. the death of the settlor does not have the effect of revocation of the trust. **Cl. 13(2)** should be deleted because the settlor should be entitled to act as a trustee. In **Cl. 10(2)(a)** the words "whether living or not" should be added to expand the beneficiaries that can be contemplated in a family trust. This also is in conformity with the existing provisions on Family Trusts as set out in The Trustees (Perpetual Succession) Act (Cap. 164).
Part III – Registration of a Trust	This part should include a provision on name reservation for purposes of registration of trusts. The same can mirror the provision in Part IV in so far as it relates to name reservation.
Part IV – Incorporation	In **Cl. 29(2)(d)**, the provision should include "(in the case of a non-charitable trust)". This is in recognition of the fact that charitable trusts do not ordinarily have "beneficial owners".
Parts VI, VII and VIII	The provisions of part II, III, IV of the current Trustees Act (Cap. 167) have been largely omitted to the detriment of trustees and beneficiaries. Examples of omitted provisions include: 1. Provisions on investments (Part II of Cap. 167); 2. Detailed provisions on general powers of Trustees (Part III of Cap. 167); 3. Provisions that relate to indemnities given to trustees by means of advertisement and notice (Part III of Cap. 167).
Part IX - Beneficial Owners of a Trust	This Part should be limited in application to non-charitable trusts. Charitable trusts do not ordinarily have "beneficial owners". At **Cl. 78(8)**, paragraph (c) should be deleted. Self - Regulatory bodies do not have supervisory powers over the Registrar of Trusts.

MC

Part XV – Provisions on Delegated Powers	The provision should recognize that the Attorney General accountable to Parliament in the exercise of the delegated regulation-making powers. As such, any regulations promulgated pursuant to this Part, ought to be laid before the National Assembly.
Part XVI - Repeal, Transitional and Savings Provisions	1. The Part should make provision for transition of records of registered trusts (under the Registration of Documents Act) to the Registrar of Trusts. This is so that historical as well as current records are included. 2. Under **Cl. 97(2)(b)**, the phrase "or any such time as the Registrar may direct" should be deleted to eliminate uncertainty. Further, a provision should be added to the effect that where the Act requires promulgation of regulations relating to compliance then the compliance period of 24 months should run from the date of such promulgation. 3. **Cl. 97(3)** ought to be revised so that Registrar is required to issue new certificates of registration within specified timelines. Upon issuance of the new certificates (to already incorporated trusts), then the existing certificates would cease to be of effect.

(5)

(1) DDC & 16/7/26

(2) Mr. Abenayo HDS 15/7
Mr. Salim. C.A.I
Pse deal
Mutegi DD DCs
17/Jul/2026

LAW SOCIETY OF KENYA

South C, off Red Cross Road

P.O. Box 72219-00200 Nairobi, Kenya

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Website: www.lsk.or.ke

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MEMORANDUM

TO

THE NATIONAL ASSEMBLY

ON

THE TRUST ADMINISTRATION BILL, 2026

JULY, 2026

Charles Kanjama, SC, President Law Society of Kenya

South C, off Red Cross Road

P.O Box 72219 - 00200 Nairobi | Kenya

Tel: +254 111 045 300

Email: president@lsk.or.ke

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DIRECTORATE OF LEGAL AFFAIRS
17 JUL 2026

NATIONAL ASSEMBLY
RECEIVED
16 JUL 2026
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J.W.N
P. O. Box 41842 - 00100, NAIROBI

I. INTRODUCTION

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- President, Charles Kanjama, SC
- Vice President, Teresia Wavinya
- General Membership Representatives, Tom K'opere, Vivienne Eyase, Wanjohi Wambugu
- Nairobi Representatives, Effie Sheila Achieng, Muthoni Gachara, Wycklife Oyoo
- Up-country Representatives, Hiram Kirimi, Faith Jappann, Hezekiah Aseso, Sharon Oyoko
- Coast Representative, Titus Mukanzi
- Secretary/CEO, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration of justice and practice of law in Kenya. Pursuant to this statutory mandate, the Law Society of Kenya makes presentation on the **Trust Administration Bill, 2026.**

GENERAL COMMENTS

The Trust Administration Bill, 2026 is a timely legislative proposal that seeks to establish a comprehensive and modern legal framework for the administration, regulation and supervision of trusts in Kenya. The Bill is commendable for consolidating key principles of trust law into a single statute and providing greater legal certainty on the rights, duties and obligations of trustees, beneficiaries and other persons involved in the administration of trusts. The proposed framework has the potential to strengthen accountability in trust management, enhance the protection of beneficiaries' interests,

promote transparency in the administration of trust property and align Kenya's trust law with evolving international best practices.

Nevertheless, given the significant role trusts play in wealth management, succession planning, charitable activities and commercial transactions, it is important that the Bill clearly balances trustee autonomy with adequate oversight and beneficiary protection. The Bill should also ensure consistency with the Constitution, existing property and succession laws, and emerging developments in digital asset management and electronic administration of trusts. Further, the proposed framework should be supported by clear transitional provisions, effective dispute resolution mechanisms and accessible administrative procedures to facilitate implementation while minimising uncertainty for existing trusts and future trust arrangements.

The Law Society has therefore identified targeted proposed amendments and recommendations, which are set out below.

SPECIFIC COMMENTS

NO.	PROVISION	ISSUE	PROPOSAL	JUSTIFICATION
1.	Clause 5(2) – provides registration or incorporation of written trust.	This clause provides that unless a written trust is registered or incorporated, it shall not be received as evidence in any transaction except with the consent of the court. Thus, a settlor's documented intention can be defeated for a purely procedural default.	Amend this clause to confine inadmissibility to disputes over title or priority; preserve admissibility to prove the settlor's intention, and exempt testamentary, resulting and constructive trusts.	In *Albert Kigera Karume & 2 others v George Ngugi Waireri & 3 others [2020] KEHC 9609 (KLR)*, the settlor transferred his assets into a private trust, and the trust document recording his intentions, were central to the Court upholding the structure. A rule excluding such documents frustrates proof of the settlor's true wishes the very freedom the trust device exists to serve.
2.	Clause 8(3)- provides that a charitable trust	Charitable trusts are generally not allowed to trade, as they would be required to pay tax on the gain. This limits	Amend clause 8(3)to read- *(3)A charitable trust may engage in*	This enables charitable trusts to generate their own income instead of solely relying on donations, grants, or

	shall be a non-trading entity.	the trusts from generating income in order to sustain themselves and in furtherance of their charitable objectives.	*trading activities, provided that any profits derived from such activities are applied exclusively towards the furtherance of the trust's charitable purposes.*	government funding. This additional income can be reinvested into the trust's charitable activities, enabling it to reach more beneficiaries. The proposed amendment is applicable in other jurisdictions such as South Africa, the United Kingdom and New Zealand enabling charities to strike a balance between generating income and ensuring charitable assets are used exclusively for public benefit.
3.	Clause 13(d) read with clause 40 – provides for powers of a settlor and the removal of a trustee.	Clause 13 provides for the powers of a settlor including power to appoint and remove any trustee or beneficiary. Further, clause 40 allows that "any person with a legitimate interest" obtain a trustee's removal from court on the open-ended ground that it is "in the interest of the trust and the beneficiaries." The term legitimate interest is undefined and could extend to members of the public; the grounds for removal are too broad; and the court	Amend the clause to (a)Define "legitimate interest" to mean a beneficiary, co trustee, the settlor or an enforcer, expressly excluding the general public and strangers to the trust. (b) Confine removal to proven breach of trust, statutory disqualification, or loss of legal capacity. (c) Make the clause subject to the settlor's reserved powers under clause 13(d), and provide that the court's discretion	A trust gives effect to the settlor's settled intentions; under clause 7 a trust is irrevocable by default, so the settlor has made a final disposition of their own property and chosen its custodians. In *Albert Kigera Karume & 2 others v George Ngugi Waireri & 3 others [2020] KEHC 9609 (KLR)*, removal was ordered only after findings of breach of the trust deed, wastage of assets and failure to account and on the application of

		route can be invoked by a stranger to displace the very trustees the settlor deliberately chose.	shall not be exercised so as to defeat the settlor's wishes in an irrevocable trust, save on the grounds in (b).	beneficiaries who were the settlor's own children, not strangers. That proven-breach threshold should be codified so the court's protective jurisdiction cannot be turned into a vehicle for third parties to reopen the settlor's choices.
4.	Clause 26- refusal to issue a certificate, no appeal allowed when the Registrar fails to register a trust.	The grounds for the Registrar to refuse to issue a certificate are well-expounded. However, no provision for an appeal process is provided in the proposed bill which is a breach of fair administration and violates the constitutional right to fair hearing. An appellant should be accorded the opportunity to have the Registrar's decision of refusing to issue a certificate set aside within a reasonable time.	Introduce a new clause after clause 25 to provide for appeal or review to a tribunal or to the High Court.	The proposed provision safeguards the right to fair administrative action by allowing applicants to challenge a decision refusing registration. It promotes transparency, accountability, and consistency in the exercise of the Registrar's powers while providing an independent avenue for correcting errors. The proposal is consistent with good regulatory practice and comparative charitable trust legislation in several common law jurisdictions such as South Africa and the United Kingdom.
5.	Clause 36 – provides for the qualification and	This clause provides for the disqualification of a trustee on grounds of a conviction attracting over six months'	Amend this clause to provide for the exclusion of clause 36(2) to a settlor acting as trustee of	A settlor settling their own property for their own family is not the third-party fiduciary the disqualification

	disqualification to act as a trustee	imprisonment, an economic crime and being undischarged bankrupt. This bars even a settlor from acting as trustee of their own family trust although clause 10(3) and 12(3) otherwise permit a settlor to be both beneficiary and trustee hindering legitimate generational wealth planning over the settlor's own property.	their own family trust (or permit it on full written disclosure to the beneficiaries); reserve the disqualifications for corporate and charitable trustees who hold others or public funds.	regime targets. *Njenga Karume's case* illustrates the trust's central role in succession and intergenerational wealth; a blanket, permanent bar engages the proportionality limits of Articles 27 and 40 of the Constitution.
6.	Clause 78(8) – provides for the disclosure of trust information by the Registrar.	This clause provides that the registrar may disclose information to the trustees, beneficiaries, enforcers, to competent authorities upon written request, to self regulatory bodies regulating money laundering, terrorism financing and proliferation of weapons of mass destruction and to any person or institution designated under the Proceeds of Crime and Anti-Money Laundering Act without judicial oversight, this exposes private family arrangements to	Amend this clause to require a court order or judicial authorisation on a documented lawful basis with proportionality safeguards before disclosure to law enforcement or competent authorities, beyond strictly mandated AML reporting.	Article 31 protects privacy, and clause 91 of the Bill already invokes the Data Protection Act. *The Njenga Karume's case* frames trust disclosure as an incident of the trustee–beneficiary fiduciary relationship a beneficiary's entitlement to information flowing from that relationship not a conduit for State surveillance. Access by third parties should be gated by the courts.

		broad, warrantless access.		

CONCLUSION

The Law Society of Kenya supports the Trust Administration Bill, 2026, it is progressive geared towards strengthening trust administration regime in Kenya and deserves support in principle. The Law Society of Kenya requests that the proposed amendments be considered to ensure the Trust Administration Bill, 2026 aligns with the constitutional protections and trust law principles. Incorporating these recommendations' will enhance the Bill's effectiveness and preserve its core objective of promoting transparent, accountable and efficient trust administration in Kenya.

Yours **faithfully,**



CHARLES KANJAMA, SC

PRESIDENT, LAW SOCIETY OF KENYA

(6)

LEGISLATIVE COMMENTS ON THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

S/No.	Specific Clause	Proposed Amendment	Justification
1.	Clause 2	Definition of Competent Authority. We propose the broadening of the definition to include the Ministries, Departments and Agencies responsible for matters lands, virtual assets and intellectual property and Assets Recovery.	The expanded definition is critical to ensure that the bill covers all aspects of trust property as captured under Clause 2.
2.	Clause 2 as read with clause 14(1&2)	Provide for an adequate definition of an enforcer, qualifications of an enforcer and a supervisory body in charge of persons qualified to be enforcers. This may include minimum professional competence, absence of conflict of interest in the trust property and grounds for disqualification	The existing definition does not adequately define an enforcer and the attendant qualifications which may lead to administrative constraints. Providing these qualifications will ensure that enforcers have the requisite capacity and independence to act in the best interests of the beneficiaries
3.	Clause 8(3)	The clause restricts charitable trusts from trading. We propose the amendment of the clause to provide " A charitable trust may engage trading activities provided that any profits derived from such activities are applied solely towards the furtherance of the trust's charitable purposes .	The aspect of trading will enable charitable trusts to be self-reliant and generate income which can aid the trust to expand its area of coverage by reaching out to many beneficiaries.
4.	Clause 15(1)	Insert a new sub-clause f obligating the enforce r to " To liaise with the relevant competent authority for purposes of conducting investigations in event of a	The enforcer by virtue of monitoring the implementation of the terms of trust has the likelihood of establishing breach of terms of trust of criminal nature which they need to

		breach of trust in contravention of any law in Kenya".	inform the competent authority for attendant action.
5.	Clauses 17(4) a&b, 39(10), 41(4), 48(5), 66(4), 67(2)	Amend the proposed fines to an enhanced amount.	The proposed fines are assessed to be insignificant compared to the prevailing inflation rates hence may not be commensurate to the offence.
6.	Clause 25	The clause has failed to establish a dispute redress mechanism in relation to registrar's decision refusing to register a trust. We propose the introduction of a new clause after clause 25 to provide for appeal or review to a tribunal or to the High Court.	The appellate mechanism is of paramount importance considering it provides safeguards to the cardinal principle and right on fair administrative action and affords applicants to challenge a decision refusing registration

NIS

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Our Ref: **FRC/3/2/13 Vol. 2 (01)** Your Ref: **NA/DDC/JLAC/2026/055**

4th August 2026

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Parliament buildings
P.O. Box 41842 - 00100
NAIROBI.

Dear Mr Njoroge,

RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE TRUST ADMINISTARTION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

The Financial Reporting Centre ("The Centre") acknowledges receipt of your letter dated 28th July, 2026 on the above subject matter and inviting us to submit views on the Trust Administration Bill (National Assembly Bill No. 29 of 2026).

The Centre is an operationally independent and autonomous body established under section 21 of the Proceeds of Crime and Anti-Money Laundering Act whose main objective is ***to assist in the identification of the proceeds of crime and combating Money Laundering (ML), Terrorism Financing (TF) and Proliferation Financing (PF).*** The Centre's other objectives include, making the information it collects available to investigative authorities and other relevant agencies to support the enforcement of Kenyan laws; collaborating with counterpart institutions in other countries by exchanging information on money laundering and related offences and ensuring ***compliance with international standards and recognized best practices in anti-money laundering measures.***

Kenya, as a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), underwent a Mutual Evaluation (ME) in 2021 to evaluate the effectiveness of its anti-money laundering, counter-financing of terrorism and counter-proliferation financing (AML/CFT/CPF) regime. The evaluation, conducted through a peer review

process, measured the country's level of compliance with the international standards established by the Financial Action Task Force (FATF). The assessment examined both the adequacy of Kenya's legal and institutional framework and the effectiveness of its implementation in combating money laundering, terrorist financing, and the financing of the proliferation of weapons of mass destruction. The findings identified several areas requiring improvement, including compliance with FATF Recommendation 25, which relates to the transparency and beneficial ownership of trusts. Kenya was rated as Partially Compliant with this recommendation, indicating that while certain legal and regulatory measures were in place, gaps remained that needed to be addressed to fully meet international standards.

On 23 February 2024, the Financial Action Task Force (FATF) placed Kenya on its list of jurisdictions under increased monitoring (the FATF Grey List) due to strategic deficiencies in Kenya's anti-money laundering, counter-terrorism financing and counter-proliferation financing (AML/CFT/CPF) framework. Although Kenya demonstrated a commitment to strengthening its AML/CFT regime, it is required to implement a time-bound Action Plan addressing both legislative and enforcement gaps to achieve compliance with international standards. One of the key areas requiring reform is the legal framework governing trusts, particularly in relation to transparency and beneficial ownership. Kenya is required to review its legal regime governing operations of trusts to align it with FATF Recommendation 25, which aims to prevent the misuse of trusts for money laundering and terrorist financing. Under Immediate Outcome 5, the FATF further required Kenya to designate a competent authority to regulate trusts, maintain accurate and up-to-date basic and beneficial ownership information (on trusts) and establish an effective sanctions regime for non-compliance.

To satisfy the FATF Action Plan and facilitate its removal from the Grey List, Kenya should enact a legislation to govern the operation of trusts that complies with FATF Requirements. The country should also demonstrate that the implementation of the legal and regulatory regime on trusts is effective. This includes enforcing transparency requirements, maintaining beneficial ownership information, and imposing proportionate and dissuasive sanctions against non-compliant trusts. Specifically, Kenya's Action Plan with the FATF requires the country to:

a) designate an authority and provide it with appropriate capacity, skills and resources (human, financial and technical) to regulate **TRUSTs** including ***collecting and making available*** to Law Enforcement Agencies (LEAs) ***adequate, accurate and up-to-date Beneficial ownership (BO) information*** in a ***timely manner***. This should include the establishment of an **appropriate sanction's regime.**

b) demonstrate application of ***remedial actions and/or dissuasive, proportionate and effective sanctions against breaches*** of compliance with the **basic and BO transparency requirements** for legal persons and arrangements consistent with Kenya's risk profile.

Achieving both legal compliance and effective enforcement will be critical to strengthening Kenya's AML/CFT framework and meeting international expectations.

The Centre has reviewed the Trust Administration Bill, 2026 and notes the following:

- The Bill marks a significant transition from fragmented and inadequate trust framework to a comprehensive, transparent and well-regulated regime, strengthening compliance with FATF Recommendation 25 and Immediate Outcome 5;
- The Bill introduces a centralized Register of Trusts and makes registration a prerequisite for the legal recognition and enforceability of trusts, thereby promoting transparency and reducing the risk of trusts being used to conceal beneficial ownership or facilitate illicit activities;
- The Bill requires trustees to maintain accurate and up-to-date records including that of beneficial ownership information, while imposing a seven-year record retention period. This is in line with FATF Recommendations 10 and 25 which amongst others, requires records to be kept for a minimum of five (5) years and for Trusts to compile and keep a record of beneficial owners, lodge it with the registrar and keep it up to date;
- With regard to charitable trusts charitable trusts are generally not allowed to trade. In the event such entities decide to trade, they should do so under a different legal entity incorporated differently from the charitable trust. The provisions in clause 8 (3) of the Bill seek to ensure this position and is accordingly supported in its current form;
- The Bill reinforces the regulatory framework through enforcement measures, including administrative and criminal penalties for non-compliance, monetary fines and imprisonment. These provisions are intended to ensure adherence to the law, enhance accountability, and strengthen the country's ability to prevent and combat money laundering, terrorist financing, and the misuse of trust structures for illicit purposes;
- The Bill will ensure that competent authorities are able to obtain in a timely manner adequate, accurate and up-to-date basic and beneficial ownership information on trusts including, the residence of the trustees and their equivalents and any assets held or managed by the financial institution or Designated Non-Financials Businesses and professions (DNFBP), in relation to any trustees or their equivalents with which they have a business relationship, or for which they undertake an occasional transaction. Additionally, Reporting Institutions (Financial Institution and Designated Non-Financial Businesses and professions (DNFBPs) under POCAMLA are able to request for and obtain information on Trusts. This access to information on trusts is an important pillar in the fight against financial crime.

The Centre welcomes the Bill in its current form and content as it largely addresses the international standards required of countries by ensuring transparency and beneficial ownership aimed at protecting abuse of corporate structures to perpetrate money laundering and terrorism financing. The Bill also makes the registration and management of trusts effective and also introduces regulation and accountability measures thus enhancing the utility of Trusts in commercial transactions, charitable activities and wealth management. To further strengthen the Bill, the Centre proposes the amendments set out in the attachment hereto.

The Centre confirms that it will appear before the Committee on Thursday, August 6, 2026 at 10 am to present its views to the Committee.

Yours Sincerely

NAPHTALY K. RONO, MBS, HSC
DIRECTOR GENERAL AND NATIONAL COORDINATOR
AML/CFT MUTUAL EVALUATION OF THE REPUBLIC OF KENYA

c.c: **Hon. Dorcas Agik Oduor, SC, EBS, OGW**
The Attorney General
The State Law Office and the Department of Justice
Sheria House, Harambee Avenue
NAIROBI

CPA. Dr. Aurelia Rono
Principal Secretary
The State Department for Parliamentary Affairs
Office of the Prime Cabinet Secretary
Kenya Railways, Block A, Haile Selassie
NAIROBI

MEMORANDUM OF PROPOSED AMENDMENTS BY THE FINANCIAL REPORTING CENTRE ON THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

No.	Deficiency	Clause	Issue	Justification	Proposal
1.	Verification of Beneficial Ownership Information	Clauses 24(1), 30(1), 33(3), 48(1), 66(1), and 79(1)	The Bill does not impose an explicit ongoing obligation on the Registrar to independently verify beneficial ownership information	FATF Recommendation 25 (Criterion 25.8) requires information to be adequate, accurate and up to date. Existing provisions rely mainly on trustee declarations, while Clause 79(1) provides only reactive powers to request information.	Provide the Registrar with explicit authority to verify beneficial ownership information using independent sources, identification databases, and information-sharing mechanisms
2.	Effectiveness and Dissuasiveness of Administrative Sanctions	Clauses 46(3), 49(3), 17(4), 37(3), 39(10), 40(5), 41(4), 66(4), 67(2), and 93	Administrative penalties for transparency-related breaches may not be sufficiently proportionate or dissuasive for high-value trusts	FATF Immediate Outcome 5 (Core Issue 5.5) requires sanctions to be effective, proportionate, and dissuasive. While Clauses 46(3) and 49(3) provide criminal penalties, the administrative penalties under the listed clauses may be too low to deter non-compliance	Enhance administrative penalties and introduce additional measures such as escalating fines, compliance orders, suspension of trustees, and disqualification for repeated breaches
3.	Timely Access to Trust Information	Clauses 49(2) and 49(3)	The 14-day response period for trustees may delay access to beneficial ownership information	FATF Recommendation 25 (Criterion 25.10) and Immediate Outcome 5 (Core Issue 5.4) require rapid and efficient access to information. Clause 49(2) allows trustees fourteen days to provide requested	Introduce expedited disclosure timelines for urgent ML/TF investigations and allow competent authorities to request immediate access where necessary

No.	Deficiency	Clause	Issue	Justification	Proposal
				information, which may hinder urgent investigations	
4.	Completeness of Beneficial Ownership Information	Clauses 15(1), 48(2)(a), 48(2)(g), 65(1), and Clause 2	The Bill does not expressly include protectors and objects of power within beneficial ownership requirements	FATF Criterion 25.4 requires identification of settlors, trustees, protectors, beneficiaries, and objects of power. Although the Bill recognizes enforcers and beneficiaries, Clause 65(1) does not expressly capture protectors or objects of power	Amend Part IX to expressly include protectors and objects of power within beneficial ownership registration requirements
5.	Delayed Beneficial Ownership Disclosure for Existing Trusts	Clause 66(2)	Existing trusts are granted up to twenty-four months to submit beneficial ownership registers, creating a transparency gap	FATF standards require timely access to beneficial ownership information. The transition period under Clause 66(2) may delay in collection of beneficial ownership information by Registrar and access by the FIU and law enforcement agencies	Consider shortening the transition period or require immediate disclosure for high-risk trusts or twelve months upon commencement of the Act
6.	Lack of Specificity in Required Identification Information	Clauses 22, 29, 33(2), and 48	The Bill uses the term "details" without defining the minimum identifying information required	FATF Recommendations 24 and 25 require adequate identification information. Clause 29(1) requires "details of trustees," "details of settlor," and "details or description" of	Define "details" in the Bill and prescribe minimum identification requirements, including full name, nationality, date of birth, address, and identification documents

No.	Deficiency	Clause	Issue	Justification	Proposal
				beneficiaries and beneficial owners but does not specify required identifiers.	
7.	Scope of Foreign Legal Arrangements	Clauses 3, 5(1), 5(2), 6(1)(f), and 48(2)(g)	The Bill may not adequately capture foreign trusts with sufficient links to Kenya that avoid registration or local trusteeship	FATF Immediate Outcome 5 (Core Issue 5.1) requires jurisdictions to identify and mitigate risks from foreign legal arrangements with local links. The Bill mainly captures trusts seeking legal recognition, while some foreign arrangements may fall outside the scope of Clause 3	Expand the scope of clause 3 and introduce mandatory declaration or registration requirements for foreign trusts with sufficient links to Kenya, including ownership of local assets or financial relationships

Financial Reporting Centre

August 4, 2026

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Institute of Certified Secretaries
The Governance Profession

SUPPLEMENTARY GOVERNANCE COMMENTS FOR ICS ON THE TRUST ADMINISTRATION BILL, 2026

Submitted by: Institute of Certified Secretaries
Date: Thursday 6th August 2026

INTRODUCTION

The Institute of Certified Secretaries (ICS), established under Chapter 534 of the Laws of Kenya as the professional body mandated to promote governance, corporate secretarial practice, and compliance in Kenya, previously submitted a Memorandum on the Trust Administration Bill, 2025.

Several of those comments remain valid against the Trust Administration Bill, 2026 as introduced. This supplementary memorandum is confined to matters that bear specifically on the Institute and the scope of practice of Certified Secretaries, arising from changes made between the 2025 draft and the 2026 Bill.

CLAUSE BY CLAUSE ANALYSIS AND RECOMMENDATIONS

Clause & Provision	Observation	Recommendation	Justification	ICS Position
5.76(3) – Trust Agent scope	The 2026 Bill adds a new paragraph stating that nothing in this section permits an unqualified person to draw up documents that only an advocate is allowed to prepare under the Advocates Act.	Seek express clarification, by amendment or in the Regulations, confirming that trust deed drafting and registration/incorporation documentation prepared by a Certified Secretary acting as trust agent falls outside instruments reserved under the Advocates Act, consistent with Certified Secretaries' existing scope of practice.	The Advocates Act does mention trusts. Section 34(4)(b) excuses a transfer of shares carrying "no trust," and Section 50 refers to "beneficiaries under trust." But the list of documents reserved only for advocates in Section 34(1) — property transfers, company formation, partnerships, probate — does not mention trust deeds at all. So the law as it stands does not clearly reserve trust deed drafting to	Support with ame

			advocates. Without a clear statement in the Bill, Certified Secretaries risk being pushed back to only administrative tasks (registered office, filing documents), losing ground they already hold.	
5.76 – Scope of trust agent services	The 2025 Bill's "trust service provider" (s.74) expressly included trust administration (managing and investing trust assets), record-keeping, preparing financial statements, and **advising the trust on governance issues**. The 2026 Bill's "trust agent" (s.76) is limited to formation/advisory services, provision of a registered office for family trusts, and lodging statutory documents Advising the trust on governance issues has been dropped entirely.	Reinstate "advising the trust on governance matters" as an express function of a trust agent under s.76(1), alongside the trust agent's formation and lodgment functions.	Governance advisory is a core competency of Certified Secretaries; omitting it removes the clearest statutory basis for ICS members' involvement in trust governance and narrows the profession's footing under the Bill.	Support with ame
New Provision (Appointment of Trust Secretary)	The 2026 Bill grants incorporated trusts full legal personality (s.32) and introduces stringent compliance duties and penalties for trustees (ss. 37, 48, 63, 66, 75). However, it lacks a dedicated statutory governance officer to oversee continuous compliance and guide the Board of Trustees on fiduciary obligations.	**Insert a new Clause 76A immediately following Clause 76 as follows:** **76A. Appointment of a Trust Secretary** (1) An incorporated trust, or a registered trust whose assets exceed the prescribed threshold, may appoint a Trust Secretary.	**Alignment with Companies Act (Cap. 486):** Under Section 32, incorporated trusts obtain legal personality equivalent to corporate bodies. Since companies require a Company Secretary, incorporated trusts holding substantial assets require an equivalent statutory governance officer.	Support with incl

		(2) The Trust Secretary shall be responsible for: (a) Guiding trustees on statutory duties, governance obligations, and compliance; (b) Maintaining the register of beneficial owners (s.65), register of charges, trust deeds, asset registers, and official records; (c) Ensuring timely statutory filings, including annual returns (s.75) and beneficial ownership updates (d) Managing notices, organizing agendas, minuting trustee meetings, and safeguarding the common seal; and (e) Facilitating audit compliance and acting as the official liaison to regulatory authorities. (3) A person shall not be qualified for appointment as a Trust Secretary unless that person is a Certified Secretary registered under the Certified Public	**Consistency with Mwongozo:** *Mwongozo* designates the Corporate/Governance Secretary as the custodian of board governance, compliance, and fiduciary oversight. **Anti-Money Laundering & FATF Compliance:** Bound by Cap. 534 and POCAMLA obligations, a regulated Trust Secretary acts as a professional gatekeeper to maintain accurate beneficial ownership records (s.65), assisting Kenya's exit from the FATF Grey List. **Trustee Protection:** Trustees often serve non-executively or on a rotating basis. A Trust Secretary ensures continuity of records across board transitions and protects trustees from personal administrative liability (ss. 37, 48, 66) by driving compliance schedules.	

		Secretaries of Kenya Act (Cap. 534).		

(9)

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: BRS/CR/GC/2/ VOL 1 /265 **6th August, 2026**
Your: NA/DDC/JLAC/2026/ 055

Mr. Samuel Njoroge CBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026) SPONSORED BY THE LEADER OF THE MAJORITY, THE HON. KIMANI ICHUNG'WAH, EGH MP

This has reference to your letter dated the 28th July, 2026, under Ref. NA/DDC/ JLAC/2026/055 and the request for written submissions on the Trust Administration Bill (National Assembly Bill No. 29 Of 2026), and invitation to appear before the meeting of the Departmental Committee on Justice and Legal Affairs on the 6th of August, 2026, to make submissions on the Bill.

The Office of the Attorney General was involved in the preparation of the Bill and the Bill does not raise significant constitutional issues. However, after further consultation we recommend the amendment of clause 39(3) as follows; by inserting the following words "subject to the Public Trustee Act" after the words "The court may". The purpose of the amendment is to ensure consistency between the provisions of the Bill and the Public Trustee Act regarding the manner the court may appoint the Public Trustee as a trustee of a trust that has no trustees.

We thank you and assure you of our continued support.

Hon. Shadrack J. Mose, CBS
SOLICITOR-GENERAL

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ISO 9001:2008 Certified

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL

Our Ref: NA/DDC/JLAC/2026/ 055 **6th August, 2026**
Your Ref:

Mr. Samuel Njoroge CBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026) SPONSORED BY THE LEADER OF THE MAJORITY, THE HON. KIMANI ICHUNG'WAH, EGH MP

This has reference to your letter dated the 28th July, 2026, under Ref. NA/DDC/ JLAC/2026/055 and the request for written submissions on the Trust Administration Bill (National Assembly Bill No. 29 Of 2026), and invitation to appear before the meeting of the Departmental Committee on Justice and Legal Affairs on the 6th of August, 2026, to make submissions on the Bill.

Kindly be advised that the I shall be unable to attend before the Committee as requested on the appointed date due to a prior engagement and in this regard, have nominated the below-listed State Counsels to attend before the Committee on my behalf:

1. Mr. Wachira Nguyo, Deputy Chief State Counsel
2. Mr. Samson Maundu, Deputy Chief Parliamentary Counsel
3. Mr. Louis M. Mutuku, Senior State Counsel
4. Ms Shighadi Mwakio , Assistant Registrar

We thank you and assure you of our continued support.

Hon. Shadrack J. Mose, CBS
SOLICITOR-GENERAL

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(10)

KENYA LAW REFORM COMMISSION

ADVISORY OPINION

ON THE TRUST ADMINISTRATION BILL, 2026

(NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

Issued pursuant to the mandate of the Kenya Law Reform Commission under section 6 of the Kenya Law Reform Commission Act, No. 19 of 2013, and in response to the invitation of the Departmental Committee on Justice and Legal Affairs of the National Assembly (Ref. NA/DDC/JLAC/2026/055)

With Annexure A (Clause-by-Clause Observations and Proposed Amendments) and Annexure B (Drafting and Technical Corrections)

6 AUGUST 2026

ADVISORY OPINION
ON THE TRUST ADMINISTRATION BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

1. PRELIMINARY POSITION

1. The Commission has examined the Trust Administration Bill, 2026 against the Constitution, the existing statutory and equitable law of trusts, the jurisprudence of the superior courts, and the specialised legislation governing land, succession, retirement benefits and regulated investment arrangements.[1]

2. The Commission notes the Bill attempts to combine three distinct legislative projects in one instrument: *the registration and beneficial-ownership transparency of trusts; the incorporation of trustees for perpetual succession; and the codification of the general substantive law governing trustees.* Those projects can coexist only where the legislation preserves the distinction between a trust and its trustees, identifies the precise classes of trust to which it applies, and completely carries forward the substantive rules that it proposes to repeal. The Bill does none of those things and instead subjects all trusts to one regime, makes registration constitutive of validity, incorporates the trust rather than the trustees, and repeals the Trustee Act without replacing its substantive machinery.

3. The Commission therefore recommends against enactment of the Bill in its present form. The defects identified below are architectural and correcting them would require a reconsideration of the policy design and the preparation of a substantially new Bill. The detailed clause-by-clause matrix annexed to this Opinion as Annexure A is in the Commission view the minimum changes that would be required should the Committee nevertheless elect to proceed with the Bill. We consider the following ten issues itemized below as major defects in this bill.

2. MAKING REGISTRATION CONSTITUTIVE OF VALIDITY WOULD ABOLISH CUSTOMARY TRUSTS AND REVERSE SETTLED SUPREME COURT JURISPRUDENCE

4. Clauses 5 and 6 proceed from the proposition that a written trust is valid and enforceable only if it has been registered or incorporated, and that non-registration is itself a ground upon which the trust may be declared invalid. This makes an administrative act by the Registrar the legal source of the trust and converts registration from a transparency mechanism into a condition of substantive property rights. [2]

5. That approach is directly inconsistent with the law governing customary trusts in land. Section 28(b) of the Land Registration Act recognises trusts, including customary trusts, as

1 Trust Administration Bill, 2026 (National Assembly Bill No. 29 of 2026), especially cls 3-6, 22-33, 36-69 and 75-97.

2 Trust Administration Bill, 2026 (National Assembly Bill No. 29 of 2026), cls 5(1) and 6(1)(f).

overriding interests to which registered land is subject without their being noted in the register. The statutory purpose of an overriding interest is precisely that it binds the registered proprietor notwithstanding the absence of an entry on the title. [3]

6. In *Mbui Mukangu v Gerald Mutwiri Mbui*, the Court of Appeal rejected the proposition that first registration necessarily extinguished rights arising under customary law. The Court recognised that customary law contains the concept of land being held in a fiduciary capacity for members of a family or community and that the registered proprietor may remain subject to those obligations. [4]

7. The Supreme Court conclusively settled the position in *Isack M'Inanga Kiebia v Isaaya Theuri M'Lintari*. The Court held that a customary trust, once proved, is an overriding interest binding the registered proprietor and identified the factual considerations relevant to proof, including the history of the land, its character as family or clan land, the claimant's relationship to the family or clan, and the nature of the claim against the registered proprietor. The Court deliberately rejected a formalistic approach under which registration alone defeated customary rights. [5]

8. The Bill would reverse that development. A customary trust ordinarily has no settlor-created deed, no incorporation certificate and no prior registry entry. It is established through evidence of occupation, possession, family history, allocation of ancestral land, contribution, conduct and customary obligation. By making registration a condition of validity, the Bill would permit a registered proprietor to defeat the beneficial interest simply by declining to register the very trust that the proprietor disputes. The beneficiaries most likely to be affected are family and community members who had no control over registration and may not even possess the title document.

9. **African Customary Law is recognized under the Constitution** and a statute should enhance it rather than purely codifying legal transplants. We note it remains impossible to compel a person who denies a customary obligation to register it voluntarily. More fundamentally, Parliament should not extinguish an existing proprietary interest merely because it was not converted into a new administrative form within a specified period. Such an outcome would engage equality, property, community-land and access-to-justice guarantees and would undermine the constitutional recognition of customary dispute-resolution mechanisms. [6]

> Commission recommendation. *Clauses 5(1) and 6(1)(f) should be deleted.* The Bill should state expressly that registration does not create a trust and that failure to register does not invalidate a trust, extinguish a beneficial or proprietary interest, or prejudice

3 Land Registration Act, No. 3 of 2012, s 28(b).

4 Mbui Mukangu v Gerald Mutwiri Mbui (Civil Appeal No. 281 of 2000) [2004] eKLR.

5 Kiebia v M'Lintari & another (Petition No. 10 of 2015) [2018] KESC 22 (KLR), judgment of 5 October 2018.

6 Constitution of Kenya (2010), arts 27, 40, 63 and 159(2)(c).

> a person claiming under customary law or any other rule of law. Customary, resulting, constructive and implied trusts should be wholly outside the registration regime.

3. THE PURPORTED EXCLUSION OF EVIDENCE RELATING TO AN UNREGISTERED TRUST WOULD OBSTRUCT THE ADMINISTRATION OF JUSTICE

10. Clause 5(2) provides that, unless a written trust has been registered or incorporated, a document evidencing its existence shall not be received as evidence in a transaction affecting the relevant property except with the consent of the court and upon such terms as the court may impose. The provision is conceptually confused: a private transaction does not ordinarily "receive evidence" in the forensic sense, while a court receives evidence in proceedings rather than in a transaction. [7]

11. To the extent that the clause is intended to regulate admissibility in judicial proceedings, it intrudes upon the Evidence Act without integrating the proposed rule into the general law of evidence. The Evidence Act establishes the framework for relevance, admissibility and proof of documents, including primary and secondary evidence. A registration statute should not create an isolated evidentiary disability whose scope, exceptions and relationship with the Evidence Act are left uncertain. [8]

12. The practical effect would be to punish beneficiaries for the default of another person. A child, dependant, charitable beneficiary or family member may neither know of the trust nor possess the power to register it. Yet the beneficiary would be prevented from relying on the instrument that proves the interest. Conversely, a trustee who failed to register the trust—or deliberately withheld registration in order to conceal a breach—could invoke that failure to resist production of the document. The Bill would thereby confer an evidentiary advantage upon the person responsible for non-compliance.

13. The requirement for leave of the court does not save the provision. The Bill supplies no criteria for granting leave, imposes additional cost and delay, and requires the claimant to overcome a procedural barrier before the court can examine the instrument and determine the substantive rights. A court should be free to receive all relevant and otherwise admissible evidence, assess its weight, and grant the remedy required by law.

14. The restriction therefore engages the right of access to justice, the right to a fair hearing and the constitutional direction that justice be administered without undue regard to procedural technicalities. It is also incapable of satisfying Article 24 because the Bill does not demonstrate that excluding probative evidence is necessary or proportionate to the objective of encouraging registration. [9]

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7 Trust Administration Bill, 2026 (National Assembly Bill No. 29 of 2026), cl 5(2).

8 Evidence Act (Cap. 80), especially ss 5 and 64-78.

9 Constitution of Kenya (2010), arts 24, 48, 50(1) and 159(2)(d).

> **Commission recommendation.** Clause 5(2) should be deleted in its entirety. Non-registration may, where justified, attract a compliance notice or proportionate administrative penalty; it must never prevent a court from receiving relevant evidence, determining the existence of a trust, enforcing fiduciary obligations or protecting beneficial property rights.

4. The Trustee Act is substantive general law and cannot be repealed by a Bill that does not replace it

15. The Bill treats the Trustee Act, Cap. 167, as though it were merely an old registration statute capable of being superseded by the proposed administrative framework. That is incorrect. The Trustees (Perpetual Succession) Act, Cap. 164, concerns the incorporation of trustees. The Trustee Act, Cap. 167, supplies substantive default rules governing the powers, administration, supervision and liability of trustees across the legal system. The distinction between the two statutes is essential. [10]

16. The Trustee Act addresses, among other matters, authorised investments and the management of trust investments; powers of sale, mortgage, leasing and insurance; receipts and the protection of persons dealing with trustees; appointment and replacement of trustees; vesting of trust property; use of agents, nominees and custodians; maintenance and advancement; payment into court; court-supervised administration; vesting and other judicial orders; and relief of trustees who have acted honestly and reasonably. Its provisions operate as default law where the trust instrument or specialised statute is silent. [11]

17. Some provisions are undoubtedly dated and require modernisation. The authorised-investment rules, for example, should be reconsidered against contemporary standards of suitability, diversification, professional advice and periodic review. That need for reform does not justify repeal without replacement. On the contrary, repeal would remove the only general statutory machinery available to countless trusts, wills, settlements, court orders and sectoral arrangements that assume the continued existence of the Act.

18. The Bill carries forward selected duties and powers, but not the Act as a coherent whole. It does not reproduce a complete investment code, a complete default delegation regime, sufficient purchaser protection, the full range of vesting and court-administration powers, or the established jurisdiction to relieve an honest and reasonable trustee. The provisions that it does include are scattered across a registration statute and are frequently accompanied by criminal or administrative sanctions. The result would be a statute that is more intrusive in supervision but materially less complete as substantive trust law.

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10 Trustees (Perpetual Succession) Act (Cap. 164); Trustee Act (Cap. 167).

11 Trustee Act (Cap. 167), see generally the provisions on investment, appointment and discharge of trustees, vesting orders, powers of the court and relief of trustees, including s 62.

19. The repeal would also generate consequential uncertainty. Existing trust deeds and court orders may confer powers by reference to the Trustee Act. Other statutes and regulatory instruments use concepts or investment powers derived from it. The Committee cannot safely assume that those references will continue to operate after repeal. A provision-by-provision equivalence table, a consequential-amendment schedule on matters relating to succession, pension, capital-markets, charities and professional matters would be indispensable before any replacement statute could be enacted.

20. Attempting to transplant the omitted provisions into this Bill at Committee Stage would not be intelligible legislative revision. It would amount to drafting a new general Trusts Act without a policy paper, a complete comparative review or fresh public participation. Parliament should not repeal the substantive foundation of trustee law until an integrated and modern replacement has been prepared.

> **Commission recommendation. The proposed repeal of the Trustee Act should be deleted.** Cap. 167 should remain the substantive general law applicable to trustees and should be separately reviewed and modernised. Every provision of the present Bill concerning trustee powers, duties, delegation, liability and court supervision should be made expressly subject to the Trustee Act and to any specialised written law. Only the Trustees (Perpetual Succession) Act should be considered for replacement, and then only through a correct incorporation-of-trustees model.

5. INCORPORATING THE TRUST RATHER THAN THE TRUSTEES MISCONCEIVES AND DESTABILISES THE FIDUCIARY RELATIONSHIP

21. Part IV proposes to incorporate the trust itself, issue a certificate in the name of an "Incorporated Trust" and confer corporate personality upon the trust. This changes the legal character of the institution that the Bill seeks to regulate. [12]

22. In orthodox trust law, the trust is a legal relationship. Identified property is vested in or controlled by a trustee, who holds and administers it for beneficiaries or for a legally permitted purpose. The trustee has legal title or control; the beneficiaries hold equitable or beneficial interests; and the trustee is constrained by fiduciary duties. The trust property is segregated from the trustee's beneficial estate, but the trust relationship is not, merely by existing, a separate legal person.

23. The existing Trustees (Perpetual Succession) Act reflects that distinction. Upon incorporation, the trustees, not the trust, become a body corporate with perpetual succession, power to sue and be sued and capacity to hold and deal with property for the benefit of the trust. Corporate personality attaches to the continuing office of trustee so that changes in the individual office-holders do not require repeated transfers of property. [13]

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12 Trust Administration Bill, 2026 (National Assembly Bill No. 29 of 2026), Part IV, cls 28-33.

13 Trustees (Perpetual Succession) Act (Cap. 164), s 3(3).

24. By contrast, the Bill makes the trust itself the body corporate and describes it as acquiring, owning, holding and disposing of property in its own name. That formulation collapses the separation between the legal holder, the beneficial interest and the fiduciary obligation. It leaves unanswered whether the trustee remains an owner, becomes a director or officer, or merely acts as an agent of the incorporated trust. It is equally unclear whether fiduciary duties are owed to the corporate trust, to the beneficiaries, or to both.

25. The consequences extend across the legal system. If the incorporated trust owns the property beneficially, it is uncertain whether beneficiaries retain proprietary interests capable of tracing. If the incorporated trust is a legal person, its assets may be exposed to its creditors and insolvency proceedings. The Bill does not specify the applicable insolvency law, the tax status of the entity, the manner in which land is registered, the person with standing to sue for breach, or the treatment of trust property upon dissolution. Nor does it explain whether the body corporate can hold the property "on trust" for beneficiaries when the body corporate is itself defined as the trust. It inverts the law of trust as traditionally understood.

26. These questions cannot be dismissed as matters for regulations. They determine the ownership of property and the remedies available to beneficiaries and creditors. If the intended policy is to create a foundation-like juridical person that owns property and is governed by officers for stated purposes, that institution should be designed transparently in a separate foundations law. It should not be introduced under the name of a trust while removing the fiduciary structure that gives a trust its legal meaning.

> **Commission recommendation.** Part IV should be rewritten as the incorporation of trustees. The trustees for the time being should constitute the body corporate; the corporate body should hold property only in its capacity as trustee; changes in individual trustees should not affect the identity of the body corporate, title, contracts, liabilities or proceedings; and the corporate name should be "The Incorporated Trustees of [name]".

6. The Bill cannot intelligibly apply to all trusts

27. Clause 3 provides that the proposed Act will apply to all trusts created and all trustees appointed under the Act or under any other written law. Read in isolation, the provision may appear to be a general application clause. Read together with the registration, incorporation, trustee-qualification, record-keeping, beneficial-ownership, annual-return, enforcement, disqualification and dissolution provisions, however, it purports to place every arrangement described as a trust under the supervision of the proposed regime, and substantially distorts the Kenyan law even in sectors where such law is working without any obstacles. [14]

28. **Kenyan law does not recognise a single homogeneous category of trusts created by one statute.** Trusts may arise by express declaration, by will, by order of a court, by operation

14 Trust Administration Bill, 2026 (National Assembly Bill No. 29 of 2026), cl 3.

of equity, under customary law or under specialised legislation. They include customary trusts affecting registered land; resulting and constructive trusts imposed to give effect to the parties' contributions or to restrain unconscionable conduct; testamentary trusts administered under the Law of Succession Act; retirement-benefit schemes constituted under trust and supervised by the Retirement Benefits Authority; unit trusts, collective investment schemes and real-estate investment trusts regulated by the Capital Markets Authority; statutory and public trusts; and community or customary land arrangements. [15]

29. **These categories differ not merely in terminology but in juridical source and regulatory purpose.** A constructive trust may arise because a court finds that it would be unconscionable for the legal owner to deny another person's interest. A customary trust may arise from the history of family or clan land and remain binding even though it is not entered in the land register. A testamentary trust derives from a will and becomes operational within the administration of an estate. A retirement-benefit trust is part of a prudentially regulated scheme with statutory trustees, administrators, custodians and investment managers. **It is neither necessary nor coherent to subject each of these arrangements to a second general registrar with overlapping powers over trustees, records, information, annual returns and dissolution.**

30. The difficulty is particularly acute for trusts arising by operation of law. Such trusts are not brought into existence by filing a deed or obtaining an administrative certificate. In many cases, their existence is contested and is established only after a court has received evidence and determined the parties' rights. The Bill cannot sensibly require a person to register a constructive or customary trust before the facts giving rise to it have been judicially established. Nor can the legal owner, who may deny the trust altogether, be made the gatekeeper of its recognition.

31. Clause 3 also creates unexpressed conflicts with specialised legislation. A pension scheme could be required to comply simultaneously with the Retirement Benefits Act and with a general trust regime. A collective investment scheme could be answerable both to the Capital Markets Authority and to the proposed Registrar. A testamentary trust could be subject to the succession court, the personal representative and the proposed registration regime without any rule determining which law prevails. Parliament should not displace or supplement specialised statutory schemes by implication. If additional beneficial-ownership duties are considered necessary for a particular sector, they should be introduced through an express amendment to that sector's governing law or through the anti-money-laundering framework.

> **Commission recommendation. Clause 3 should be replaced. The Act should apply only to express trusts created and registered or incorporated under the Act.** It should expressly exclude customary, resulting, constructive, implied, testamentary and statutory trusts, together with trusts, schemes and fiduciary arrangements established

15 Land Registration Act, No. 3 of 2012, s 28(b); Community Land Act, No. 27 of 2016, s 5(3); Law of Succession Act (Cap. 160); Retirement Benefits Act, No. 3 of 1997; Capital Markets Act (Cap. 485A) and the Capital Markets (Collective Investment Schemes) Regulations, 2023.

and comprehensively regulated under another written law. The substantive and supervisory provisions of the specialised written law should prevail in every case.

7. SECURITY VETTING AND THE REGISTRAR'S OPEN-ENDED REJECTION POWERS ARE CONSTITUTIONALLY INDEFENSIBLE

32. Clauses 25 and 31 permit the Registrar to refuse registration or incorporation where a trust is considered *prejudicial to public peace, welfare or good order, contrary to national security or public interest, or where adverse findings have resulted from an undefined vetting process.* The Bill supplies no objective statutory criteria capable of constraining those powers. [16]

33. It does not identify who conducts the vetting, the information that may be collected, the persons to be vetted, the duration and purpose of retention, the standard for an adverse finding, or the relationship between the process and the Data Protection Act. It does not require disclosure of the substance of the concern, an opportunity to controvert inaccurate information, or an independent review of confidential material. A family, religious, charitable or commercial settlement could therefore be denied recognition on the basis of undisclosed information and an unreviewable administrative opinion.

34. The expressions "public interest", "public peace", "welfare", "good order" and "national security" are capable of describing legitimate state objectives, but they are not self-executing grounds of decision. Where they are used to limit property, privacy, association or administrative rights, Article 24 requires the limitation to be prescribed in clear and specific terms and to be reasonable and justifiable. Article 47 and the Fair Administrative Action Act additionally require administrative action to be lawful, reasonable and procedurally fair, with notice, an opportunity to be heard and reasons for an adverse decision. [17]

35. The High Court has emphasised that Article 47 subjects administrative processes to constitutional discipline and requires public power to be measured against constitutional standards rather than left to unconstrained common-law discretion. [18]

36. The jurisprudence concerning registration of trade unions is instructive by analogy. In *Murdock Owuor & others v Registrar of Trade Unions*, the Court found that the Registrar had applied the wrong statutory considerations, acted unevenly and failed to exercise the registration function within the criteria prescribed by law. [19] In *Ogenya & others v Registrar of Trade Unions*, the Court held that refusal of registration amounted to an unlawful and

16 Trust Administration Bill, 2026 (National Assembly Bill No. 29 of 2026), cls 25 and 31.

17 Constitution of Kenya (2010), arts 24 and 47; Fair Administrative Action Act, No. 4 of 2015, ss 4 and 6.

18 Dry Associates Ltd v Capital Markets Authority & another [2012] eKLR.

19 Murdock Owuor & 10 others v Registrar of Trade Unions & 3 others [2018] KEELRC 2050 (KLR). See also Constitution of Kenya (2010), art 36(3).

unjustified limitation of constitutional rights. [20] Although trusts and trade unions are different institutions, the constitutional principle is the same: a registrar may not withhold legal recognition through open-ended discretion, irrelevant considerations or undisclosed administrative preferences.

37. Security vetting is especially disproportionate in this context. Trust registration is not ordinarily a national-security licence. A parent should not require security clearance to settle property for a child; nor should a charity or religious body be denied registration because an unidentified agency has generated an adverse finding that the applicant cannot see or challenge. Where the purpose of a trust is unlawful, fraudulent or connected to money laundering or terrorism financing, those matters can be addressed through objectively drafted grounds, reporting obligations and the existing criminal and asset-recovery laws.

> **Commission recommendation. The references to security vetting, adverse findings, public welfare, public interest and national security as free-standing grounds of refusal should be deleted.** Refusal should be limited to objective statutory matters such as an unlawful purpose, materially false or fraudulent information, failure to satisfy stated requirements after notice, or a prohibited or misleading name. Any intended refusal must be preceded by notice, disclosure of the substance of the concern, an opportunity to respond, written reasons and a direct right of appeal to the High Court. **If Parliament retains any security-based limitation, it must be narrowly defined and demonstrably justified under Article 24.**

8. The Bill's enforcement architecture is punitive, fragmented and disproportionate

38. The Bill scatters criminal offences, imprisonment terms, administrative penalties, disqualification powers and collective trustee liability across numerous Parts. Ordinary defaults involving appointment notices, records, access to information, disposal of property, delegation, returns and registry filings may attract criminal sanctions. In several provisions, liability appears to attach to every trustee in default even where only one trustee authorised or committed the act. [21]

39. Clause 46 illustrates the problem. It requires trustees to preserve the value of trust property and attaches severe criminal consequences to prohibited disposal. A trustee cannot guarantee asset value. Market movements, inflation, currency depreciation, economic shocks and reasonable but unsuccessful investment decisions may reduce value without any breach of duty. **The correct legal standard is reasonable care, skill, prudence and loyalty, assessed against the circumstances, not strict criminal responsibility for financial outcomes.**

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20 Ogenya & 6 others v Registrar of Trade Unions [2026] KEELRC 1091 (KLR), judgment of 17 April 2026.

21 Trust Administration Bill, 2026 (National Assembly Bill No. 29 of 2026), including cls 17, 37, 39, 40, 44, 46, 47, 49, 58, 63, 64, 66, 67, 75, 79, 92 and 93.

40. Criminal law should be reserved for inherently culpable conduct, including theft or fraudulent conversion of trust property, knowing misappropriation, deliberate falsification of records, intentional concealment of beneficial ownership, obstruction of a competent authority and knowingly providing materially false information. Late filing, failure to notify a change, incomplete records and similar compliance defaults should ordinarily be addressed through a notice, a period to remedy, a civil order or a proportionate administrative penalty.

41. Penal provisions must also meet the constitutional requirement of legal certainty. In ***Andare v Attorney General***, the High Court held that a criminal provision expressed in vague and overbroad terms offended the requirement that a person must be able to know in advance what conduct attracts criminal liability. [22] The Court reached the same essential conclusion in *AIDS Law Project v Attorney General*, emphasizing that vague offences leave guilt to subjective assessment and undermine the right to a fair trial. [23]

42. The Bill's punitive model will deter competent persons from accepting trusteeship. Charitable, religious and community institutions frequently rely upon unpaid trustees. The risk of imprisonment for administrative or collective defaults will increase insurance and professional-advice costs and may leave smaller trusts unable to recruit trustees. The enforcement architecture is therefore not only disproportionate; it also undermines the Bill's objective of facilitating lawful and transparent trust administration.

> **Commission recommendation. The enforcement provisions should be redrafted as one coherent Part. Every offence must identify the prohibited conduct and the required mental element.** Collective criminal liability should be removed, and liability should attach only to a trustee who authorised, participated in or knowingly permitted the offence. Administrative defaults should be preceded by notice and an opportunity to remedy, with reasons and a right of review or appeal. **Criminal sanctions should be confined to fraud, dishonesty, deliberate concealment, obstruction and other clearly culpable conduct, consistently with Articles 24 and 50 of the Constitution.** [24]

9. THE PROHIBITION AGAINST TRADING BY CHARITABLE AND FAMILY TRUSTS HAS NO COHERENT POLICY BASIS AND MAY PRODUCE SERIOUS UNINTENDED CONSEQUENCES

43. Clauses 8 and 10 describe charitable and family trusts as non-trading entities. The expression "non-trading entity" is not adequately defined, and the Bill provides no policy justification for prohibiting lawful income-generating activity. The restriction is particularly

22 Andare v Attorney General & another; Article 19-East Africa (Interested Party) [2016] KEHC 7592 (KLR).

23 AIDS Law Project v Attorney General & another; VIHDA Association (Interested Party); Center for Reproductive Rights (Amicus Curiae) [2015] KEHC 6972 (KLR).

24 Constitution of Kenya (2010), arts 24 and 50; see also Law Society of Kenya v Kenya Revenue Authority & another [2017] KEHC 8539 (KLR) on accessibility, clarity and legal certainty.

incongruous because clause 10 simultaneously recognises the preservation or creation of wealth for generations as a legitimate purpose of a family trust. [25]

44. Family trusts commonly hold shares in family companies, farms, rental property, hotels, intellectual property, investment portfolios and operating businesses transferred as part of succession planning. A prohibition on trading may be read to prevent the trust from operating a business directly, receiving business income, holding controlling shares or developing trust property. It is unclear whether one prohibited transaction would invalidate the trust, expose trustees to sanctions or affect contracts with third parties.

45. Charitable trusts likewise require sustainable income. Schools charge fees, hospitals charge for services, care institutions operate facilities, charities lease property, publish materials, conduct fundraising enterprises and run social businesses. The proper legal concern is whether income and property are applied to the charitable objects, whether private benefit is controlled and whether trustees manage conflicts of interest, not whether the trust earns revenue.

46. The ban also risks arbitrary differentiation. Companies, partnerships, individuals and other legal structures may carry on lawful businesses, while a family or charitable trust would be prohibited without an identified mischief or evidence that less restrictive safeguards are inadequate. To the extent that the restriction prevents trustees from productively using property for beneficiaries or charitable purposes, it interferes with property interests and requires justification under Articles 24, 27 and 40. [26]

> **Commission recommendation. The expression "non-trading entity" should be deleted from clauses 8 and 10.** A family trust should be permitted to hold, invest in and operate a business directly or through another entity, subject to the trust instrument, tax law and relevant sectoral legislation. A charitable trust should be permitted to undertake trading or income-generating activity where the activity is ancillary to, or undertaken in furtherance of, its charitable objects and the income is applied exclusively to those objects.

10. Creating a Registrar of Trusts as an office within the Business Registration Service fragments an already established institution

47. **Clause 77 establishes a Registrar of Trusts as an office within the Business Registration Service.** The Bill does not explain the relationship between that office and the Board, the Director-General, the Service's employees, its budget, its information systems, its procurement structures or its statutory accountability. It consequently creates an office within an office without a coherent governance model.

48. The Business Registration Service Act already establishes the Service as a state corporation, provides for a Board and a Director-General, and confers on the Service

25 Trust Administration Bill, 2026 (National Assembly Bill No. 29 of 2026), cls 8(3) and 10(2)(b)-(c).

26 Constitution of Kenya (2010), arts 24, 27 and 40.

responsibility for carrying out registrations, maintaining registers and records, implementing policy, collaborating with other agencies and charging fees for services. The ordinary legislative approach is therefore to add trust-registration functions to the functions of the Service and allow the Service to organise the work internally. [27]

49. The existence of registrars under companies, insolvency and business-name legislation does not establish that every new register requires a separate statutory office. Those offices reflect the historical development of the former Registrar-General's Department and the enactment history of the relevant statutes. Their continued existence should not be treated as a template for further fragmentation of the Service.

50. The Sports Registrar is also not an appropriate analogy. The Sports Act creates a specialised sectoral office with functions extending beyond maintaining a register, including the registration and regulation of sports organisations within a broader ministry-level regulatory framework. [28] Trust registration, by contrast, is an additional business-registration function proposed to be housed in an existing state corporation whose statutory purpose is to maintain registration systems.

51. The proposed arrangement would create practical disputes over appointment, reporting, discipline, staffing, delegation, data custody, procurement, revenue and legal liability. These problems are aggravated by provisions that appear to allow the Registrar to receive, manage and apply fees and other money separately from the Service. A parastatal should not be segmented into semi-autonomous statutory silos unless Parliament has identified a compelling functional necessity and designed corresponding accountability arrangements.

> **Commission recommendation. The statutory powers should be conferred upon the Business Registration Service, not upon a separate Registrar of Trusts.** The Director-General should be authorised to designate a suitably qualified officer or division to administer the register on behalf of the Service. All staffing, expenditure, information systems, fees and accountability should remain within the governance and public-finance framework of the Service.

11. The Bill unnecessarily scales up the cost and complexity of creating and administering a trust

52. The Bill adopts a governance model suited to a large institutional or commercial trust and applies it to small family, charitable and community arrangements. Clause 11 requires a charitable trust and a non-charitable purpose trust to have **at least three natural-person trustees or one corporate trustee.** Other provisions contemplate enforcers, trust agents, beneficial-

27 Business Registration Service Act, No. 15 of 2015, ss 3-5 and 17.

28 Sports Act, No. 25 of 2013, ss 45-47.

ownership filings, annual returns, extensive record-keeping, notifications, professional services and possible licensing costs. [29]

53. **A trust is not used only by wealthy families or financial institutions.** It may be established by one parent for a child, by a testator for a minor or dependant, by a family to preserve one parcel of land, by a congregation holding a modest place of worship, by a community group administering a bursary fund, or by a person providing for a dependant with a disability. Requiring three trustees multiplies identification, consent, meeting, record, replacement and dispute costs. Requiring a corporate trustee may be still more expensive and may make the institution inaccessible to ordinary citizens.

54. Multiple trustees do not necessarily prevent abuse. Three related or complicit trustees can misapply property as readily as one trustee, while a single competent trustee can administer a simple settlement efficiently. The relevant safeguards are fiduciary duties, segregation of property, proper records, disclosure to beneficiaries, court supervision and targeted beneficial-ownership transparency—not an inflexible headcount.

55. **The existing Trustees (Perpetual Succession) Act expressly provides that "trustees" includes a sole trustee.** That approach recognises that the necessary governance structure depends on the purpose, value and complexity of the trust. [30] An enforcer is conceptually necessary for a non-charitable purpose trust that has no beneficiary with standing to enforce the purpose. It should not be imposed on ordinary beneficiary trusts, where beneficiaries and the court already provide the enforcement structure. A trust agent should likewise be optional rather than a disguised mandatory professional intermediary.

56. Excessive governance and filing costs may produce the opposite of the Bill's intended transparency objective. Families and community organisations may avoid formal trusts altogether, use informal nominees or transfer assets through less suitable structures. Regulation should make lawful compliance feasible, not price ordinary persons out of the institution.

> **Commission recommendation.** The general statutory minimum should be one trustee. The trust instrument and specialised legislation may prescribe a larger number where appropriate. An enforcer should be mandatory only for a non-charitable purpose trust that has no beneficiary capable of enforcing it. Appointment of a trust agent should remain optional, and fees, returns and record obligations should be proportionate to the type, value, risk and complexity of the trust.

12. Overall Conclusion and Recommended Disposition

57. **The matters set out above demonstrate that the Bill cannot be made constitutionally and conceptually sound through ordinary textual amendment.** Its registration-based validity

29 Trust Administration Bill, 2026 (National Assembly Bill No. 29 of 2026), especially cls 11, 14, 22, 36, 48, 63-68, 75, 76, 83 and 95.

30 Trustees (Perpetual Succession) Act (Cap. 164), s 2 (definition of "trustees", which includes a sole trustee).

rule, evidentiary exclusion, repeal of the Trustee Act, incorporation model, application clause, rejection powers, enforcement framework, trading prohibition, institutional design and governance costs are interdependent. Correcting one defect without redesigning the others would leave the legislative scheme internally unstable.

58. The Commission accordingly advises the Committee not to recommend the Bill for enactment in its present form. The sponsor should be invited to withdraw it and initiate a fresh policy and drafting process.

59. A replacement legislative programme should distinguish three matters: first, a proportionate registration and beneficial-ownership regime for clearly defined express trusts; secondly, the incorporation of trustees under a perpetual-succession model that preserves the fiduciary structure; and thirdly, the separate modernisation of the Trustee Act as the general substantive law governing trustee powers, duties, court supervision and remedies. Those reforms may ultimately be placed in one integrated statute, but only after a complete provision-by-provision review and a deliberate decision on the architecture.

60. Because the amendments required would alter the Bill's scope, legal effect, institutional design and burdens upon affected persons, a reconstructed Bill should be subjected to fresh public participation under Article 118 of the Constitution rather than enacted through extensive Committee-stage changes to a proposal whose foundational assumptions have not been publicly tested. [31]

DATED at NAIROBI this 6th day of August, 2026.

James Nombi
Ag. SECRETARY/CEO

31 Constitution of Kenya (2010), art 118(1)(b).

ANNEXURE A

CLAUSE-BY-CLAUSE OBSERVATIONS AND PROPOSED AMENDMENTS

Without prejudice to the Commission's primary recommendation, the matrix below identifies the minimum clause-specific amendments that would be required should the Committee nevertheless elect to proceed. The proposed amendments must be read together with the findings in the Advisory Opinion.

PROVISION	OBSERVATION	PROPOSED AMENDMENT	JUSTIFICATION
Title and long title	The title and long title present the Bill as a comprehensive trust-administration code, yet the Bill neither correctly identifies the juridical subject of incorporation nor carries forward the substantive law contained in the Trustee Act. The title also obscures the fact that the Bill is principally a registration and transparency measure.	Rename the Bill as "Trust Registration Bill, 2026" and substitute a long title confined to registration and beneficial-ownership transparency of defined express trusts and incorporation of trustees. Delete any reference to repeal of the Trustee Act.	A Bill must disclose its true scope. Registration, incorporation of trustees and substantive trustee law are distinct legislative projects. The Trustee Act (Cap. 167) should remain the general substantive law until separately reviewed and modernised.
Clause 1 - short title and commencement	Immediate commencement would activate registration, filing, annual-return, beneficial-ownership and penalty obligations before regulations, forms, systems, staffing and public guidance exist.	Provide for commencement by Gazette notice not earlier than twelve months after enactment, with power to appoint different dates for different Parts. Commencement of filing and enforcement duties should follow publication of regulations, operational readiness of the Business Registration Service and a public transition programme.	Staged commencement avoids impossible compliance duties and protects legal certainty and fair administrative action under Article 47 of the Constitution.
Clause 2 - definition of "trust"	The definition is circular, treats a trust as though it were a person created by statute and does not distinguish an express trust from a customary, resulting, constructive, implied, testamentary, statutory or court-imposed trust.	For this Bill, define only the registrable category: "express trust" means a voluntary fiduciary relationship constituted in writing under this Act under which identified property is held by one or more trustees for identified beneficiaries or a lawful purpose. State expressly that a trust is not, merely by reason of its existence or registration, a body corporate or legal person.	The definition must preserve the trust as a fiduciary relationship and prevent the Bill from purporting to regulate trusts arising outside it. The broader substantive meaning of trust should remain governed by the Trustee Act, equity, customary law and specialised legislation.
Clause 2 - "trust deed" and related terms	The Bill uses "trust deed" and "trust instrument" inconsistently and uses several undefined concepts, including "foreign trust", "protector", "trust information", and "reporting institution". The definition of "discretionary trust" is circular.	Define "trust instrument" for purposes of an express trust created under the Act; define "foreign trust", "protector", "trust information", and "reporting institution" by reference to POCAMLA where appropriate; redraft "discretionary trust" to describe a trust in which entitlement depends on the exercise of a trustee discretion; and harmonise terminology throughout.	Clear definitions are necessary because the Bill creates filing duties, offences and administrative powers. Undefined or circular terms undermine legal certainty.
Clause 2 - "beneficial owner"	The Companies Act definition is based on shareholding, voting rights and board control and is not suitable for a legal arrangement in which control and benefit arise from trust roles and reserved powers.	Insert a trust-specific definition covering every settlor; trustee; protector or enforcer; beneficiary or, where beneficiaries are not yet ascertained, the class in whose main interest the trust is established or operates; and any other natural person exercising ultimate effective control. Require adequate, accurate and current identifying particulars and reasonable verification.	This aligns the transparency regime with the legal structure of trusts and FATF Recommendation 25 while avoiding the false application of company-control thresholds.
Clause 2 - "corporate trustee" and licensing	A corporate trustee is defined as licensed under the Act, but the Bill contains no licensing framework and clause 36(3) inconsistently refers to licensing under another written law. Clause 95 leaves the substance of licensing to regulations.	The preferable course is to delete the proposed licensing scheme and recognise corporate trustees lawfully authorised under relevant written law. If a new licence is retained, the Act itself must state the regulated activity, exemptions, eligibility, governance, capital, fit-and-proper standards, application, refusal, conditions, suspension, revocation, inspection, sanctions and appeal. Make the qualification conditions in clause 36(3) conjunctive where intended.	Essential licensing policy cannot be created wholly through delegated legislation: Constitution, Article 94(5) and (6).
Clause 2 - drafting corrections	The definitions contain incorrect statutory terminology and omit concepts used later in the Bill. "Designated non-financial business or professionals" does not reproduce the expression used in POCAMLA.	Use "designated non-financial businesses and professions"; "Certified Public Accountant"; and "authorized" consistently. Rationalise "settlor", "founder" and "donor"; define "Court" and "competent authority" narrowly by lawful function and written request; and correct all internal cross-references.	Terminological accuracy is especially important where definitions determine disclosure obligations, licensing and criminal liability.

PROVISION	OBSERVATION	PROPOSED AMENDMENT	JUSTIFICATION
Clause 3 - application	Clause 3 purports to apply the Act to all trusts and all trustees appointed under any written law. Kenyan law recognises no single homogeneous statutory category of trusts. The clause would sweep in customary trusts under land law; resulting and constructive trusts arising by operation of equity; testamentary trusts under the Law of Succession Act; statutory and court-created trusts; retirement-benefit trusts; collective investment schemes and real estate investment trusts; insurance and insolvency arrangements; community-land trusts; and other sectorally regulated fiduciary arrangements.	Delete clause 3 and substitute: "This Act applies only to an express trust voluntarily constituted and registered under this Act and to trustees incorporated under this Act. It does not apply to a customary, resulting, constructive, implied, testamentary, statutory or court-created trust, or to a trust, scheme, fund or fiduciary arrangement established or regulated under another written law." Add a non-derogation clause preserving the Land Registration Act, Community Land Act, Law of Succession Act, Retirement Benefits Act, Capital Markets Act, Insurance Act, Insolvency Act, Public Trustee Act, Public Benefits Organizations Act and other specialised laws.	The Bill cannot impose registration, trustee-qualification, annual-return, beneficial-ownership, disqualification and dissolution duties on arrangements it did not create. Section 28(b) of the Land Registration Act and Kiebia v M'Lintari [2018] KESC 22 confirm that customary trusts may bind registered land without registry entry.
New clause after clause 3 - preservation of other trusts and laws	Even a narrowed application clause requires an express saving so that registration under this Act is not treated as the exclusive source of trust obligations and no inference is drawn against trusts recognised by customary law, equity, succession law, court order or sectoral legislation.	Insert: "Nothing in this Act limits, invalidates or otherwise affects a trust or fiduciary obligation arising under customary law, equity, a will, statute, court order or another written law, or the jurisdiction of a court to recognise, enforce, vary or supervise such trust or obligation."	An express saving is required to prevent clauses 4-6, 22-33 and 97 from being interpreted as an exhaustive code. It protects accrued rights and the constitutional recognition of customary interests and access to justice.
Clause 4 - creation of trust	Clause 4 purports to state generally how a trust is created, although the Bill should not codify trusts arising outside the Act. It also assumes a transfer to another trustee and therefore omits a self-declared express trust.	Confine clause 4 to an express trust created under this Act. Permit creation by transfer of identified property to a trustee or by a written declaration by an owner that the owner holds identified property as trustee. Require certainty of intention, property and beneficiaries or permitted purpose. State that testamentary, customary, resulting, constructive, statutory and court-created trusts are outside the clause and remain governed by the applicable law.	A registration Bill should define only the voluntary express trusts within its scope and should not purport to exhaust the sources by which Kenyan law recognises fiduciary obligations.
Clause 5(1) - registration as a condition of validity	Clause 5(1) makes registration or incorporation constitutive of validity and enforceability. It would permit a legal owner or trustee to defeat a beneficiary by relying on the trustee's own failure to register and would reverse the statutory and judicial recognition of customary trusts and other trusts arising without a registry act.	Delete clause 5(1). Insert to the effect that: "Registration under this Act is declaratory and administrative only. The existence, validity or enforceability of a trust or beneficial interest does not depend on registration, and failure to register does not invalidate the trust, extinguish an interest or provide a defence to a trustee or legal owner."	Section 28(b) of the Land Registration Act and Kiebia v M'Lintari [2018] KESC 22 recognise customary trusts as overriding interests. Administrative non-compliance cannot retrospectively extinguish property rights under Article 40 or discriminate against customary-right holders.
Clause 5(2) - exclusion of evidence of an unregistered trust	Clause 5(2) purports to prevent receipt of a document evidencing an unregistered trust in a transaction affecting property, subject to undefined Court consent. It confuses private transactions with admissibility in judicial proceedings, intrudes upon the Evidence Act and may allow a defaulting trustee to suppress the instrument that proves the trustee's obligations.	Delete clause 5(2) in its entirety. Non-registration may attract a compliance notice or proportionate administrative penalty where the Act validly applies, but it must not bar a court, tribunal, registrar or party from receiving relevant evidence or determining substantive rights. Any evidentiary reform should be undertaken expressly through the Evidence Act.	The provision impairs access to justice and fair hearing under Articles 48 and 50(1), conflicts with Article 159(2)(d), and imposes cost and delay on innocent beneficiaries, including children and dependants.
Clause 6 - invalidation of a trust	Clause 6(1)(f) makes non-registration a ground of invalidity. This would allow a trustee or legal owner to defeat beneficial interests through the trustee's own administrative default and would reverse the recognition of unregistered customary and equitable trusts. The broad creditor-protection language in subsections (2) and (3) also requires coordination with insolvency, matrimonial-property, tax, anti-corruption and asset-recovery law.	Delete clause 6(1)(f). Limit judicial invalidation to an express trust created under the Act that lacks a lawful purpose, the required certainties or legal capacity, after notice to affected persons. Preserve severance where lawful. State expressly that the clause does not limit avoidance of transactions at an undervalue, fraudulent dispositions, tracing, recovery or forfeiture under the Insolvency Act, POCAMLA, anti-corruption legislation, tax law or other written law.	Invalidity must arise from substantive legal defects and a court determination, not registration status. Creditor and public-law remedies should remain under the statutes designed for them.
Clause 7 - revocable and irrevocable trusts	Clause 7 treats irrevocability as the default, but clause 13(1)(a) appears to confer a general statutory power on the settlor to revoke, vary or amend. The two provisions are inconsistent.	Open clause 13 with "Where the trust instrument expressly so provides". Require any reserved power of revocation to be exercised in writing and prospectively, with notice to trustees and filing where the trust is registered. Preserve accrued liabilities, vested rights, creditor claims and tax consequences. State that reservation of a power does not of itself invalidate the trust.	Revocation should depend on the instrument, not an implied statutory power, and should not prejudice accrued or third-party rights.

PROVISION	OBSERVATION	PROPOSED AMENDMENT	JUSTIFICATION
Clause 8 - charitable trusts	The criteria are drafted cumulatively and would make discretionary form and a power of deferral prerequisites for charitable status. Clause 8(3) labels every charitable trust a "non-trading entity", potentially prohibiting schools, hospitals, farms, rental activity, publishing and social enterprise used to finance charitable objects.	Define charitable purpose by recognised heads of charity and public benefit. Delete the requirement that the trust be discretionary and delete the categorical non-trading rule. Provide that a charitable trust may conduct or hold income-generating activity where ancillary to or undertaken to advance its objects and where income and property are applied exclusively to those objects. Coordinate with the Public Benefits Organizations Act and tax legislation.	Charitable status depends on purpose and public benefit, not organisational form or absence of income. An undefined trading ban lacks a demonstrated policy basis and may disproportionately interfere with property and economic activity: Constitution, Articles 24, 27 and 40.
Clause 9 - non-charitable purpose trusts	A non-charitable purpose trust may have no beneficiary, yet the Bill makes appointment of an enforcer optional and sometimes assumes that a beneficiary can appoint one. The trust could therefore exist without any person having standing to compel performance.	Require the appointment and continuous existence of an independent enforcer for every non-charitable purpose trust. Make the enforcer a registration condition; empower the Court, on application by an interested person or the Service, to fill a vacancy; prescribe lawful, specific and possible purposes; and provide for duration, termination and application of surplus property.	Where there is no beneficiary, the enforcer is the essential accountability mechanism. The office cannot be optional.
Clause 10 - family trusts	The clause describes preservation or creation of intergenerational wealth as a purpose but simultaneously requires a family trust to be a non-trading entity. Family trusts commonly hold family companies, farms, rental property, investments and operating businesses. The Bill provides no policy basis for the prohibition and does not address the Perpetuities and Accumulations Act.	Delete "non-trading entity". Permit a family trust to own, invest in or operate lawful businesses directly or through entities, subject to the trust instrument, tax law and sectoral regulation. Clarify that registration confers no tax exemption. Coordinate duration and accumulation with the Perpetuities and Accumulations Act and preserve the Income Tax Act and Stamp Duty Act treatment through consequential amendments.	The ban is conceptually inconsistent with the stated wealth-preservation purpose, creates uncertainty for existing assets and may unjustifiably discriminate between trusts and other lawful property-holding vehicles.
Clause 11 - minimum number of trustees	The mandatory structure of at least three natural-person trustees or one corporate trustee increases establishment and compliance costs without demonstrating that headcount prevents abuse. It may make simple family, community, religious, bursary and disability-support trusts dependent on professional services.	Provide that a trust may have one or more trustees, subject to the trust instrument and any specialised written law. Require a second or independent trustee only for a defined high-risk category where justified. Require an enforcer only for a non-charitable purpose trust without an enforceable beneficiary. Keep appointment of a trust agent optional.	The Trustees (Perpetual Succession) Act recognises a sole trustee. Proportional regulation should focus on accountability and continuity rather than imposing a costly governance structure on every trust.
Clause 12 - settlor	The expression "sound mind" is outdated, and the clause permits the settlor to be trustee and beneficiary without addressing the point at which complete identity of legal and beneficial interests terminates the trust by merger.	Use "has legal capacity under the applicable law" and preserve testamentary-capacity rules outside this Act. State that a settlor may be a trustee or beneficiary, but an express trust does not subsist where the same person is the sole trustee and absolutely entitled sole beneficiary. Preserve supported decision-making and non-discrimination.	Modern capacity language is constitutionally preferable, and a trust requires an enforceable fiduciary obligation distinct from complete beneficial ownership.
Clause 13 - reserved powers of settlor	The listed powers are so broad that a settlor could control investment, distribution, appointment and trustee discretion while the nominal trustees retain legal responsibility. The clause is also inconsistent with clause 7 unless the powers are expressly reserved.	Make every reserved power effective only if expressly stated in the instrument. Require exercise for a lawful purpose, in good faith and consistently with the trust. Prohibit a direction requiring breach of duty. Require disclosure of reserved powers for beneficial-ownership purposes and provide that a person exercising ultimate effective control may incur fiduciary or accessory liability as appropriate.	Reserved powers should not convert trustees into nominees or permit control to be concealed from beneficiaries, regulators and reporting institutions.
Clauses 14-18 - enforcer	The provisions do not make an enforcer mandatory for a beneficiary-less purpose trust; prohibit any direct or indirect profit and therefore appear to bar professional remuneration; give an immunity broader than that of trustees; and do not fully state fiduciary, conflict, reporting and replacement duties.	Require an enforcer for every non-charitable purpose trust. Permit reasonable remuneration where authorised by the instrument, Court or appointing authority. Impose duties of good faith, care, independence, conflict disclosure, record keeping and enforcement. Exclude fraud, dishonesty, willful misconduct and gross negligence from immunity. Provide a vacancy and replacement mechanism and a Court power to compel performance or remove an enforcer.	The enforcer is an accountability office and must be workable, independent and no less answerable for gross negligence than a trustee.
Clauses 19-21 - beneficiaries, classes and disclaimer	The Bill does not adequately address unascertained, unborn or minor beneficiaries, notice and representation, or the effect of disclaimer on other interests. A disclaimer should not be used to evade creditors, tax or recovery law.	Clarify identification by name or objectively ascertainable class; permit representation and Court approval for minors, persons lacking capacity, unborn and unascertained persons; require a written, informed and irrevocable disclaimer; state the destination of the disclaimed interest; and preserve creditor, insolvency, matrimonial-property, tax and POCAMLA remedies.	Beneficial interests may be contingent and interdependent. Disclaimer requires safeguards for persons unable to consent and for public and third-party claims.
Clause 22 - application for registration	The application requirements assume an enforcer even where optional, require broad personal and beneficial-ownership information without differentiating public and restricted data, and contain a textual error in clause 22(2)(f).	Require the trust instrument, prescribed particulars of trustees and the registered office, trust-specific beneficial-ownership information, and details of an enforcer only where one is required or appointed. Mark sensitive particulars for restricted access under clause 78. Correct "cour" to "court". Where a trust agent files, require written authority and make the trustees responsible for accuracy.	The application should collect information necessary for lawful registration and transparency without treating all personal data as public or imposing impossible particulars.

PROVISION	OBSERVATION	PROPOSED AMENDMENT	JUSTIFICATION
Clause 23 - contents of trust instrument	The clause omits several matters necessary for administration and assumes that security may be required of a trustee without stating who determines it. It also requires beneficiaries to be named even where a lawful class is intended.	Require the instrument to state the settlor, trustees, property or method of identifying it, beneficiaries or class, purpose, duration, appointment and removal machinery, decision-making, reserved powers, enforcer where required, amendment and termination, destination of surplus and governing law. Permit objectively ascertainable classes. Delete security for trustees.	Registration should establish a minimum administrable instrument without prescribing one rigid private-law form.
Clauses 24 and 27 - certificate and effect of registration	The Bill correctly states that registration does not confer legal personality, but this is undermined by clauses 5 and 6 and by the later incorporation model. A certificate should not be conclusive evidence of substantive validity or ownership.	State that the certificate is conclusive only of entry in the register on the stated date. It does not validate an unlawful or sham arrangement, determine title or beneficial entitlement, or affect customary or equitable interests. Delete any provision making registration constitutive of validity.	The registry records administrative status; contested private-law rights remain for the courts.
Clauses 25 and 31 - refusal to register or incorporate	The Registrar may refuse on open-textured grounds including public peace, welfare, good order, national security, public interest and adverse findings from an undefined vetting process. The Bill does not identify who vets, the criteria, material considered, disclosure, hearing, reasons or appeal. This is excessive discretion over private family, charitable and commercial arrangements.	Delete security vetting and the general public-interest, welfare and national-security grounds. Limit refusal to objective statutory defects: unlawful purpose established on reasonable grounds; materially false or fraudulent information; prohibited or misleading name; or failure, after notice, to satisfy an express requirement. Require a notice of intended refusal, disclosure of the substance of the concern, opportunity to respond, written reasons and appeal to the High Court within thirty days.	Any limitation must satisfy Article 24 and administrative action must comply with Article 47 and the Fair Administrative Action Act. Dry Associates v CMA [2012] eKLR, Murdock Owuor v Registrar of Trade Unions [2018] KEELRC 2050 and Ogenya v Registrar of Trade Unions [2026] KEELRC 1091 illustrate that registration discretion must be bounded by objective criteria and procedural fairness.
Clause 26 - revocation of registration certificate	Revocation is permitted pursuant to a court order without stating the grounds, applicant, notice procedure, treatment of property, continuity of trusteeship or effect on third parties.	Prescribe the grounds and persons entitled to apply; require service on trustees, enforcer and affected persons; preserve the trust and property pending directions; and require the Court to address administration, replacement, vesting, creditors, beneficiaries and bona fide third-party rights. Clarify that revocation of registration does not of itself extinguish the trust.	Administrative status and substantive fiduciary obligations must not be collapsed into one consequence.
Part IV and clauses 28-33 - incorporation model	Part IV incorporates the trust itself. That destroys the orthodox division between legal title held by trustees and beneficial interests held for beneficiaries or a purpose, and leaves unanswered who owns the property, to whom duties are owed, whether the entity can become insolvent and whether equitable remedies survive.	Delete Part IV and substitute a Part on incorporation of trustees. The trustees for the time being should constitute a body corporate named "The Incorporated Trustees of [name]"; property should vest in that body only in its capacity as trustee; changes in individual trustees should not affect title; and incorporation should not alter beneficial interests, fiduciary duties, equitable remedies, taxation or the trust's separate governing law.	The Trustees (Perpetual Succession) Act, section 3(3), correctly incorporates trustees. If Parliament intends a foundation-like entity that owns assets in its own right, it requires a distinct foundations statute, not relabelling as a trust.
Clause 28 - name reservation	The clause is grammatically defective, contains no duration for reservation and provides no review of refusal. The naming convention reflects incorporation of the trust rather than trustees.	Recast as reservation of a name for incorporated trustees; prescribe a sixty-day period renewable once; prohibit only objectively misleading, offensive, identical or unlawfully reserved names; require reasons for refusal and administrative review or appeal. Correct numbering and references to the Registrar's index.	Name control should be predictable and should follow the corrected incorporation model.
Clauses 29 and 30 - incorporation requirements and certificate	The clauses duplicate registration filings, require disclosure of sensitive property and beneficial-ownership information without access controls, contain drafting errors and issue a certificate to an "Incorporated Trust".	Permit incorporation only after registration. Require a resolution or instrument authorising incorporation, current trustee particulars and confirmation of title. Keep asset and beneficial-ownership details in the restricted registry. Issue the certificate to "The Incorporated Trustees of [name]" and state the unique number and date. Correct clauses 29(1)(j), 29(2) and 30(1)(a).	Incorporation should build on registration, avoid duplicate filings and preserve the trust/trustee distinction.
Clause 32 - effect of incorporation	Clause 32 makes the trust a body corporate owning property in its own name, which is the central conceptual defect of Part IV.	Substitute a provision that the trustees for the time being become a body corporate with perpetual succession, power to sue and be sued and capacity to hold and deal with property solely as trustees. State expressly that the corporate body has no beneficial interest and remains subject to the trust instrument, Trustee Act, equity and Court supervision.	Corporate continuity should attach to the office of trustee, not transform the fiduciary relationship into an asset-owning corporation.
Clause 33 - conversion of registered trust	The clause says that a registered trust ceases to exist after incorporation and is silent on vesting, contracts, liabilities, charges and proceedings.	Provide that the trust relationship continues unchanged and only the trustees acquire corporate continuity. Vest legal title in the incorporated trustees without further assurance, subject to land and security-registration requirements, and preserve every beneficial interest, contract, liability, charge, claim and pending proceeding. The certificate should be sufficient evidence for consequential registry entries.	Incorporation changes succession to legal title; it must not extinguish the trust or interrupt rights and obligations.

PROVISION	OBSERVATION	PROPOSED AMENDMENT	JUSTIFICATION
Clause 34 - trust property	The requirement to manage property "without any deviation" from the instrument is too absolute and may prevent exercise of powers under the Trustee Act, compliance with another written law or Court directions.	Require administration in accordance with the instrument, the Trustee Act, this Act, other applicable law and Court orders. Where literal compliance becomes impossible, unlawful or materially prejudicial, permit an application for directions or variation under the Trustee Act.	Fidelity to the instrument must coexist with statutory powers and the Court's supervisory jurisdiction.
Clause 35 - property acquired illegally	The clause purports to exclude unlawful property from the trust estate without requiring the adjudicative and forfeiture procedures established by POCAMLA, anti-corruption and other recovery statutes.	Replace with a non-derogation provision preserving investigation, preservation, recovery and forfeiture under the applicable written law. No deprivation or forfeiture should occur except through the competent authority and lawful process, with the protections afforded to innocent beneficiaries and third parties.	Property rights and forfeiture require due process under the specialised recovery framework; the trust registrar should not determine criminal provenance or title.
Clause 36 - trustee qualification and disqualification	The clause uses outdated disability language and creates a potentially lifelong bar for any offence attracting more than six months' imprisonment, regardless of relevance, age or whether imprisonment was imposed. Corporate-trustee conditions are internally inconsistent.	Use "has legal capacity". Limit conviction-based disqualification to a stated period, such as ten years, and to fraud, dishonesty, corruption, money laundering, terrorist financing, breach of trust, serious financial misconduct or an offence under this Act, or where a custodial sentence was imposed. Preserve Court discretion and rehabilitation. Require notice, reasons and appeal for administrative disqualification. Correct the corporate-trustee criteria.	Disqualification from fiduciary office must be relevant, proportionate and procedurally fair under Articles 24 and 47.
Clauses 37 and 38 - appointment and additional trustees	The appointment hierarchy is incomplete, clause 38(2)(b) appears to compel beneficiaries or the enforcer to go to court, vesting is not fully addressed, and the provision concerning an incapacitated sole trustee who is also sole beneficiary is opaque.	State the hierarchy: instrument; continuing trustees; authorised appointor or enforcer; and Court as final safeguard. Replace "shall" with "may" in clause 38(2)(b). Require written acceptance and filing by continuing trustees or trust agent. Provide automatic vesting in new and continuing trustees or incorporated trustees, subject to necessary registry entries. Redraft the sole-trustee/sole-beneficiary case to require Court leave.	Clear machinery prevents paralysis and gaps in title while avoiding unnecessary compulsory litigation.
Clause 39 - resignation	A sole or last trustee may resign by notice and leave the trust without an administrator. Clause 39(4)(e) terminates office upon mere commencement of insolvency proceedings, even if vexatious, and differs from the undischarged-bankrupt criterion in clause 36.	Provide that resignation of a sole or last trustee takes effect only when a successor accepts office or the Court orders otherwise. Require delivery of property, records and accounts, notice to the enforcer and Service, and continuing liability for prior breaches. Replace commencement of proceedings with the making of a bankruptcy or insolvency order or appointment of a liquidator or administrator.	A trustee should not abandon the trust, and office should not terminate merely because an unproved petition has been filed.
Clauses 40-42 - removal, death, dissolution and change	Removal grounds and safeguards are incomplete; clause 41 cross-refers to the wrong appointment provision; and surviving trustees may preserve the trust for only thirty days, although court and registry processes commonly take longer.	Add removal for incapacity, serious or persistent breach, conflict, refusal, unfitness and circumstances making removal expedient for proper administration, with notice and urgent interim powers. Correct clause 41 to refer to clauses 37 and 38. Delete the thirty-day cap and permit continuing trustees to exercise necessary powers pending replacement, subject to a duty to procure replacement without unreasonable delay. Provide automatic vesting and filing.	The law must protect continuity without paralysing a trust when replacement takes longer than thirty days.
Clause 43 - standard of care	The general standard is useful but does not integrate the investment, delegation and review duties presently supplied by the Trustee Act, and the professional standard should be stated more clearly.	Retain the objective standard and higher standard for a professional or person holding out special skill. Cross-reference the Trustee Act. Require regard to purpose, distribution needs, liquidity, risk, diversification, costs and tax consequences; periodic review; appropriate advice unless reasonably unnecessary; and records of material decisions.	The Bill should supplement, not replace, the substantive fiduciary standards in the Trustee Act.
Clause 44 - duty to act within powers	The clause requires trustees at all times to act jointly, effectively imposing unanimity even where the instrument permits majority decisions. It also appears to require a Court application for every ambiguity or omission.	Provide that trustees act as prescribed by the instrument; in default, unanimously, except that trustees of a charitable or other multi-member trust may act by majority if the instrument so provides. Permit Court directions for material uncertainty, conflict or deadlock, but allow reasoned administration of routine matters after appropriate advice. Correct the duplicated "an" in clause 44(3).	A mandatory unanimity rule is unworkable for larger trustee boards and unnecessarily increases administration and litigation costs.
Clauses 45 and 46 - conflicts, profit and preservation	The conflict rules are incomplete. Clause 46 makes trustees insurers of property value and imposes severe collective criminal liability without requiring knowledge, recklessness or participation by the trustee charged.	Consolidate duties of disclosure, abstention, no unauthorised profit and no self-dealing, subject to instrument, fully informed consent where legally possible or Court approval. Replace the absolute preservation duty with a duty to take reasonable steps under clause 43 to preserve and, where appropriate, enhance value. Reserve criminal liability for a trustee who knowingly or recklessly authorises or participates in fraudulent disposal, misappropriation or concealment; confine liability to trustees in default.	Market loss or an imprudent decision may create civil fiduciary liability, but criminal punishment requires a defined culpable act and mental element: Constitution, Articles 24 and 50.

PROVISION	OBSERVATION	PROPOSED AMENDMENT	JUSTIFICATION
Clauses 47-49 - segregation, records and access	The provisions overlap with clauses 63 and 64 and criminalise non-disclosure without establishing a non-excludable minimum entitlement, privilege, confidentiality or treatment of letters of wishes and deliberative material.	Consolidate record duties. Require segregation and clear designation of trust assets. Give a beneficiary an irreducible right to notice of the trust, terms relevant to that beneficiary and trust accounts. Permit withholding of privileged, third-party confidential, deliberative or settlor-confidential material subject to Court review. Replace criminal sanctions for ordinary beneficiary requests with directions, administrative penalties and Court orders; reserve offences for deliberate concealment, destruction or obstruction of competent authorities.	Accountability must be balanced with legal professional privilege, privacy and the distinctive confidentiality of trustee decision-making.
New Part - investment powers and standards	The Bill repeals the Trustee Act but does not re-enact its statutory investment machinery. Trustees under instruments silent on investment would face uncertainty as to power, diversification, advice, nominees, custodians and land.	Do not insert an incomplete substitute in this Bill and do not repeal the Trustee Act. Retain Cap. 167 as the substantive law and initiate a separate modernisation Bill covering a general investment power, suitability and diversification, advice, review, nominees, custodians, delegation, land, ethical or purpose-related investment and purchaser protection. Cross-reference that Act throughout this Bill.	The Trustee Act is the general substantive law applicable across trusts created under other statutes and at equity. Its machinery cannot intelligibly be reconstructed through isolated Committee-stage amendments.
Clause 50 - maintenance, accumulation and advancement	The clause deals only with maintenance from income during minority. Repeal of the Trustee Act would remove the general power of advancement of capital and leaves adult beneficiaries lacking capacity inadequately addressed.	Retain the Trustee Act and cross-reference its maintenance and advancement powers. If a supplementary provision is retained here, permit application of income and advancement of capital, up to the whole presumptive share unless restricted by the instrument, for a minor or adult lacking capacity, with proportionate protection of other interests and appropriate payment arrangements.	Maintenance and advancement are substantive default powers and should not disappear through repeal of Cap. 167.
Clauses 51 and 52 - management and delegation	Delegation is permitted only where the Act or instrument allows it, but there is no complete statutory default, no prohibited-function list and no standard for selection, terms, monitoring or liability. Clause 58 later conflicts with this regime.	Retain and modernise the delegation regime in the Trustee Act. Cross-reference it here. Require written terms, reasonable selection, scope and duration, monitoring and review; prohibit delegation of dispositive, amendment, termination and trustee-appointment powers unless expressly authorised; regulate nominees and custodians; and state when a trustee is or is not liable for a delegate's default.	Delegation is necessary in modern administration but cannot amount to abdication. A single substantive code in the Trustee Act avoids conflicting provisions.
Clause 53 - appropriation	A trustee may appropriate property without beneficiary consent using a valuation the trustee considers fit, creating a risk of unequal or self-serving allocation.	Subject appropriation to impartiality and the instrument; require an independent professional valuation for land, businesses and unquoted securities; give notice to materially affected beneficiaries; provide equality adjustments; and require Court approval where a beneficiary is a minor, lacks capacity or a material conflict exists.	Appropriation reallocates value among beneficiaries and therefore requires objective valuation and conflict safeguards.
Clauses 54 and 55 - sale, lease and borrowing	Clause 54(4) may be read as an absolute withdrawal of the sale power for charitable property, even where the instrument authorises a disposal. Purchaser protection and trustee liability are not clearly separated. Borrowing lacks prudence safeguards.	Permit a charitable trustee to sell, lease or charge property where authorised by the instrument or sanctioned by the Court, with proceeds applied to the charitable purposes. Protect a purchaser for value in good faith without actual notice of breach, while preserving beneficiary remedies against trustees. Require necessity or benefit, reasonable terms, valuation where appropriate, conflict controls and proper security documentation for borrowing.	Charities must be able to dispose of obsolete or unproductive assets, but the transaction should remain fiduciary and subject to Court control where the instrument is silent.
Clauses 56-59 - distribution, litigation, power of attorney and insurance	Clause 58 overlaps with general delegation, restricts the donee to a natural person despite use of professional corporate managers, appears to permit only one renewal and contains a garbled subsection (7).	Coordinate these powers with the Trustee Act. Require distributions to respect liabilities and the instrument; permit litigation and compromise under the duty of care. Rewrite clause 58 as a limited, written delegation during absence or incapacity, allowing an appropriately licensed corporate service provider where justified, renewable for further periods of three years, with notice, monitoring and revocation. Replace subsection (7) with protection for a person dealing with the donee in good faith. Retain prudent insurance power.	One coherent delegation regime is necessary; drafting defects should not invalidate good-faith transactions or create an uncontrolled substitute trusteeship.
Clause 60 - remuneration and expenses	Consent of every beneficiary is impracticable for discretionary classes, minors and unborn or unascertained beneficiaries. Properly incurred expenses should not depend on consent.	Allow remuneration where authorised by the instrument, Trustee Act or Court. Permit reasonable professional remuneration where the instrument is silent, subject to disclosure and prescribed principles. Permit reimbursement of properly and reasonably incurred expenses as of right. Require Court or independent approval only for exceptional, conflicted or disputed charges.	A workable rule supports competent administration without permitting unilateral or unreasonable extraction from the fund.

PROVISION	OBSERVATION	PROPOSED AMENDMENT	JUSTIFICATION
Clauses 61 and 62 - liability, indemnity and beneficiary release	The Bill does not preserve the full equitable remedies, contribution between trustees or the Court's power under section 62 of the Trustee Act to relieve an honest and reasonable trustee. A release by one beneficiary may be read too broadly.	Retain the Trustee Act and cross-reference its remedial and relief provisions. Preserve restoration, equitable compensation, account of profits, tracing, injunction, removal and contribution. Provide that an indemnity cannot exclude fraud, dishonesty, wilful misconduct or gross negligence. A release should bind only an adult beneficiary with full capacity and informed consent, and only to the extent of that beneficiary's interest, without prejudice to others, creditors or public law.	Repeal would remove a central judicial safety valve and narrow the Court's remedial jurisdiction. Trust liability cannot be reduced to loss or depreciation alone.
Clauses 63 and 64 - statutory and accounting records	Clause 63(1)(a) requires every trust to keep a certificate of incorporation, which an unincorporated registered trust cannot possess and would therefore automatically breach. The provisions duplicate clause 48 and use broad criminal sanctions for record defaults.	Substitute "certificate of registration or incorporation, as the case may be". Consolidate records in one provision; prescribe core categories in the Act; retain records for at least seven years after termination or cessation, subject to longer tax and AML periods; require proportionate accounts and financial statements; and use compliance directions and administrative penalties before criminal sanctions, except for deliberate falsification, concealment or destruction.	The Act should not create an impossible offence and should distinguish ordinary compliance failures from dishonest record manipulation.
Clauses 65-68 - beneficial ownership register and changes	The Bill leaves the register's content to regulations, imposes no direct duty on beneficial owners to provide or update information, ambiguously excludes some legacy registered trusts and sets nominal penalties.	State minimum particulars in the Act: full name, identity or passport number, personal identification number where applicable, nationality, date of birth, service address, role, nature and date of interest or control, and cessation date. Require information to be adequate, accurate, current and reasonably verified. Empower trustees to issue notices and require beneficial owners to respond. Apply filing to every registrable express trust, whether incorporated or not, with phased treatment of legacy trusts. Protect residential addresses and identity numbers from public access. Use proportionate, dissuasive and appealable penalties, including continuing default penalties within statutory maxima.	A register is reliable only if the persons holding the information must supply and update it. FATF Recommendation 25 requires adequate, accurate and up-to-date information and proportionate, dissuasive sanctions.
Clause 69 - breach and disqualification	The Registrar may issue directions and disqualify trustees without a complete prior-hearing procedure, proportionality criteria, continuity arrangements or a guaranteed direct appeal. Clause 79 creates a second overlapping disqualification procedure.	Consolidate clauses 69 and 79 into one procedure. Require notice of the alleged breach, disclosure of material, reasonable opportunity to respond and remedy, written reasons and proportionate sanctions. Limit disqualification to serious, deliberate or persistent breach; preserve interim protective measures only where necessary; provide appeal to the High Court; and ensure replacement or Court directions before disqualification leaves a trust without a trustee.	Disqualification affects office, reputation, property administration and beneficiaries and must comply with Article 47 and the Fair Administrative Action Act.
Clauses 70 and 71 - powers of Court	The Court is given mainly vesting and conveyance powers, while the Trustee Act's broader supervisory, administrative, remedial and relief jurisdiction is proposed for repeal.	Delete the repeal of the Trustee Act and provide that the Court retains all powers under that Act, equity and other written law. If clarification is needed, cross-reference appointment and removal, directions, accounts and inquiries, vesting, protection of property, approval of compromises and transactions, variation, representation of minors and unascertained persons, remedies for breach and relief of honest and reasonable trustees. Replace "infant" with "minor" and include persons lacking capacity.	Court supervision is foundational to trust law and cannot be reduced to two narrow provisions.
Clauses 72-75 - change of name, directions and annual returns	The naming and direction powers are broad, the annual return content is left wholly to regulations and the annual-return penalty of five hundred shillings is both procedurally crude and non-dissuasive.	Use objective naming grounds, notice, reasons and appeal. State the core return in the Act: current trustees, registered office, enforcer status where applicable, confirmation of beneficial-ownership accuracy and material changes. Set a filing period and extension for good cause. Apply a compliance notice followed by a proportionate administrative penalty and continuing default penalty, with review and appeal. Correct the marginal and drafting errors.	Core continuing duties should be knowable from primary legislation and sanctions should be fair yet effective.
Clause 76 - trust agents	The clause limits trust agents to three professions, uses the wrong statutory designation for accountants and does not integrate trust and company service providers into the AML/CFT reporting framework. Disclosure to a "competent authority" is insufficiently bounded.	Use "Certified Public Accountant". Permit qualified persons or entities under objective competence and integrity criteria rather than a closed professional list. State conflicts, confidentiality, record retention and authority to file. Require corporate trustees and trust agents to comply with POCAMLA where they are reporting institutions or designated non-financial businesses and professions, and require trustees to disclose their trustee status when entering a business relationship. Permit disclosure only on a lawful, written and purpose-specific request.	The role should be professionally open but accountable and should complete, rather than duplicate, the AML/CFT information chain.

PROVISION	OBSERVATION	PROPOSED AMENDMENT	JUSTIFICATION
Clause 77 - Registrar within Business Registration Service	The Bill creates a Registrar of Trusts as an office within the Business Registration Service, producing an office within an existing state corporation without explaining accountability to the Board and Director-General, staffing, budget, procurement, systems or liability. Historical registrars under companies and insolvency legislation do not justify replicating institutional fragmentation.	Delete the separate statutory office. Confer the registration and registry functions on the Business Registration Service. Authorise the Director-General to designate an appropriately qualified officer for day-to-day administration and to delegate functions in writing under the Business Registration Service Act. Amend that Act, if necessary, to add the new function.	The Service already has corporate governance, staffing, finance and delegation machinery. Functions should be assigned to the statutory entity, which may delineate them internally, rather than segmenting a parastatal into another quasi-office.
Clause 78 - register and disclosure	The clause permits wide disclosure of highly sensitive information about settlors, beneficiaries, minors, family wealth, addresses and control arrangements, without clearly separating public, restricted and competent-authority access.	Create a public part containing only name, status, registered office for service, incorporation status and current trustees where justified. Place beneficial-ownership, identity, residential address, asset and instrument information in a restricted part. Permit access to competent authorities only for lawful functions, on recorded request and subject to audit logs. Provide purpose limitation, role-based access, correction, retention, security and protection of minors and vulnerable persons. Preserve Court-ordered disclosure and legal professional privilege.	Mandatory data collection must satisfy Article 31 and the Data Protection Act through specific safeguards, not merely a general cross-reference.
Clause 79 - Registrar directions and trustee disqualification	Clause 79 duplicates clause 69, omits an equivalent appeal and uses unclear language about trustees being "gazetted for disqualification".	Delete clause 79 and consolidate its legitimate information-compliance function into clause 69. Provide notice, hearing, reasons, remedy period, proportionality and High Court appeal. Recast Gazette publication as notice of a final disqualification only after expiry or determination of appeal, and publish no protected personal information.	Parallel enforcement procedures create inconsistency and increase the risk of unlawful administrative action.
Clauses 80 and 90 - electronic lodgement and records	The Bill duplicates electronic-filing provisions and does not address system failure, time of filing, alternative access, correction, cybersecurity or disaster recovery.	Consolidate into one technology-neutral provision under the Business Registration Service. Recognise secure electronic signatures and records; permit assisted and non-electronic filing where necessary; provide rules for time of filing, system outage, correction, evidence, accessibility, cybersecurity, backup and disaster recovery; and keep technical specifications in regulations.	Digital administration should be reliable and inclusive and should not invalidate compliance because of system failure.
Clauses 81 and 82 - official seal and rectification	Rectification may alter records affecting private rights, but the Bill does not adequately distinguish clerical correction from adjudication of contested validity, ownership or beneficial entitlement.	Retain administrative correction only for omission, clerical error or demonstrable inaccuracy after notice. Require written reasons and appeal. Refer any dispute about the substance of the instrument, validity of the trust, title, beneficial interests or fraud to the Court. Use electronic authentication rather than making the physical seal indispensable.	The registry may correct its records but cannot determine contested proprietary rights.
Clause 83 - fees and registry money	The Registrar may determine fees outside regulations and receive, manage, invest or use gifts, loans and money as though the Registry were an autonomous fund. This is inconsistent with the proposal that the office sits inside the Business Registration Service.	Delete clauses 83(2) and (3). Require every fee to be prescribed by regulations subject to the Statutory Instruments Act and Article 210. Require all revenue and expenditure to be received, retained where lawfully authorised, appropriated and accounted for by the Business Registration Service under its Act and the Public Finance Management Act. Do not authorise the Registrar to accept loans, gifts or operate a separate fund.	A designated officer within a parastatal cannot be given a parallel treasury. Public money must follow the existing entity's governance and public-finance framework.
Clauses 84-89 - dissolution, restoration and property	The Part conflates termination of a fiduciary relationship, cancellation of registration and dissolution of an incorporated body. It permits dissolution without a complete solvency, liability, notice, distribution and winding-up process.	Separate: (a) termination of an express trust under the instrument or Court order; (b) administrative cancellation of registration after final accounts and compliance; and (c) dissolution of incorporated trustees. Require declaration of solvency, discharge or provision for liabilities, notice to beneficiaries, enforcer and creditors, a distribution plan, treatment of charitable surplus, objections and Court supervision. Apply insolvency law where appropriate. Restoration should revive status without prejudicing intervening rights.	A registry entry cannot extinguish liabilities or beneficial interests, and an incorporated body cannot be dissolved safely while holding property and obligations.
Clauses 92 and 93 - false information and general penalty	Clause 92 may criminalise negligent error through the phrase "has reason to suspect", while clause 93 applies a general criminal penalty without differentiating the gravity of conduct. Across the Bill, trustees may be collectively punished for another trustee's default.	Use "knowingly or recklessly lodges materially false or misleading information" and provide a due-diligence defence and correction mechanism. Delete the general penalty and designate each offence expressly. Reserve crime for fraud, dishonest conversion, deliberate concealment or destruction, obstruction and knowing falsehood. Treat late filing and record defaults through notices and proportionate administrative penalties. Impose liability only on a person who authorised, participated in or knowingly permitted the offence.	Criminal law requires precision, culpability and proportionality: Articles 24 and 50; Andare v Attorney General [2016] KEHC 7592 and AIDS Law Project v Attorney General [2015] KEHC 6972.

PROVISION	OBSERVATION	PROPOSED AMENDMENT	JUSTIFICATION
Clause 94 - dispute resolution	The clause may permit the instrument to oust the courts' supervisory jurisdiction and assigns all default disputes to the High Court without preserving the Environment and Land Court, succession jurisdiction, specialised courts or protection of minors and unascertained persons.	Make private dispute resolution subject to the Constitution, Arbitration Act and other jurisdiction-conferring law. State that no clause ousts the supervisory, protective or public-law jurisdiction of a competent court; preserves urgent relief; or binds a minor, person lacking capacity, unborn or unascertained beneficiary without Court approval. Preserve Environment and Land Court jurisdiction over title and land-use disputes and the appropriate succession jurisdiction.	Trust accountability ultimately depends on judicial supervision, and Article 162 jurisdiction cannot be reassigned by private instrument or ordinary drafting.
Clause 95 - regulations	The power delegates essential licensing, beneficial-ownership, disqualification, fees and information requirements and allows the Registrar to prescribe matters outside a statutory instrument.	Limit regulations to forms, procedures, filing, verification and technical implementation within clear statutory standards. Remove licensing, principal disqualification criteria, essential beneficial-ownership categories, offences and penalties unless fully stated in the Act. Require public participation, regulatory impact analysis where applicable and scrutiny under the Statutory Instruments Act. All fees must be prescribed by regulation, not administrative notice.	Delegated legislation may implement but should not create the central rights, restrictions and sanctions of the scheme: Constitution, Article 94(5) and (6).
Clause 96 - consequential amendments	Amending only the Registration of Documents Act is plainly insufficient. The Bill affects the Trustees (Perpetual Succession) Act, Trustee Act, Business Registration Service Act, land and security registries, succession, public-benefit organisations and the tax and stamp-duty provisions that refer to registered family trusts under Cap. 164.	Delete the repeal of the Trustee Act. Insert a comprehensive consequential-amendments Schedule, including the Business Registration Service Act, Land Registration Act, Law of Succession Act, Public Trustee Act, POCAMLA and relevant sector statutes. Preserve and re-anchor family-trust treatment under the Income Tax Act and Stamp Duty Act before repealing Cap. 164. Coordinate the Public Benefits Organizations Act and registries for land and movable security.	Without consequential amendments, enactment may sever existing statutory references, tax treatment, registry mechanisms and sectoral supervision.
Clause 97 - repeal, savings and transition	Clause 97 repeals both Acts and subjects existing trusts to compliance within twenty-four months. Read with clauses 5 and 6, it threatens retrospective invalidity and does not preserve the full range of appointments, instruments, rights, liabilities, proceedings, orders, powers and regulations.	Delete the repeal of the Trustee Act. If Cap. 164 is replaced, deem existing incorporated trustees to continue as incorporated trustees without re-transfer of property. Insert a detailed Schedule preserving all trusts, instruments, certificates, appointments, legal title, beneficial interests, rights, liabilities, contracts, charges, proceedings, judgments, orders, filings and regulations. Existing trusts outside the new Act should remain outside it. Permit only voluntary migration of eligible express trusts or a carefully defined transparency filing that does not affect validity. Provide phased implementation and extension on stated grounds.	Transition must preserve accrued property rights, title and legal continuity. A registration deadline cannot extinguish trusts or beneficial interests, particularly customary or court-recognised interests.
New provision - testamentary trusts and succession	Clause 10 refers to a testamentary family trust, but the Bill does not explain the interaction with grants of representation, confirmation, assent, administration of estates and the succession court. Under the recommended narrow scope, testamentary trusts should not be brought within this registration code.	Insert an express exclusion and saving for trusts created by will or arising in administration of an estate. State that nothing in the Act affects the validity of a will, a grant, duties of personal representatives, the Law of Succession Act or the jurisdiction of the succession court. Any optional post-assent registration service should not affect validity or administration.	Succession has its own court-supervised legal framework. A registration deadline should not operate against executors, minors or testamentary beneficiaries.
New provision - interface with the Public Benefits Organizations Act	A charitable trust may also qualify as a public benefit organisation, creating duplicate registration, annual returns, governance and disclosure obligations under two regulators.	Provide that registration under this Act does not replace or duplicate registration under the Public Benefits Organizations Act. Require statutory coordination and lawful information sharing between the Business Registration Service and the Public Benefits Organizations Regulatory Authority, with mutual recognition of equivalent filings and no derogation from either regulator's defined mandate.	The Public Benefits Organizations Act commenced on 14 May 2024. Regulatory coherence and proportionality require avoidance of duplicative compliance burdens.
New provision - variation and wider court jurisdiction	The Bill contemplates long-duration and intergenerational trusts but contains no coherent jurisdiction to approve variation on behalf of minors, unborn, unascertained or incapable beneficiaries. Clause 44 merely permits guidance, while repeal would remove substantive Trustee Act machinery.	Do not attempt a partial variation code in this Bill. Retain the Trustee Act and amend it separately to confer a modern jurisdiction to approve arrangements varying or revoking trusts or enlarging trustee powers where beneficial to persons unable to consent, while preserving charitable cy-pres and specialised jurisdiction.	Variation is part of substantive trust law and Court supervision. It should be developed coherently in the modernisation of the Trustee Act, not inserted piecemeal into a registry Bill.

(11)

ETHICS AND ANTI-CORRUPTION COMMISSION

COMMENTS ON THE DRAFT
TRUST ADMINISTRATION BILL, 2026
(NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

Thursday

6TH August 2026

INTRODUCTION

The Ethics and Anti-Corruption Commission is a Constitutional Commission established under section 3 of the Ethics and Anti-Corruption Commission Act, CAP 7H, pursuant to Article 79 of the Constitution of Kenya.

The comments are submitted to the Departmental Committee on Justice and Legal Affairs as requested vide a letter **Ref: NA/DDC/JLAC/2026/055** dated **28TH July 2026** from the Clerk of the National Assembly.

COMMENTS ON THE DRAFT TRUST ADMINISTRATION BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

	Clause	Subject	Proposal/Comment	Rationale
1.	Clause 6	Invalidation of a trust	Insert a new sub-clause (6) to provide as follows- ***"Any person, including a competent authority, may apply to the court for an order to declare a trust to be invalid or void in accordance with this section"***	The Bill is silent as to the procedure to move court for invalidation or voiding of Trusts, and by whom. It is necessary to expressly provide for the invalidation or voiding of Trusts through application by a competent authority, especially in a criminal investigation.
2.	Clause 22	Registration of a Trust	Insert a new sub-clause (5) to provide as follows- ***"The Registrar may consider any representations or report by a competent authority in respect of an application for registration of a Trust"***	This is to enable the Registrar to seek for or consider information that is relevant to determine whether a Trust should be registered, where that information is ordinarily in the custody of a competent authority.
3.	Clause 35	Property acquired illegally	Consider to expressly include the **Anti-Corruption and Economic Crimes Act, Cap 65 and the**	The Anti-Corruption and Economic Crimes Act and the Conflict of Interest Act have express provisions for

			Conflict of Interest Act, 2025 in addition to the **Proceeds of Crime and Anti-Money Laundering Act, Cap. 59A.**	recovery and forfeiture of illegally acquired property.
4.	Clause 49	Access to information	Insert a new sub-clause after (c) to provide as follows- ***"in order to comply with the Anti-Corruption and Economic Crimes Act, Leadership and Integrity Act, the Anti-Bribery Act and the Conflict of Interest Act"***	This is to expressly provide for disclosure of trust information in a proceeding under the said statutes.
5.	Clause 84	Dissolution of a Trust	Insert a new sub-clause (8) to provide as follows- ***"The Registrar may consider any representations or report by a competent authority in respect of an application for dissolution of a Trust"***	This is to enable the Registrar seek for or consider information that is relevant to determine whether a Trust should be registered, where that information is ordinarily in the custody of a competent authority.

Dated this **Thursday, 6th** Day of **August 2026**

Abdi A. Mohamud, EBS, MBS
Secretary/Chief Executive Officer
Ethics and Anti-Corruption Commission

ETHICS AND ANTI-CORRUPTION COMMISSION
INTEGRITY CENTRE (Jakaya Kikwete/Valley Road Junction) P.O. Box 61130 – 00200, NAIROBI, Kenya
TEL.: 254 (020) 4997000, MOBILE: 0709 781000; 0730 997000
EMAIL: eacc@integrity.go.ke WEBSITE: www.eacc.go.ke

When replying please quote:

EACC.1/13 VOL V (7) **4th August 2026**

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Office of the Clerk
Main Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Dear Mr. Njoroge,

RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2016)

Reference is made to letter **Ref: NA/DDC/JLAC/2026/055** dated **28th July 2026** on the captioned subject.

The Ethics and Anti-Corruption Commission is established under Section 3 of The Ethics and Anti-Corruption Act, CAP 7H, pursuant to Article 79 of the Constitution, with the mandate of combating and preventing corruption and unethical conduct.

We express our appreciation for the opportunity to engage with the Departmental Committee on Justice and Legal Affairs to present submissions on the Trust Administration Bill (National Assembly Bill No. 29 of 2016).

In this regard, **Mr David Kaboro, OGW,** Deputy Director, Civil Litigation and Asset Recovery and **Ms Mishi Kairichi,** Legal Officer, will represent the Secretary/Chief Executive Officer of EACC at the meeting on **Thursday, 6th August 2026** at **10:00 a.m.** at Committee Room 22, 5th Floor, Bunge Tower, Parliament Buildings.

The Commission is grateful for your invitation and anticipates future fruitful interactions with your office.

Yours sincerely

Abdi A. Mohamud, EBS, MBS
SECRETARY/CHIEF EXECUTIVE OFFICER

(12)

KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

Office of the Commissioner General

KRA/5/1002/5(14248)

5th August 2026

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
P. O. Box 42842-00100
Parliament Buildings
Nairobi

Dear

INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

Reference is made to your letter Ref: NA/DDC/JLAC/2026/055 dated 28th July 2026 requesting Kenya Revenue Authority to appear before the National Assembly Departmental Committee on Justice and Legal Affairs on **Thursday, 6th August 2026** to discuss the Trust Administration Bill (National Assembly Bill No.29 of 2026).

Due to prior official engagements and the ongoing strategic planning for Financial Year 2026/2027, I am unable to attend the scheduled session. I therefore request to be represented by Mr. Maurice Oray, the Deputy Commissioner - Policy & Tax Advisory, together with other officers who are well versed with the matters at hand.

Additionally, we hereby submit twenty-two (22) copies of the report for consideration by the Committee.

Yours sincerely,

Adan Mohamed, EGH
COMMISSIONER GENERAL

KENYA REVENUE AUTHORITY

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KENYA REVENUE AUTHORITY SUBMISSION TO THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

AUGUST 2026

KENYA REVENUE AUTHORITY
Confirmed
P. O. Box 48240 - 00100, NAIROBI
Date: 05.08.2026
Sign: A.M

1.0 INTRODUCTION

The Clerk of the National Assembly vide letter Ref: NA/DDC/JLAC/2026/055 dated 28th July 2026 requested Kenya Revenue Authority (KRA) to provide written submissions on the Trust Administration Bill (National Assembly Bill No. 29 of 2026).

In this regard, we submit comments as follows:

2.0 KRA's VIEWS AND COMMENTS OF THE BILL

Clause	Provision as per the Bill	Proposed Amendment	Comments/Justification
Clause 2	The definition of "beneficial owner" in the Companies Act is designed for corporate entities and may not fully capture the complexities of trust structures, where beneficial ownership is often layered through discretionary interests. The same definition may not adequately distinguish between beneficiaries with vested interests and those with discretionary interests.	Insert a specific definition of "beneficial owner" for trusts that distinguishes between: a) Persons with vested interests, b) Persons with discretionary interests and, c) Persons with contingent interests. Provide regulations prescribing the method of identifying beneficial owners in discretionary trusts where the class of beneficiaries is not fixed.	• The current definition from the Companies Act is too narrow for trust structures. Discretionary trusts by their nature have a class of potential beneficiaries whose identities may not be known until the trustee exercises discretion. A tailored definition is necessary to ensure full beneficial ownership transparency without imposing unrealistic compliance burdens on trustees.
Clause 2	"discretionary beneficiary" means a person **who** benefits under a trust at the discretion of the trustee does not have a fixed, vested or contingent interest in trust property,	Amend the definition to exclude a Charitable Trust so that it reads: "discretionary beneficiary" means a person **other than a charitable trust who** benefits under a trust at the discretion of the trustee does not have a fixed, vested or contingent interest in trust property,	• In the Act the definition is ambiguous, open ended and has discretionary powers. • The definition of "discretionary beneficiary" is intended to cater towards family trust, however this definition is narrow in scope and does include beneficiaries for charitable trusts, who must be identifiable and known for the charitable trust to function and also benefit from a tax exemption status. • Contradicts beneficiary for a charitable Trust whom it is intended to be the general public.

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Sign: A.M

Clause	Provision as per the Bill	Proposed Amendment	Comments/Justification
Clause 2	"discretionary trust" means a trust where beneficiaries or the benefits of the trust become ascertainable once the trust deed sets-out the criteria or the discretion of the trustee,	Amend the definition to exclude a Charitable Trust so that it reads: "discretionary trust" means a trust other than a charitable trust where beneficiaries or the benefits of the trust become ascertainable once the trust deed sets-out the criteria or the discretion of the trustees,	• The definition is ambiguous, open ended and the trustess have sweeping discretionary powers. • The definition of "discretionary trust" provides sweeping powers to the trustees from an exemption tax prism. It allows a creation of a trust before ascertaining the beneficiaries or at the discretion of the trustees.
Clause 3	Application of the Act. Applies to all trusts created and trustees in relation to the obligations and duties of trustees.	Insert a new Subsection (2): "Nothing in this Act limits or affects the powers of the Commissioner General under the Tax Procedures Act, the Income Tax Act or any other tax law to assess, collect or recover tax from a trust, trustee, settlor, enforcer or beneficiary or to treat trust property as available for the satisfaction of any tax liability in accordance with the law."	• An express saving clause removes any ambiguity and pre-empts litigation on whether trustee duties under this Act override or displace obligations and enforcement powers under the tax laws.
Clause 8	Charitable trusts. Sets out the objects and criteria that qualify a trust as "charitable" for purposes of registration or incorporation under the Bill.	Insert a new Subsection: "Registration or incorporation of a trust as a charitable trust under this Act does not, by itself, confer exemption from income tax. A charitable trust seeking exemption from tax shall apply to, and obtain the exemption from, the Commissioner in accordance with paragraph 10 of the First Schedule to the Income Tax Act."	• As drafted, a trust that meets the registration criteria in clause 8 could be presented as automatically tax-exempt, yet exemption is a distinct process under the Income Tax Act that requires the Commissioner's approval and is subject to periodic renewal and compliance checks. • Express clarification will prevent misuse of the "charitable trust" label to evade tax and will align the Bill with existing tax exemption safeguards.
Clause 11(1)	(1) A charitable and a non-charitable purpose trust shall have at least three natural persons as trustees or o corporate trustee.	Delete the words or one corporate Trustee for purposes of a Charitable Trust	• The clause intends to substitute trustees with one corporate entity. The threshold for trustees in a charitable trust must be identifiable and be in good moral standing. Having a corporate entity that can stand in for natural persons will introduce an

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Clause	Provision as per the Bill	Proposed Amendment	Comments/Justification
			opaque element making it difficult to trace who the real trustees are. • Corporate Trustee cannot substitute or be a standalone to replace the requirement of 3 natural persons. This is for reasons of traceable persons for transparency purposes. • Corporate Trustee to be amongst the three (3) natural persons.
Clause 19(1)	A beneficiary of a trust shall be: (a) identifiable by name, or (b) ascertainable by reference to: (i) a class or, (ii) a relationship with another person, whether living or not, at the time of the creation of th trust.	Delete the word OR between the sentences	• For tax exemption purporses beneficiaries must be traceable and identifiable by name and location. By introducing a class or relationship with another person makes it difficult for tax exemption purposes to establish who is the ultimate beneficiary of a charitable trust • For Charitable Trust they should be no substitution. • For Charitable purposes beneficiaries should be identifiable by name.
Clause 22 & 29	Registration of a trust and requirements for incorporation. Sets out the documents and information required to accompany an application for registration or incorporation, including details of the settlor, trustees, beneficiaries and beneficial owners.	Add a requirement that every application for registration or incorporation, and every notification of a trustee's appointment, be accompanied by the Kenya Revenue Authority Personal Identification Number (PIN) of the trust (where already issued), the settlor and the trustees, and that the Registrar verify the PIN(s) with the Authority prior to registration or incorporation.	• PIN validation at the point of registration mirrors the existing requirement for company incorporation and will enhance visibility of trust transactions. • Early PIN capture reduces the incidence of unregistered taxpayers behind trust structures and supports more effective tax administration from the outset.
Cause 47(1)	The Clause requires a trustee to keep trust property separate from the trustee's own property and separately identifiable from other trust property. The Bill does not address the situation where a trustee holds	Insert a clarification that a trustee may hold trust property in a pooled investment or common fund, provided the trustee maintains proper records identifying the trust's beneficial interest.	• Modern investment practice often involves pooling funds for efficiency. Strict separation of physical assets is impractical and would prevent trustees from achieving economies of scale in investment management. The principle should be that

05.08.2026
A.M

Clause	Provision as per the Bill	Proposed Amendment	Comments/Justification
	trust property in a pooled investment vehicle, such as a unit trust or collective investment scheme. The requirement to keep property "separately identifiable" could be impractical in such circumstances. The provision does not address the treatment of fungible assets like cash held in a bank account.	Provide that cash may be held in a single bank account for multiple trusts, provided that separate trust ledger accounts are maintained.	proper accounting records are maintained, not that physical assets are separately identifiable.
Clause 49	The Clause allows access to documents by enforcer and beneficiaries: It provides beneficiaries with access upon written request, subject to the terms of the trust deed.The distinction between enforcer and beneficiary access rights creates ambiguity. Beneficiaries' access is expressly made subject to the trust deed, which means a settlor could entirely exclude beneficiaries from accessing information. This may be contrary to the principle that beneficiaries are entitled to know the status of the trust property. Enforcers have unfettered access but not all trusts will have enforcers.	Amend Clause 49 to provide that beneficiaries have a right to access basic information about the trust, including the trust deed, accounts and property, without being subject to the terms of the trust deed. Provide that the trust deed may only limit access to sensitive information, such as the identity of other beneficiaries, where there is a reasonable basis for doing so.	• Beneficiaries have a common law right to know the status of the trust and their entitlements . The current Bill effectively allows the trust deed to defeat this right, which could lead to abuse and prevent beneficiaries from holding trustees accountable. A balanced approach that preserves beneficiary rights while allowing for legitimate privacy concerns is preferable.
Clause 58	Clause 58 allows a trustee to delegate functions by power of attorney for up to three years, renewable and requires that the donee be a natural person. The power of attorney provision is too restrictive in requiring that the donee be a natural person. In modern trust administration, professional trustees often need to delegate investment	Amend Clause 58(3) to permit delegation to a body corporate if the body corporate is licensed or regulated to provide the delegated services. Permit the power of attorney to be for a period not exceeding five years for property management functions.	• Modern trust administration often involves specialist services provided by corporate entities. Restricting delegation to natural persons is outdated and would prevent trustees from engaging professional investment managers . The three-year limit is arbitrary and would impose unnecessary compliance costs for long-term property management arrangements.

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Clause	Provision as per the Bill	Proposed Amendment	Comments/Justification
	management functions to corporate investment managers. The three-year limitation may also be insufficient for long-term property management, such as leasing or agricultural management.	Provide that a delegation may be for an indefinite period if the trust deed expressly permits it.	
Clause 65 – 68	Beneficial owners of a trust. Every trust must compile, keep and lodge with the Registrar a register of its beneficial owners, and the Registrar may disclose beneficial ownership information to competent authorities upon written request.	Provide for system interoperability and secure electronic access between the Registrar's beneficial ownership register and KRA's iTax system, so that KRA may access beneficial ownership information for tax administration, audit, transfer pricing and exchange of information purposes without the need for a fresh written request on each occasion. KRA should also be expressly designated as a recipient of beneficial ownership information in the Regulations made under Clause 65(2) of the Bill.	• Beneficial ownership information is central to KRA's ability to identify the true owners of trust assets for income tax, capital gains tax and international exchange of information purposes. • A manual request-based process for each enquiry will slow down audits and investigations, real-time or batch electronic access, would be more efficient.
Clause 84	Dissolution of a trust. On application by the trustee and subject to specified conditions, the Registrar may dissolve a trust. No tax clearance is required as a condition for dissolution.	Amend Clause 84(2) to add a condition that an application for dissolution be accompanied by a valid tax compliance certificate or written confirmation from the Commissioner General that the trust has no outstanding tax liabilities, failing which the Registrar shall decline to dissolve the trust.	• Minimizes administrative challenges and improves visibility.
Clause 86	The Clause provides for restoration where dissolution was by mistake of the Registrar, excluding mistakes based on wrong information from the applicant. Section 87 provides for restoration by Court. The provisions do not address the situation where a trust is dissolved inadvertently due to reasons such as administrative	Amend Section 86 to provide that the Registrar may restore a trust where the dissolution was as a result of an administrative error or oversight by the trustees. Amend Section 87 to clarify that former trustees and beneficiaries have standing to apply for restoration.	• Trusts may be dissolved inadvertently due to administrative lapses, not just mistakes of the Registrar. Providing a mechanism for restoration in such cases would prevent injustice to beneficiaries who may be affected. Standing for former trustees and beneficiaries is necessary where the current trustees are unwilling or unable to apply.

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Clause	Provision as per the Bill	Proposed Amendment	Comments/Justification
	oversight by the trustees. The exclusion of mistakes based on applicant's information may be too broad and could prevent restoration where the mistake was honestly made. The Bill does not provide for restoration on the application of former trustees or beneficiaries.	Provide that restoration shall take effect from the date of publication of the notice or such earlier date as the Registrar may direct.	
Clause 90	Electronic filing and keeping of records. Filings with the Registrar may be made electronically and records may be kept in electronic form.	Add a provision expressly enabling and requiring system interoperability and secure data-sharing between the Registrar's electronic system and KRA's tax system (iTax), including for verification of PINs, beneficial ownership and annual return information.	• Relevant for information exchange government institutions and will enhance efficiency, reduce compliance costs and improve tax administration for trusts.
Clause 94	Disputes relating to a trust are determined in accordance with the dispute resolution mechanism set out in the trust deed, or by the High Court where the trust deed is silent.	*Insert a new Subsection (3):* *"Nothing in this section shall be construed as ousting or limiting the jurisdiction of the Tax Appeals Tribunal, or any other tribunal or body established under tax law, to hear and determine a dispute relating to a tax liability of a trust, trustee, settlor or beneficiary."*	• Trust deeds increasingly provide for private arbitration or other bespoke dispute resolution mechanisms, without this clarification, a trust deed's dispute clause could be argued to displace the exclusive jurisdiction of the Tax Appeals Tribunal over tax disputes involving trust property or income. • Is a protective clarification consistent with the general principle in new Clause 3A(1) that this Act does not limit the Commissioner General's powers, and avoids satellite litigation over which forum has jurisdiction.
Part III Registration of trusts (unincorporated).	The Bill creates two parallel regimes for trusts: registration (without legal personality) and incorporation (with legal personality). The relationship between the two regimes is not fully articulated. It is unclear why a trust would choose registration over	Clarify in the Memorandum of Objects and Reasons the distinction between registration and incorporation and provide guidance on when each is appropriate.	• The two (2) regimes may create confusion for practitioners and the public. A registered trust with legal personality through incorporation may be a more attractive option for most trusts. The Bill should provide clear guidance on why a trust would choose registration over

KENYA REVENUE AUTHORITY
P.O. Box 48240-00100, NAIROBI
Date: 05.08.2026
Sign: A.M

Clause	Provision as per the Bill	Proposed Amendment	Comments/Justification
	incorporation, given the benefits of legal personality. Section 33 allows a registered trust to apply for incorporation, but the process is not clearly detailed.	Provide that a registered trust that applies for incorporation may carry over its registration number, name and other identifiers. Provide that any rights, obligations, and liabilities of a registered trust survive the transition to incorporation.	incorporation. The transition from registration to incorporation should be seamless to avoid disruption to the trust's affairs.

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3.0 CONCLUSION

KRA remains fully committed to executing its mandate of tax administration and trade facilitation in strict adherence to the applicable laws and regulations. Furthermore, KRA stands ready to provide any additional information or clarification required in connection with these proposals.

KENYA REVENUE AUTHORITY
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P. O. Box 48240 - 00100, NAIROBI
Date: 05.08.2026
Sign: A.M

TO: CHAIR AND MEMBERS, DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

CC: OFFICE OF THE CLERK OF THE NATIONAL ASSEMBLY, KENYA

FROM: KENYA CONFERENCE OF CATHOLIC BISHOPS – PARLIAMENTARY LIAISON DESK

DATE: 6TH AUGUST 2026

Dear Chair,

RE: MEMORANDUM ON THE TRUST ADMINISTRATION BILL NO. 29 of 2026

The Kenya Conference of Catholic Bishops submits this Memorandum on the Trust Administration Bill, 2026 to the Departmental Committee on Justice and Legal Affairs. Our memorandum is grounded in Article 118(1)(b) of the Constitution of Kenya and Standing Order 127(3) of the National Assembly Standing Orders.

We support the consolidation of the Bill into a single legislative framework. The alignment with anti-money laundering standards reflects the integrity in stewardship that the church affirms. Clause 8(1) recognizes the advancement of religion as a charitable purpose, and the transitional provisions in Clause 97(2) protect the continuity of existing trusts and their titles. However, particular provisions place religious and charitable trusts under wide and undefined discretion modelled on commercial companies.

We therefore do not support the Bill in its present form and this Memorandum is confined to those provisions. We request the Committee to adopt the amendments set out in the table below.

Clause of the Bill	Provision as drafted	Proposed amendment	KCCB'S Comments / Proposals
Clause 2 (definition of "beneficial owner"); Part	Clause 2 assigns "beneficial owner" the meaning under section 3(1) of the Companies Act (Cap 486) the natural person who ultimately owns or controls a company. Part IX requires every trust to compile, keep	Amend Clause 2 to provide a definition of "beneficial owner" tailored to trusts, identifying the parties to the trust settlor, trustees, protector or enforcer, and beneficiaries. Provide in Part IX a modified	A charitable religious trust has no owner; its beneficiaries are the faithful and the public. The company-ownership test does not fit, and it risks exposing the personal data of

Clause of the Bill	Provision as drafted	Proposed amendment	KCCB'S Comments / Proposals
IX, Clauses 65–69	and lodge a register of beneficial owners, with administrative penalties for default under Clause 66(4).	disclosure for charitable trusts that names the controlling trustees and office-holders in place of owners.	beneficiaries contrary to the Data Protection Act, and Clause 91 of the Bill).
Clause 8(3), read with Clause 54(4)	Clause 8(3) provides that a charitable trust shall be a non-trading entity. The Bill does not define the term "non-trading entity"	Amend Clause 8 to define "non-trading entity," and to provide that a charitable trust does not cease to be non-trading by reason only of income-generating activity whose surplus is applied solely to its charitable objects.	Under the general law of charity that applies in Kenya, a charitable trust may carry on a trade in direct furtherance of its purpose, as a mission school or hospital does when it charges fees. Clause 8(3) introduces a blanket statutory bar for the first time, and because the term is undefined, a literal reading could reach that primary-purpose activity and push the Church's schools and hospitals out of the charitable-trust form. Clause 54(4) stands apart: it reproduces section 16(2) of the repealed Trustees Act, which already withheld from charitable-purpose trustees the statutory power to raise capital by sale or mortgage, so the Committee could use this consolidation to grant charitable trustees a clear power of sale rather than carry that gap forward.

Clause of the Bill	Provision as drafted	Proposed amendment	KCCB'S Comments / Proposals
Clause 11(3), read with Clause 36(4)	Clause 11(3) requires at least one trustee to be a citizen of or resident in Kenya where the trustees are natural persons.	Amend Clause 11(3) to allow the requirement to be satisfied by a resident trust agent or local contact person (as Clause 36(4) already permits for corporate trustees) and provide a reasonable compliance period in the Regulations.	Missionary and international congregations serving in Kenya are sometimes governed by superiors resident abroad. A resident trust agent or contact person meets the transparency purpose without excluding these communities.
Clauses 25 and 31, read with Articles 24, 32, 36 and 40 of the Constitution	Clauses 25 and 31 empower the Registrar to refuse registration or incorporation on grounds of "public interest," "national security," and "public peace, welfare or good order," and to subject charitable trusts to a vetting process producing "adverse findings." The Bill provides no express right of appeal against a refusal.	Amend Clauses 25 and 31 to define the grounds of refusal and the criteria of any vetting, and insert an express right of appeal to the High Court against a refusal, with the Registrar required to act proportionately.	A refusal of the legal existence of a religious or associational body limits freedom of religion, freedom of association, and the right to property. The Constitution allows such limitation only by clear law and only so far as is reasonable and justifiable. The Bill's Memorandum of Objects and Reasons states that it "does not limit any fundamental rights or freedoms" a statement these clauses contradict.
Clauses 48, 63, 64, 66 and 75, read with Clause 95	These clauses require every trust to keep extensive records to prescribed accounting standards, lodge a register of beneficial owners, and file annual returns, with several offences attracting fines of up to five million shillings, and up to twenty million shillings for a body corporate.	Provide in the Regulations made under Clause 95 for proportionate record-keeping, accounting and penalty requirements for charitable trusts below a defined asset threshold.	Many Church trusts are small parish or congregational bodies without professional administration, serving the poor directly. An obligation should match the capacity of the body that bears it.

Clause of the Bill	Provision as drafted	Proposed amendment	KCCB'S Comments / Proposals
Clauses 69 and 79, read with Article 47 of the Constitution	Clauses 69 and 79 allow the Registrar, after a notice and gazette process, to disqualify trustees for up to three years. Clause 69(5) grants a right of appeal to court; Clause 79 grants none.	Amend Clause 79 to carry the same right of appeal to court as Clause 69(5), and require the Registrar to grant a hearing before disqualifying any trustee.	The trustees of Church bodies are frequently clergy and bishops, and their disqualification affects the governance of the institutions they hold in trust. A hearing and an appeal are required by Article 47 and the Fair Administrative Action Act.

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Our Ref:

Your Ref:

6th August 2026

The Chairperson
Departmental Committee on Justice and Legal Affairs
National Assembly of Kenya
Parliament Buildings
NAIROBI

Dear Honourable Chairperson,

RE: PRESENTATION AND DEFENCE OF THE KCCB MEMORANDUM ON THE TRUST ADMINISTRATION BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

Greetings from the Kenya Conference of Catholic Bishops (KCCB). We appreciate the opportunity to appear before the Departmental Committee on Justice and Legal Affairs to present and defend its memorandum on the **Trust Administration Bill, 2026 (National Assembly Bill No. 29 of 2026)**.

KCCB is the national body representing the Catholic Bishops in Kenya and, through its General Secretariat, supports the bishops in advancing the mission of the Catholic Church and engaging with matters of national importance, including legislation and public policy that affect the Church, its institutions, charitable works and the communities it serves.

KCCB submitted its memorandum on the Trust Administration Bill in response to the invitation by the National Assembly for stakeholders and members of the public to make submissions on the Bill. The Bill seeks to establish a comprehensive legal framework for the regulation and management of trusts and to repeal and replace the existing Trustees (Perpetual Succession) Act, Cap. 164 and the Trustees Act, Cap. 167.

KCCB's submission is informed by the practical experience of the Catholic Church and its institutions in establishing, administering and managing trusts and related legal arrangements for religious, charitable, educational, health and social development purposes. Our memorandum therefore seeks to contribute constructively to the legislative process by highlighting provisions that may have implications for the effective administration of Church-related trusts and recommending appropriate amendments and safeguards.

We are grateful to the Committee for providing KCCB with this opportunity to make an oral presentation and to clarify the issues and recommendations contained in our memorandum. We look forward to engaging constructively with the Committee and responding to any questions or requests for clarification.

We respectfully request that the Committee considers the views and recommendations contained in the KCCB memorandum in its consideration of the Bill.

Yours faithfully,

Very. Rev. James Waweru Mwaura
General Secretary

KENYA CONFERENCE OF CATHOLIC BISHOPS
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(14)

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Ref: CHAK/NA/LEG/2026/01
Date: 4th August 2026

The Clerk of the National Assembly
Main Parliament Buildings
P.O. Box 41842–00100
NAIROBI.

Dear Sir,

RE: MEMORANDUM ON THE TRUST ADMINISTRATION BILL, 2026 – PUBLIC PARTICIPATION SUBMISSION BY THE CHRISTIAN HEALTH ASSOCIATION OF KENYA (CHAK)

We write on behalf of the Christian Health Association of Kenya (CHAK), an ecumenical umbrella organization representing Protestant churches, church-sponsored health units, and community health projects across the Republic of Kenya. CHAK facilitates capacity building, quality health service delivery, and advocacy and holds its institutional assets and properties through the registered Christian Health Association of Kenya Trust (CHAK Trust).

Pursuant to Article 118(1)(b) of the Constitution of Kenya, which provides for public participation in the legislative process, CHAK hereby formally submits its legislative memorandum and accompanying Presentation Matrix highlighting critical areas of concern regarding the **Trust Administration Bill, 2026**.

CHAK commends the National Assembly for its efforts to consolidate and modernize the legal framework governing trusts and trustees. However, following a review of the Bill, we have identified several provisions that may unintentionally affect the operational framework, financial sustainability, and volunteer governance structures of faith-based health providers and other charitable institutions.

The attached Presentation Matrix sets out CHAK's proposed amendments, justifications, and recommended remedies, with particular focus on the following provisions:

1. **Clause 8(3) – Non-Trading Restrictions:** Seeking the inclusion of an appropriate proviso to safeguard legitimate investment and self-sustainability models employed by charitable and faith-based health systems.
2. **Clause 62(1) – Trustee Liability Standards:** Proposing a clear statutory definition of **"gross negligence"** to provide certainty and avoid discouraging qualified professionals and faith leaders from serving as volunteer trustees.
3. **Clause 66(2) – Beneficial Ownership Register:** Proposing practical proxy parameters that appropriately address the complex and layered governance structures of ecumenical and institutional trusts.
4. **Administrative Penalty Clauses:** Advocating for the introduction of a reasonable **"Notice to Comply"** period before the imposition of penalties, to prevent critical donor, charitable, and medical resources from being redirected towards avoidable and compounding administrative fines.

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CHAK appreciates the opportunity to participate in this important legislative process. We respectfully request that the views and proposed amendments contained in the attached memorandum and Presentation Matrix be considered during the review of the Bill.

We further look forward to the opportunity to present and elaborate on these submissions before the relevant Departmental Committee during the public hearing sessions.

Thank you for your consideration.

Yours faithfully,

Dr Chrisostim Barasa

Dr. Christostim Barasa
General Secretary & CEO
Christian Health Association of Kenya (CHAK)

Encl: CHAK Trust Presentation Matrix on the Trust Administration Bill, 2026

CHAK MEMO TO NATIONAL ASSEMBLY

TRUST ADMINISTRATION BILL, 2026 PRESENTATION MATRIX

Bill Provision / Clause	CHAK Trust Deed / Operational Context	Practical & Legal Implication for CHAK	Proposed Amendment / Remedy	Justification for the Committee
Clause 8(3): "A charitable trust shall be a non-trading entity."	**CHAK Clause 6.9 & 12.4:** Mandates resource mobilization through investments and funding from social enterprises like the Mission for Essential Drugs & Supplies (MEDS).	**Criminalizes CHAK's sustainability model.** Outlaws resource mobilization through commercial investments, crippling CHAK's self-reliance.	**Insert a proviso to Clause 8(3):** "Provided that a charitable trust may engage in trading activities or hold investment assets if 100% of the surplus or dividends are applied exclusively to its charitable objects."	Protects the sustainability of faith-based health systems, reducing reliance on the government and external donor funding.
Clause 62(1): Bars any indemnity or limitation of trustee liability for "gross negligence".	**CHAK Clause 15.1:** Indemnifies trustees for good-faith errors, excluding only wilful and individual fraud.	**Personal asset exposure** for senior church leaders serving as volunteer trustees, as "gross negligence" is undefined and legally broad.	**Insert statutory definition in Clause 2:** "'Gross negligence' means a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or loss."	Prevents a leadership vacuum. Senior church and healthcare leaders will refuse volunteer trusteeships if exposed to broad personal liability.
Clause 66(2): Mandates existing trusts to lodge a Register of Beneficial Owners within 24 months.	**CHAK Structure:** Umbrella ecumenical body with dozens of member churches, institutional structures, and no natural-person owners.	**Administrative paralysis.** Tracking "beneficial ownership" down to individuals within massive, decades-old church hierarchies is operationally impractical.	**Amend Clause 65 to add a sub-clause:** "For umbrella faith-based organizations and ecumenical trusts, the registered institutional trustees or sitting executive committee shall be deemed the beneficial owners."	Recognizes the unique, non-private nature of ecumenical organizations which lack individual shareholders or private beneficiaries.
Clauses 38(8), 40(4), 48(5): Imposes strict 21-day registrar notification timelines for changes to trustees/deeds with immediate fines.	**CHAK Clause 7.1:** Trustees are dynamically nominated by member churches and formally ratified at the Annual General Meeting (AGM).	**Punitive fines for procedural lag.** A corporate fine of KES 14,000 for missing a 21-day window redirects donor funds away from patient care.	**Amend penalty clauses to introduce a warning tier:** "The Registrar shall issue a 30-day default notice to comply before compounding any administrative penalties under this section."	Avoids penalizing public-benefit non-profits over minor administrative delays that occur due to widespread church consultation cycles.
Clause 46(3): Corporate fines up to KES 20 Million for trustees who dispose of trust property in a manner that "frustrates the purpose".	**CHAK Clause 9.2 & 18:** Trustees hold property in trust but dispose of assets/liquidate based on AGM resolutions and member consensus.	**High risk of criminal liability** for legitimate property disposal or re-allocation decisions if questioned by a third party.	**Amend Clause 46(3) to include an exclusion:** "Subsection (2) shall not apply where property disposal is carried out in good faith pursuant to a resolution passed by a two-thirds majority of the trust's ultimate appointing authority or AGM."	Safeguards democratic governance within institutional trusts, allowing them to adapt land and property usage to changing healthcare needs.

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NATIONAL COUNCIL OF CHURCHES OF KENYA

MEMORANDUM ON THE TRUST ADMINISTRATION BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

PRESENTED TO

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS
THE NATIONAL ASSEMBLY

National Council of Churches of Kenya (NCCK)
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INTRODUCTION

1. The National Council of Churches of Kenya (NCCK) is an ecumenical fellowship of Christian churches and organizations in Kenya, established in 1913, with a mandate to promote Christian unity, holistic development, and the witness of the Church in society. NCCK brings together Protestant, Anglican, Orthodox, and African Instituted Churches, as well as Christian organizations, with a combined membership of over fifteen million Kenyans. As a key stakeholder in Kenya's social and legal landscape, NCCK has a longstanding interest in legislative reforms that affect the governance of religious, charitable, and community institutions.

2. Reference is made to the Trust Administration Bill, 2026 (National Assembly Bill No. 29 of 2026), which was published in the Kenya Gazette Supplement No. 124 on 20th May 2026 and received by the National Assembly on 11th June 2026. The Bill seeks to consolidate and reform laws relating to the registration, incorporation, management, and regulation of trusts and trustees in Kenya. It further seeks to repeal the Trustees (Perpetual Succession) Act (Cap. 164), which has governed the incorporation of trustees in Kenya since 1923, with subsequent amendments in 2021 and 2024, as well as the Trustees Act (Cap. 167), which currently codifies many general trustee powers.

3. NCCK welcomes the initiative to modernize Kenya's trust law framework. The current Trustees (Perpetual Succession) Act is skeletal and does not adequately address contemporary governance challenges, including beneficial ownership transparency, trustee accountability, data protection, and the distinct regulatory needs of charitable, family, and non-charitable purpose trusts. The Bill represents a significant legislative undertaking that, if properly calibrated, can enhance public confidence in trusts, protect beneficiaries, and facilitate the work of charitable institutions, including faith-based organizations.

4. NCCK's interest in this Bill is particularly informed by the extensive use of the trust structure by churches, church-related institutions, and faith-based organizations to hold property, manage endowments, and advance charitable objects such as education, health care, and social welfare. Many of NCCK's member churches and affiliated institutions are constituted as trusts or hold assets in trust. The regulatory framework established by this Bill will therefore have a direct and material impact on the operations, governance, and sustainability of these institutions.

5. In this memorandum, NCCK presents its general observations on the Bill, followed by specific clause-by-clause comments comparing the proposed provisions with the current Trustees (Perpetual Succession) Act (Cap. 164). NCCK's comments are offered in a spirit of constructive engagement, with the aim of ensuring that the final Act strikes an appropriate balance between regulatory oversight, transparency, and the operational autonomy of charitable and religious trusts. NCCK reserves the right to make further oral and written submissions during the Committee stage of the Bill.

GENERAL COMMENTS

6. NCCK acknowledges that the Trust Administration Bill, 2026 is a comprehensive and ambitious piece of legislation that seeks to bring Kenya's trust law into the 21st century. The Bill introduces critical innovations, including a dual-track system of registration (for unincorporated trusts) and incorporation (for trusts with separate legal personality), detailed duties and powers of trustees, beneficial ownership registers, annual return requirements, and dissolution procedures. These reforms are broadly welcome and address significant gaps in the current Cap. 164.

7. The Bill's explicit recognition of charitable trusts, non-charitable purpose trusts, and family trusts provides much-needed legal certainty. NCCK is particularly encouraged by the inclusion of 'the advancement of religion, human rights and fundamental freedoms, the protection of the environment or any other purpose beneficial to the general public' as charitable objects under Clause 8. This aligns with the constitutional protection of religious freedom under Article 32 and the charitable activities of faith-based organizations.

8. However, NCCK notes with concern that the Bill imposes substantial compliance burdens on all trusts, including charitable trusts, without sufficient differentiation based on risk profile or institutional capacity. The requirement for all trusts to maintain registers of beneficial owners (Part IX), file annual returns (Clause 75), and engage trust agents (Clause 76) may disproportionately affect small churches, community-based trusts, and rural faith-based institutions with limited administrative capacity. NCCK recommends that the Bill, or the regulations made thereunder, provide simplified compliance pathways for small charitable trusts and religious institutions.

9. NCCK further notes that the Bill does not contain any specific exemptions or simplified regimes for religious charitable trusts. In comparative jurisdictions, religious trusts often benefit from presumptive charitable status, reduced filing requirements, or exemptions from certain disclosure obligations, subject to compliance with basic governance standards. NCCK recommends that the Committee consider whether such differentiated treatment would be appropriate in the Kenyan context, having regard to the constitutional principle of the separation of church and state and the unique public benefit conferred by religious institutions.

10. The repeal of Cap. 164 and Cap. 167 and the transition to the new Act raises practical considerations for existing trusts. Many church trusts incorporated under Cap. 164 have operated for decades under the existing framework. 'NCCK notes, and welcomes, that Clause 97(2) already provides a twenty-four (24) month compliance period for existing trusts, deems trusts incorporated under Cap. 164 to continue as trusts under the new Act, and includes a savings clause preserving accrued rights, powers, liabilities and duties. NCCK recommends that Clause 97(3) be strengthened to fix a definite timeframe within which the Registrar must reissue certificates of incorporation and complete the

transfer of records from the current Registrar, so that existing church trusts have certainty on when the transition will be operationally complete.

11. Finally, NCCK urges the Committee to ensure that the regulations contemplated under Clause 95 are developed through a participatory process that includes consultations with religious organizations, the legal profession, the charitable sector, and other stakeholders. The success of this Bill will depend significantly on the quality and accessibility of the subsidiary legislation that operationalizes its provisions

SPECIFIC COMMENTS

The table below sets out NCCK's clause-by-clause analysis of the Trust Administration Bill, 2026, comparing each provision with the current Trustees (Perpetual Succession) Act (Cap. 164), and indicating NCCK's position with justifications.

No.	Clause & Title	Proposed Provision under the Bill 2026 / Current Position under Cap. 164	NCCK Position and Justification
1.	PART II: TRUST AND TRUST FORMATION Clauses 4–7 (Creation, Registration, Invalidation, Irrevocable Trusts)	BILL: Clause 4 defines trust creation. Clause 5 requires written trusts to be registered OR incorporated to be valid and enforceable; unregistered written trusts cannot be received as evidence except with court consent. Clause 6 lists grounds for invalidation (illegal purpose, no ascertainable beneficiary, duress/fraud, uncertain terms, incapacity, non-registration). Clause 7 deems trusts irrevocable unless express power of revocation exists. CURRENT (Cap. 164): Section 3 provides for incorporation only. No general registration requirement for unincorporated trusts. Section 3A addresses irrevocable trusts. Section	SUPPORT WITH RECOMMENDATION FOR AMENDMENT. NCCK supports the clarity on creation and invalidation. However, NCCK recommends that Clause 5(1) be amended to provide a grace period (e.g., 90 days from execution) for registration of written trusts, to avoid immediate invalidity for trusts created in good faith but pending administrative processing. The requirement for registration as a precondition for validity is a significant departure from current practice and may catch existing informal trusts by surprise.

		3F addresses validity grounds (similar to Bill).	
2.	PART II: TYPES OF TRUSTS Clauses 8–11 (Charitable, Non-Charitable Purpose, Family Trusts, Limitation of Trustees)	BILL: Clause 8 defines charitable trusts (relief of poverty, advancement of education/religion/human rights/environment, public benefit). Clause 9 allows non-charitable purpose trusts without beneficiaries if purpose is specific, capable of fulfilment, and not illegal. Clause 10 defines family trusts (estate planning, non-trading). Clause 11 requires charitable/non-charitable purpose trusts to have at least 3 natural person trustees OR 1 corporate trustee; family trusts require at least 1 trustee. CURRENT (Cap. 164): Sections 3B, 3C, and 3D contain similar provisions on charitable, non-charitable purpose, and family trusts, but without the trustee number requirements. No distinction in trustee numbers between trust types.	SUPPORT WITH RECOMMENDATION NCCK supports the categorization of trusts and the trustee minimum requirements, which enhance governance. However, NCCK recommends that the Bill clarify whether the 3-trustee requirement for charitable trusts applies to all charitable trusts regardless of size or asset value. Small rural church trusts with limited membership may struggle to identify 3 qualified trustees. NCCK proposes a tiered system or exemption for small charitable trusts with assets below a threshold prescribed in regulations.

3.	PART III: REGISTRATION OF A TRUST Clauses 22–27	BILL: New registration regime: application to Registrar with trust deed, fees, beneficial owners register, statement of initial property, and enforcer details (Clause 22). Certificate of registration issued (Clause 24) but does NOT confer legal personality (Clause 27(2)). Registrar may refuse registration for unlawful purpose, national security, or non-compliance (Clause 25). Registration may be revoked by court order (Clause 26). CURRENT (Cap. 164): No standalone registration regime. Only incorporation under Section 3. Certificate of incorporation confers body corporate status (Section 3(3)).	SUPPORT WITH CONCERNS. NCCK supports the introduction of a registration tier for trusts that do not require corporate status. However, NCCK is concerned that the registration requirements (including beneficial ownership details under Clause 22(2)(c)) may be overly burdensome for small charitable trusts. NCCK recommends that the regulations prescribe simplified registration forms for charitable trusts, and that the registration fee structure be graduated based on trust size or asset value.
4.	PART IV: INCORPORATION OF A TRUST Clauses 28–33	BILL: A registered trust, or one created afresh, may apply to incorporate after reserving a name (Clause 28). Incorporation requires trustee, settlor, beneficiary and beneficial owner details plus the trust deed (Clause 29). On incorporation, the trust becomes a body corporate with perpetual succession, capable of	SUPPORT WITH RECOMMENDATION. NCCK notes that this Part is the direct successor to the incorporation regime under Cap. 164 that most existing church trusts currently rely on, and is therefore of central importance to NCCK's membership. NCCK supports the continuity provided by Clause 97(2)(a), which deems trusts incorporated

		suing, being sued, and holding property in its own name (Clause 32). A registered trust may later apply to convert to incorporated status (Clause 33). The Registrar may refuse incorporation on the same grounds as registration, including adverse vetting findings for charitable trusts (Clause 31). CURRENT (Cap. 164): Section 3 provides for incorporation, conferring body corporate status and perpetual succession on the trustees. This Part is the direct successor to the incorporation regime under which most existing church and charitable trusts currently hold property.	under Cap. 164 to continue as trusts under the new Act. NCCK recommends that the Registrar publish clear guidance, ahead of commencement, on the practical steps and documentation existing incorporated church trusts will need to provide when the Registrar reissues certificates of incorporation under Clause 97(3), to avoid uncertainty during the transition.
5.	PART V: PROPERTY OF A TRUST Clauses 34–35	BILL: Clause 34 requires trustees to deal with trust property in accordance with the trust deed. Clause 35 excludes property acquired illegally from trust property and subjects such property to recovery under the Proceeds of Crime and Anti-Money Laundering Act (Cap. 59A). CURRENT (Cap. 164): Section 4 vests	SUPPORT NCCK strongly supports Clause 35, which aligns trust governance with anti-money laundering laws and prevents trusts from beinq g used as vehicles for laundering illicit proceeds. This provision enhances the integrity of the trust sector and protects legitimate charitable trusts from reputational harm.

		property in the body corporate upon incorporation. Section 12 addresses gifts to the corporate body. No explicit provision excluding illegally acquired property.	
6.	PART VI: TRUSTEES Clauses 36–42	BILL: Clause 36 sets qualifications (18+ years, sound mind, not disqualified under other law) and disqualifications (director/secretary disqualification under Companies Act, liquidator/administrator disqualification under Insolvency Act, mental incapacity, conviction of offence attracting imprisonment exceeding 6 months, corruption/economic crime conviction, undischarged bankruptcy). Corporate trustees must be companies whose main object is trustee services (Clause 36(3)). Clauses 37–42 address appointment, substitution, resignation, removal, death/dissolution, and effect of change. CURRENT (Cap. 164): Section 6 addresses appointment of trustees and filling vacancies. No detailed	SUPPORT WITH RECOMMENDATION FOR AMENDMENT. NCCK supports the qualification and disqualification criteria, which enhance trustee integrity. However, NCCK recommends that Clause 36(2)(d) be reviewed: the disqualification for any offence attracting imprisonment exceeding six months is overbroad and may exclude persons convicted of minor regulatory offences or historical offences who have been rehabilitated. NCCK proposes that the disqualification be limited to offences involving dishonesty, fraud, breach of trust, or moral turpitude, or that a rehabilitation period (e.g., 10 years) be provided after which the disqualification ceases.

		qualification or disqualification criteria. No specific provisions on resignation or removal procedures.	
7.	PART VII: DUTIES AND GENERAL POWERS OF TRUSTEES Clauses 43–59	BILL: Comprehensive codification of trustee duties: reasonable care, skill and diligence (Clause 43); act within powers (Clause 44); not to profit (Clause 45); preserve trust property (Clause 46); keep property separate (Clause 47); keep records for 7 years (Clause 48); access to information restrictions (Clause 49). General powers include: apply income for maintenance (Clause 50); manage property (Clause 51); delegate functions (Clause 52); appropriate property (Clause 53); sale and lease (Clause 54); borrow (Clause 55); distribute (Clause 56); sue and settle (Clause 57); power of attorney (Clause 58); insure (Clause 59). CURRENT (Cap. 164): No detailed codification of trustee duties or powers. Trustees' duties and powers are governed by common law and the trust deed.	SUPPORT. NCCK strongly supports the codification of trustee duties and powers. This provides certainty, reduces litigation, and sets clear standards for trustees of church and charitable trusts. The record-keeping requirements (Clause 48) and the duty to keep trust property separate (Clause 47) are particularly important for institutional accountability. NCCK recommends that regulations specify the format and standards for record-keeping to assist smaller trusts in compliance.

8.	PART VIII: REMUNERATION, INDEMNITY AND LIABILITY Clauses 60–64	BILL: Clause 60 allows remuneration authorized by trust deed, beneficiary consent, court order, or written law. Clause 61 establishes liability for breach of trust (loss, depreciation, lost profits). Clause 62 prohibits trust deeds from limiting liability for dishonesty, willful misconduct, or gross negligence. Clause 63 requires trusts to keep registers and records. Clause 64 requires accounting records compliant with financial accounting standards, retained for 7 years. CURRENT (Cap. 164): No provisions on remuneration, indemnity, or accounting standards. Section 9 requires recording of documents by Registrar. No internal accounting requirements.	SUPPORT. NCCK supports the liability framework, particularly Clause 62 which prevents trustees from contracting out of liability for dishonesty or gross negligence. However, NCCK notes that for charitable trusts where trustees typically serve voluntarily without remuneration, the Bill should ensure that liability provisions do not deter qualified persons from serving as trustees. NCCK recommends that the regulations provide for standard indemnity insurance arrangements for trustees of charitable trusts, or that the Bill expressly permit trusts to purchase trustees' liability insurance from trust funds.
9.	PART IX: BENEFICIAL OWNERS OF A TRUST Clauses 65–69	BILL: Every trust must compile and keep a register of beneficial owners (Clause 65). Register must be lodged with Registrar (Clause 66). Changes must be updated within 21 days (Clause 67). Records kept for 7 years (Clause 68). Registrar may issue compliance directives and disqualify	RECOMMEND AMENDMENT. NCCK recognizes the importance of beneficial ownership transparency for combating money laundering and terrorism financing. However, NCCK is deeply concerned about the application of these requirements to charitable trusts,

		non-compliant trustees (Clause 69). CURRENT (Cap. 164): No beneficial ownership requirements.	particularly religious trusts. Charitable trusts by definition benefit the public or a section of the public; they do not have 'beneficial owners' in the conventional sense. Requiring churches to identify and register 'beneficial owners' is conceptually problematic and may infringe on religious autonomy and the privacy of church members. NCCK recommends that: (a) charitable trusts be required to register their trustees and enforcers only, with a declaration that the trust has no beneficial owners other than the public; (b) the beneficial ownership requirements in Part IX be expressly stated not to apply to charitable trusts, or alternatively, that 'beneficial owner' for charitable trusts be defined as the trustees and the enforcer; (c) the 21-day update period in Clause 67 be extended to 30 days for charitable trusts.
10.	PART X: POWERS OF THE COURT IN RELATION TO VESTING ORDERS Clauses 70–71	BILL: Clause 70 allows courts to issue vesting orders where no capable person exists, where court appoints trustee, or where court deems fit. Clause 71 allows court to appoint a person to convey property for benefit of a minor.	SUPPORT. NCCK supports these provisions, which provide judicial oversight and flexibility in managing trust property, particularly where trustees are incapacitated or disputes arise.

		CURRENT (Cap. 164): Section 14 allows petition to High Court to decide membership questions.	
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ADDITIONAL RECOMMENDATIONS

15. Religious Charitable Trusts Framework. NCCK recommends that the Committee consider inserting a new clause or schedule specifically addressing religious charitable trusts. Such a framework could: (a) provide presumptive charitable status for trusts whose primary object is the advancement of religion, subject to registration; (b) exempt religious charitable trusts from beneficial ownership disclosure requirements applicable to commercial or family trusts; (c) allow religious charitable trusts to use their ordained ministers or recognized religious officers as trustees without requiring professional qualifications; and (d) provide for simplified annual reporting for religious trusts with income or assets below a threshold to be prescribed in regulations.

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CONCLUSION

18. Based on the foregoing analysis, NCCK expresses its general support for the Trust Administration Bill, 2026, as a necessary and timely reform of Kenya's trust law. The Bill introduces essential governance standards, enhances transparency, and provides legal certainty for trustees, beneficiaries, and regulators. The codification of trustee duties, the introduction of registration and incorporation tiers, and the modernization of the Registrar's functions are all commendable improvements over the current Trustees (Perpetual Succession) Act (Cap. 164).

19. However, NCCK respectfully submits that the Bill requires refinement in several areas to ensure that it does not impose disproportionate burdens on charitable and religious trusts, which serve vital public interests and operate on limited resources. NCCK's key concerns relate to: (a) the beneficial ownership requirements as applied to charitable trusts; (b) the need for a definite Registrar timeline for completing the mechanics of the transition under Clause 97(3); (c) the potential overbreadth of trustee disqualification criteria; (d) the ongoing compliance costs of annual returns and trust agents; and (e) the absence of a differentiated regulatory framework for small charitable and religious trusts.

20. NCCK respectfully urges the Departmental Committee on Justice and Legal Affairs to consider the comments and recommendations set out in this memorandum and to invite NCCK to present oral submissions during the Committee's deliberations. NCCK remains committed to working with Parliament, the Executive, and other stakeholders to ensure that the Trust Administration Act, 2026 serves the interests of all Kenyans, protects the integrity of charitable institutions, and upholds the constitutional values of transparency, accountability, and religious freedom.

21. NCCK further requests that this memorandum be formally admitted as part of the public record of the Committee's proceedings on the Trust Administration Bill, 2026, and that NCCK be notified of any public hearings or stakeholder forums convened to consider the Bill.

Dated this 6th day of August, 2026.



Rev. Canon Chris Kinyanjui
General Secretary
National Council of Churches of Kenya

(15) — Revised version

NCCK
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NATIONAL COUNCIL OF CHURCHES OF KENYA

MEMORANDUM ON THE TRUST ADMINISTRATION BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

PRESENTED TO

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS
THE NATIONAL ASSEMBLY

National Council of Churches of Kenya (NCCK)
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INTRODUCTION

1. The National Council of Churches of Kenya (NCCK) is an ecumenical fellowship of Christian churches and organizations in Kenya, established in 1913, with a mandate to promote Christian unity, holistic development, and the witness of the Church in society. NCCK brings together Protestant, Anglican, Orthodox, and African Instituted Churches, as well as Christian organizations, with a combined membership of over fifteen million Kenyans. As a key stakeholder in Kenya's social and legal landscape, NCCK has a longstanding interest in legislative reforms that affect the governance of religious, charitable, and community institutions.

2. Reference is made to the Trust Administration Bill, 2026 (National Assembly Bill No. 29 of 2026), which was published in the Kenya Gazette Supplement No. 124 on 20th May 2026 and received by the National Assembly on 11th June 2026. The Bill seeks to consolidate and reform laws relating to the registration, incorporation, management, and regulation of trusts and trustees in Kenya. It further seeks to repeal the Trustees (Perpetual Succession) Act (Cap. 164), which has governed the incorporation of trustees in Kenya since 1923, with subsequent amendments in 2021 and 2024, as well as the Trustees Act (Cap. 167), which currently codifies many general trustee powers.

3. NCCK welcomes the initiative to modernize Kenya's trust law framework. The current Trustees (Perpetual Succession) Act is skeletal and does not adequately address contemporary governance challenges, including beneficial ownership transparency, trustee accountability, data protection, and the distinct regulatory needs of charitable, family, and non-charitable purpose trusts. The Bill represents a significant legislative undertaking that, if properly calibrated, can enhance public confidence in trusts, protect beneficiaries, and facilitate the work of charitable institutions, including faith-based organizations.

4. NCCK's interest in this Bill is particularly informed by the extensive use of the trust structure by churches, church-related institutions, and faith-based organizations to hold property, manage endowments, and advance charitable objects such as education, health care, and social welfare. Many of NCCK's member churches and affiliated institutions are constituted as trusts or hold assets in trust. The regulatory framework established by this Bill will therefore have a direct and material impact on the operations, governance, and sustainability of these institutions.

5. In this memorandum, NCCK presents its general observations on the Bill, followed by specific clause-by-clause comments comparing the proposed provisions with the current Trustees (Perpetual Succession) Act (Cap. 164). NCCK's comments are offered in a spirit of constructive engagement, with the aim of ensuring that the final Act strikes an appropriate balance between regulatory oversight, transparency, and the operational autonomy of charitable and religious trusts. NCCK reserves the right to make further oral and written submissions during the Committee stage of the Bill.

GENERAL COMMENTS

6. NCCK acknowledges that the Trust Administration Bill, 2026 is a comprehensive and ambitious piece of legislation that seeks to bring Kenya's trust law into the 21st century. The Bill introduces critical innovations, including a dual-track system of registration (for unincorporated trusts) and incorporation (for trusts with separate legal personality), detailed duties and powers of trustees, beneficial ownership registers, annual return requirements, and dissolution procedures. These reforms are broadly welcome and address significant gaps in the current Cap. 164.

7. The Bill's explicit recognition of charitable trusts, non-charitable purpose trusts, and family trusts provides much-needed legal certainty. NCCK is particularly encouraged by the inclusion of 'the advancement of religion, human rights and fundamental freedoms, the protection of the environment or any other purpose beneficial to the general public' as charitable objects under Clause 8. This aligns with the constitutional protection of religious freedom under Article 32 and the charitable activities of faith-based organizations.

8. However, NCCK notes with concern that the Bill imposes substantial compliance burdens on all trusts, including charitable trusts, without sufficient differentiation based on risk profile or institutional capacity. The requirement for all trusts to maintain registers of beneficial owners (Part IX), file annual returns (Clause 75), and engage trust agents (Clause 76) may disproportionately affect small churches, community-based trusts, and rural faith-based institutions with limited administrative capacity. NCCK recommends that the Bill, or the regulations made thereunder, provide simplified compliance pathways for small charitable trusts and religious institutions.

9. NCCK further notes that the Bill does not contain any specific exemptions or simplified regimes for religious charitable trusts. In comparative jurisdictions, religious trusts often benefit from presumptive charitable status, reduced filing requirements, or exemptions from certain disclosure obligations, subject to compliance with basic governance standards. NCCK recommends that the Committee consider whether such differentiated treatment would be appropriate in the Kenyan context, having regard to the constitutional principle of the separation of church and state and the unique public benefit conferred by religious institutions.

10. The repeal of Cap. 164 and Cap. 167 and the transition to the new Act raises practical considerations for existing trusts. Many church trusts incorporated under Cap. 164 have operated for decades under the existing framework. 'NCCK notes, and welcomes, that Clause 97(2) already provides a twenty-four (24) month compliance period for existing trusts, deems trusts incorporated under Cap. 164 to continue as trusts under the new Act, and includes a savings clause preserving accrued rights, powers, liabilities and duties. NCCK recommends that Clause 97(3) be strengthened to fix a definite timeframe within which the Registrar must reissue certificates of incorporation and complete the

transfer of records from the current Registrar, so that existing church trusts have certainty on when the transition will be operationally complete.

11. Finally, NCCK urges the Committee to ensure that the regulations contemplated under Clause 95 are developed through a participatory process that includes consultations with religious organizations, the legal profession, the charitable sector, and other stakeholders. The success of this Bill will depend significantly on the quality and accessibility of the subsidiary legislation that operationalizes its provisions

SPECIFIC COMMENTS

The table below sets out NCCK's clause-by-clause analysis of the Trust Administration Bill, 2026, comparing each provision with the current Trustees (Perpetual Succession) Act (Cap. 164), and indicating NCCK's position with justifications.

No.	Clause & Title	Proposed Provision under the Bill 2026 / Current Position under Cap. 164	NCCK Position and Justification
1.	PART II: TRUST AND TRUST FORMATION Clauses 4–7 (Creation, Registration, Invalidation, Irrevocable Trusts)	BILL: Clause 4 defines trust creation. Clause 5 requires written trusts to be registered OR incorporated to be valid and enforceable; unregistered written trusts cannot be received as evidence except with court consent. Clause 6 lists grounds for invalidation (illegal purpose, no ascertainable beneficiary, duress/fraud, uncertain terms, incapacity, non-registration). Clause 7 deems trusts irrevocable unless express power of revocation exists. CURRENT (Cap. 164): Section 3 provides for incorporation only. No general registration requirement for unincorporated trusts. Section 3A addresses irrevocable trusts. Section	SUPPORT WITH RECOMMENDATION FOR AMENDMENT. NCCK supports the clarity on creation and invalidation. However, NCCK recommends that Clause 5(1) be amended to provide a grace period (e.g., 90 days from execution) for registration of written trusts, to avoid immediate invalidity for trusts created in good faith but pending administrative processing. The requirement for registration as a precondition for validity is a significant departure from current practice and may catch existing informal trusts by surprise.

		3F addresses validity grounds (similar to Bill).	
2.	PART II: TYPES OF TRUSTS Clauses 8–11 (Charitable, Non-Charitable Purpose, Family Trusts, Limitation of Trustees)	BILL: Clause 8 defines charitable trusts (relief of poverty, advancement of education/religion/human rights/environment, public benefit). Clause 9 allows non-charitable purpose trusts without beneficiaries if purpose is specific, capable of fulfilment, and not illegal. Clause 10 defines family trusts (estate planning, non-trading). Clause 11 requires charitable/non-charitable purpose trusts to have at least 3 natural person trustees OR 1 corporate trustee; family trusts require at least 1 trustee. CURRENT (Cap. 164): Sections 3B, 3C, and 3D contain similar provisions on charitable, non-charitable purpose, and family trusts, but without the trustee number requirements. No distinction in trustee numbers between trust types.	SUPPORT WITH RECOMMENDATION NCCK supports the categorization of trusts and the trustee minimum requirements, which enhance governance. However, NCCK recommends that the Bill clarify whether the 3-trustee requirement for charitable trusts applies to all charitable trusts regardless of size or asset value. Small rural church trusts with limited membership may struggle to identify 3 qualified trustees. NCCK proposes a tiered system or exemption for small charitable trusts with assets below a threshold prescribed in regulations. NCCK **PROPOSES** the deletion of clause 8(3). The Income Tax (Charitable Organisations and Donations Exemption) Rules, 2024 (LN 105/2024, Paragraph 10, First Schedule, Income Tax Act) already permit charitable trading — exempting purpose-related business income while taxing unrelated income separately. A blanket ban is more restrictive than existing tax law and undermines sector sustainability.

3.	PART III: REGISTRATION OF A TRUST Clauses 22–27	BILL: New registration regime: application to Registrar with trust deed, fees, beneficial owners register, statement of initial property, and enforcer details (Clause 22). Certificate of registration issued (Clause 24) but does NOT confer legal personality (Clause 27(2)). Registrar may refuse registration for unlawful purpose, national security, or non-compliance (Clause 25). Registration may be revoked by court order (Clause 26). CURRENT (Cap. 164): No standalone registration regime. Only incorporation under Section 3. Certificate of incorporation confers body corporate status (Section 3(3)).	SUPPORT WITH CONCERNS. NCCK supports the introduction of a registration tier for trusts that do not require corporate status. However, NCCK is concerned that the registration requirements (including beneficial ownership details under Clause 22(2)(c)) may be overly burdensome for small charitable trusts. NCCK recommends that the regulations prescribe simplified registration forms for charitable trusts, and that the registration fee structure be graduated based on trust size or asset value.
4.	PART IV: INCORPORATION OF A TRUST Clauses 28–33	BILL: A registered trust, or one created afresh, may apply to incorporate after reserving a name (Clause 28). Incorporation requires trustee, settlor, beneficiary and beneficial owner details plus the trust deed (Clause 29). On incorporation, the trust becomes a body corporate with perpetual succession, capable of	SUPPORT WITH RECOMMENDATION. NCCK notes that this Part is the direct successor to the incorporation regime under Cap. 164 that most existing church trusts currently rely on, and is therefore of central importance to NCCK's membership. NCCK supports the continuity provided by Clause 97(2)(a), which deems trusts incorporated

		suing, being sued, and holding property in its own name (Clause 32). A registered trust may later apply to convert to incorporated status (Clause 33). The Registrar may refuse incorporation on the same grounds as registration, including adverse vetting findings for charitable trusts (Clause 31). CURRENT (Cap. 164): Section 3 provides for incorporation, conferring body corporate status and perpetual succession on the trustees. This Part is the direct successor to the incorporation regime under which most existing church and charitable trusts currently hold property.	under Cap. 164 to continue as trusts under the new Act. NCCK recommends that the Registrar publish clear guidance, ahead of commencement, on the practical steps and documentation existing incorporated church trusts will need to provide when the Registrar reissues certificates of incorporation under Clause 97(3), to avoid uncertainty during the transition.
5.	PART V: PROPERTY OF A TRUST Clauses 34–35	BILL: Clause 34 requires trustees to deal with trust property in accordance with the trust deed. Clause 35 excludes property acquired illegally from trust property and subjects such property to recovery under the Proceeds of Crime and Anti-Money Laundering Act (Cap. 59A). CURRENT (Cap. 164): Section 4 vests	SUPPORT NCCK strongly supports Clause 35, which aligns trust governance with anti-money laundering laws and prevents trusts from being used as vehicles for laundering illicit proceeds. This provision enhances the integrity of the trust sector and protects legitimate charitable trusts from reputational harm.

		property in the body corporate upon incorporation. Section 12 addresses gifts to the corporate body. No explicit provision excluding illegally acquired property.	
6.	PART VI: TRUSTEES Clauses 36–42	BILL: Clause 36 sets qualifications (18+ years, sound mind, not disqualified under other law) and disqualifications (director/secretary disqualification under Companies Act, liquidator/administrator disqualification under Insolvency Act, mental incapacity, conviction of offence attracting imprisonment exceeding 6 months, corruption/economic crime conviction, undischarged bankruptcy). Corporate trustees must be companies whose main object is trustee services (Clause 36(3)). Clauses 37–42 address appointment, substitution, resignation, removal, death/dissolution, and effect of change. CURRENT (Cap. 164): Section 6 addresses appointment of trustees and filling vacancies. No detailed	SUPPORT WITH RECOMMENDATION FOR AMENDMENT. NCCK supports the qualification and disqualification criteria, which enhance trustee integrity. However, NCCK recommends that Clause 36(2)(d) be reviewed: the disqualification for any offence attracting imprisonment exceeding six months is overbroad and may exclude persons convicted of minor regulatory offences or historical offences who have been rehabilitated. NCCK proposes that the disqualification be limited to offences involving dishonesty, fraud, breach of trust, or moral turpitude, or that a rehabilitation period (e.g., 10 years) be provided after which the disqualification ceases.

		qualification or disqualification criteria. No specific provisions on resignation or removal procedures.	
7.	PART VII: DUTIES AND GENERAL POWERS OF TRUSTEES Clauses 43–59	BILL: Comprehensive codification of trustee duties: reasonable care, skill and diligence (Clause 43); act within powers (Clause 44); not to profit (Clause 45); preserve trust property (Clause 46); keep property separate (Clause 47); keep records for 7 years (Clause 48); access to information restrictions (Clause 49). General powers include: apply income for maintenance (Clause 50); manage property (Clause 51); delegate functions (Clause 52); appropriate property (Clause 53); sale and lease (Clause 54); borrow (Clause 55); distribute (Clause 56); sue and settle (Clause 57); power of attorney (Clause 58); insure (Clause 59). CURRENT (Cap. 164): No detailed codification of trustee duties or powers. Trustees' duties and powers are governed by common law and the trust deed.	SUPPORT. NCCK strongly supports the codification of trustee duties and powers. This provides certainty, reduces litigation, and sets clear standards for trustees of church and charitable trusts. The record-keeping requirements (Clause 48) and the duty to keep trust property separate (Clause 47) are particularly important for institutional accountability. NCCK recommends that regulations specify the format and standards for record-keeping to assist smaller trusts in compliance.

8.	PART VIII: REMUNERATION, INDEMNITY AND LIABILITY Clauses 60–64	BILL: Clause 60 allows remuneration authorized by trust deed, beneficiary consent, court order, or written law. Clause 61 establishes liability for breach of trust (loss, depreciation, lost profits). Clause 62 prohibits trust deeds from limiting liability for dishonesty, willful misconduct, or gross negligence. Clause 63 requires trusts to keep registers and records. Clause 64 requires accounting records compliant with financial accounting standards, retained for 7 years. CURRENT (Cap. 164): No provisions on remuneration, indemnity, or accounting standards. Section 9 requires recording of documents by Registrar. No internal accounting requirements.	SUPPORT. NCCK supports the liability framework, particularly Clause 62 which prevents trustees from contracting out of liability for dishonesty or gross negligence. However, NCCK notes that for charitable trusts where trustees typically serve voluntarily without remuneration, the Bill should ensure that liability provisions do not deter qualified persons from serving as trustees. NCCK recommends that the regulations provide for standard indemnity insurance arrangements for trustees of charitable trusts, or that the Bill expressly permit trusts to purchase trustees' liability insurance from trust funds.
9.	PART IX: BENEFICIAL OWNERS OF A TRUST Clauses 65–69	BILL: Every trust must compile and keep a register of beneficial owners (Clause 65). Register must be lodged with Registrar (Clause 66). Changes must be updated within 21 days (Clause 67). Records kept for 7 years (Clause 68). Registrar may issue compliance directives and disqualify	RECOMMEND AMENDMENT. NCCK recognizes the importance of beneficial ownership transparency for combating money laundering and terrorism financing. However, NCCK is deeply concerned about the application of these requirements to charitable trusts,

		non-compliant trustees (Clause 69). CURRENT (Cap. 164): No beneficial ownership requirements.	particularly religious trusts. Charitable trusts by definition benefit the public or a section of the public; they do not have 'beneficial owners' in the conventional sense. Requiring churches to identify and register 'beneficial owners' is conceptually problematic and may infringe on religious autonomy and the privacy of church members. NCCK recommends that: (a) charitable trusts be required to register their trustees and enforcers only, with a declaration that the trust has no beneficial owners other than the public; (b) the beneficial ownership requirements in Part IX be expressly stated not to apply to charitable trusts, or alternatively, that 'beneficial owner' for charitable trusts be defined as the trustees and the enforcer; (c) the 21-day update period in Clause 67 be extended to 30 days for charitable trusts.
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Dated this 10th day of August, 2026.



Rev. Canon Chris Kinyanjui
General Secretary
National Council of Churches of Kenya

(16)

REPUBLIC OF KENYA

OFFICE OF THE DATA PROTECTION COMMISSIONER

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4th August 2026

Jeremiah W. Ndombi, MBS
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NAIROBI

Dear Clerk,

RE: INVITATION TO THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

Reference is made to the letter received from the Clerk of the National Assembly, Ref No. NA/DDC/JLAC/2026/055 dated 28th July, 2026, requesting the Office of the Data Protection Commissioner (the Office) to submit views on the Trust Administration Bill (National Assembly Bill No. 29 of 2026).

The Office has reviewed the Bill and submits that Clause 91 requires compliance with the Data Protection Act Cap. 411C when processing personal data. The provision imposes a number of compliance obligations, including, but not limited to: registration with the Office as data controllers, data processors, or both; incorporating the data protection principles; and conducting data protection impact assessments where sensitive personal data is processed.

The Office remains committed to protecting Kenyans' personal data through rigorous enforcement, awareness and collaborative partnerships. We appreciate this opportunity to engage with the National Assembly, and remain available for any further clarifications required via info@odpc.go.ke.

Yours Sincerely,

IMMACULATE KASSAIT SC, MBS
DATA COMMISSIONER

KENYA VISION 2030

(17)

Governor

BANKI KUU YA KENYA

CENTRAL BANK OF KENYA

Haile Selassie Avenue
P.O. Box 60000 - 00200 Nairobi, Kenya
Telephone: +254 20 286 1003

DDC
&
18/8/26

August 17, 2026

Mr Samuel Njoroge, CBS
The Clerk of the National Assembly
National Assembly of Kenya
P.O. Box 41842 - 00100
NAIROBI

Tracy chebet
to facilitate
19/8/26

Dear Mr. Njoroge, CNA

COMMENTS ON THE TRUST ADMINISTRATION BILL, 2026

Ahmed Sabi
pls deal.
AWafula
19/08/26

I refer to your letter dated July 28, 2026, Ref: NA/DDC/JLAC/2026, inviting the Central Bank of Kenya among other government agencies, to submit comments on the Trust Administration Bill, 2026.

The Bank welcomes the opportunity to contribute to the legislative process and recognises the significance of the Bill in establishing a comprehensive framework for the administration and regulation of trusts in Kenya.

Upon preliminary review, the Bank has identified several policy, legal and operational matters that merit further consideration. These include the need for the proposed framework to accommodate emerging forms of property, including virtual assets, and to align appropriately with existing sector-specific legislation, particularly the retirement benefits framework.

Accordingly, I submit the Bank's preliminary comments and proposed amendments for consideration by the Departmental Committee on Justice and Legal Affairs.

The Bank stands ready to provide any further clarification that may be required and to participate in stakeholder engagements convened by the Committee in relation to the Bill.

Sincerely,

Dr. Kamau Thugge, CBS

DIRECTOR
RECEIVED
19 AUG 2026
Directorate of Departmental Committees

NATIONAL ASSEMBLY
RECEIVED
18 AUG 2026
CLERK'S OFFICE
P. O. Box 41842, NAIROBI.

THE TRUST ADMINISTRATION BILL 2026

INSTITUTION: CENTRAL BANK OF KENYA

No.	Clause	Provisions of the clause	Proposed Amendment	Justification/Comments
1.	**Clause 2 Definition**	"trust property" or "property" Means money or any other movable, immovable. Corporeal or incorporeal property, including any rights, interests or claims in property, which is administered by a trustee in accordance with the provisions of the trust deed	Insert after 'corporeal property: virtual assets, intellectual property assets	A broad definition encompassing virtual assets as trust property recognises emerging legislation, trends within the financial technology space
			"Virtual asset" means a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes and does not include digital representation of *fiat* currencies, securities and other financial assets	Inclusion of virtual assets as trust property ensures that they can be held managed, transferred, and protected through a trust
2.	**Clause 13 (1)** **(Powers of a settlor)**	A settlor may, subject to the terms of the trust and this Act, have powers to-.	A settlor may, subject to the terms of the trust and this Act *and any other applicable law*, have powers to-.	This is to ensure that the amendment of the trust deed of trusts established under the NPS Act is subject to the approval of the CBK. This is provided for under the NPS Regulations.
3.	**Clause 36 (1)** **(Qualification and disqualification to act as a trustee)**	A person shall qualify to act as a trustee if that person: -	A person shall qualify to act as a trustee if that person: - (d) meet any other requirement as may be prescribed in Regulations or *other applicable laws*	This is to ensure that where a trust is established under the NPS Regulations, CBK shall prescribe additional fit and proper criteria and approve trustees.

No.	Clause	Provisions of the clause	Proposed Amendment	Justification/Comments
4.	**Clause 37 (Appointment of trustees)**	A person may act as a trustee of a trust if appointed as a trustee- a. Under the terms of the trust deed b. Through a court order Under the Public Trustee Act	*Subject to this Act and any other applicable law, a* person may act as a trustee of a trust if appointed as a trustee- a. Under the terms of the trust deed b. Through a court order c. Under the Public Trustee Act	This is to require prior approval of the CBK before appointment of trustees for trusts established under the NPS to safeguard customer funds. This prevents unsuitable trustees from managing safeguarded customer funds.
5.	**Clause 38-42 (Replacement and removal of trustees)**	Provides general mechanisms for replacement.	Requires consultation with or approval by the relevant regulator before replacement of trustees administering safeguarded customer funds.	Prevents disruption to customer fund protection and continuity of trust administration.
6.	**Clause 54 (Power of sale and lease)**	Where a trust for a sale or a power of sale of a property is vested in a trustee, he or she may sell or concur with any other person in selling all or any part of the property either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.	*Subject to any applicable law,* where a trust for a sale or a power of sale of a property is vested in a trustee, he or she may sell or concur with any other person in selling all or any part of the property either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss	This is to ensure that any sale of trust property, especially the trust that is governed under the NPS Act and Regulations, it shall be subject to the approval of CBK. This is to ensure customer funds are safeguarded
8.	**Clause 58 (1) (Power of Attorney)**	A trustee may, subject to the provisions of this	A trustee may, subject to the provisions of this Act and the terms of the trust deed, *and any other applicable law,* by a power of	Pursuant to the NPS Act, any delegation of responsibilities by trustees is not allowed unless approved by the CBK. The

No.	Clause	Provisions of the clause	Proposed Amendment	Justification/Comments
		Act and the terms of the trust deed, by a power of attorney, delegate for a period not exceeding three years, the performance of any trust or function vested in him or her as trustee, alone or jointly.	attorney, delegate for a period not exceeding three years, the performance of any trust or function vested in him or her as trustee, alone or jointly.	power of attorney is also required to be subjected to fit and proper criteria before formal appointment. This is to ensure that suitable trustees govern the trust fund with customer funds.
9.	**Clause 59** **(Power to Insure)**	A trustee may insure any property which is subject to the trust against risks of loss or damage due to any event and pay the premiums out of the trust funds.	*Subject to the trust deed and any other written law,* a trustee may insure any property which is subject to the trust against risks of loss or damage due to any event and pay the premiums out of the trust funds.	This is to ensure that the payment of insurance is undertaken subject to the terms of the trust deed and any other written law including the NPS Act.
10.	**Clause 61** **(Liability)**	Subject to the provisions of this Act and the terms of a trust deed, a trustee who commits or is party to a breach of trust is liable for— (a)any loss or depreciation in value of the trust property resulting from the breach; and (b) any profit which would have accrued to the trust had there been no breach.	*Additional clause 61(2) after clause 61 (2)* *A trustee who commits or is a party to a breach of trust under subsection (1) shall be liable to an administrative penalty of—* *(a) a maximum of one million shillings, if the trustee in default is a natural person; and* *(b) a maximum of five million shillings, if the trustee in default is a body corporate.*	The clause should have a penalty clause as a deterrent measure.
11.	**New additional clause**		***Co-operation with other agencies*** *(1) The Registrar may enter into arrangements with a competent authority or any other agency for the*	The proposed clause ensures inter-agency and cross-border cooperation by empowering the Registrar to enter into information-sharing arrangements with competent

C2: CBK - Official

No.	Clause	Provisions of the clause	Proposed Amendment	Justification/Comments
			purposes of effective implementation of this Act. *(2) Pursuant to any arrangements made under subsection (1), the Registrar may share information with such competent authority or agency and receive information from* ***Sharing of information*** *The Registrar may disclose any information to any authority, within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Central Bank, Registrar or the requesting authority.* *Provided that the sharing of information with institutions outside Kenya shall only apply where there is a reciprocal arrangement between the Government or the Registrar and the government of another jurisdiction or that other authority*	authorities and other agencies for the effective implementation of the Act. This ensures timely exchange of supervisory information on trusts with entities such as CBK and FRC.



The Institute of Certified Public Accountants of Kenya

SUBMISSION ON

TRUST ADMINISTRATION BILL, 2026

AUGUST 2026

1. INTRODUCTION

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of Accountants established under the Accountants Act CAP 531, with the mandate to develop and regulate the Accountancy Profession in Kenya. The Institute is also a member of the Pan Africa Federation of Accountants (PAFA) and the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession.

The Trust Administration Bill 2026, seeks to consolidate and reform laws relating to the registration, incorporation, management and regulation of trusts and trustees in Kenya. In response to the call for comments by the National Assembly, the Institute hereby submits general and specific comments for consideration.

2. BACKGROUND

Trust administration involves the management and stewardship of property held in trust by trustees for the benefit of beneficiaries or for a permitted purpose, in accordance with the terms of the trust and applicable law. It entails the proper management and investment of trust property, maintenance of appropriate records, accounting for trust transactions and distributions, fulfilment of tax and other statutory obligations, and provision of relevant information to beneficiaries and competent authorities. Given the fiduciary responsibilities of trustees and the financial interests involved, an effective trust administration framework requires clear standards of governance, accountability, financial record keeping and transparency.

The Trust Administration Bill, 2026 introduces important reforms relating to the registration, incorporation management, regulation of trusts and accountability of trustees. ICPAK welcomes the importance of these reforms and observes that their effectiveness will also depend on the extent to which the Bill establishes clear and proportionate requirements for accounting records, auditing and financial reporting.

International practice demonstrates the importance of maintaining reliable financial and ownership information as part of effective trust administration as shown below

Table 1: Comparative Analysis of International Practice

COUNTRY	KEY PRACTICE	RELEVANCE TO KENYA
New Zealand	The Trusts Act 2019 requires trustees to retain core documents, including records of trust property identifying assets, liabilities, income and expenses, as well as	Provides a useful model for establishing clear statutory requirements for trust records and financial information,

COUNTRY	KEY PRACTICE	RELEVANCE TO KENYA
	accounting records and financial statements prepared during the trusteeship. The records are to be appropriate to the value and complexity of the trust property.	while allowing requirements to reflect the value and complexity of the trust. This supports strengthening Clause 64 of the Bill.
United Kingdom	The Trust Registration Service requires information on the trust and persons connected with it, including settlors, trustees, beneficiaries and persons exercising control. Trusts with UK tax liabilities are subject to additional requirements relating to the trust, its assets and tax position. Trustees are also responsible for tax reporting and payment on behalf of the trust.	Demonstrates the value of integrating trust registration, beneficial ownership and tax administration to enhance transparency and regulatory oversight.
South Africa	South African trustees are required to establish and maintain beneficial ownership information and lodge the relevant information with the Master of the High Court. The framework also requires trustees to keep beneficial ownership information up to date.	Highlights the importance of accurate, current and verifiable beneficial ownership information and its integration into the regulatory framework to support transparency and AML/CFT objectives.

These comparative approaches demonstrate that effective trust administration increasingly combines trustee accountability, reliable accounting records, financial reporting, beneficial ownership transparency and access to information by competent authorities, as well as maintaining safeguards for confidentiality and personal data.

Against this background, ICPAK's review identifies an opportunity to further strengthen the Bill by providing for

a. Recognition of certified and practicing accountants in trust administration, particularly in financial reporting, accounting, tax compliance, financial controls, asset tracking and related compliance functions.
b. Establishing a proportionate and risk-based framework for audit or independent review, taking into account factors such as the value of trust assets, annual income, nature of activities, public interest and risk profile
c. Annual returns should contain minimum financial information necessary to support effective regulation, including information on assets, liabilities, income, expenditure and distributions.

3. ICPAK'S PROPOSALS ON THE TRUST ADMINISTRATION BILL 2026

The Institute has developed the following submissions for specific consideration and adoption

NO.	CLAUSE	ISSUE OF CONCERN	ICPAK RECOMMENDATION	JUSTIFICATION
1	Clause 2 Definition of Trust Agent	The definition of a trust agent is limiting and fails to sufficiently recognise the role of qualified accounting professionals in the financial administration and compliance of trusts.	The Institute proposes an amendment to the definition of trust agent to read as follows Trust agent means an advocate of the High Court of Kenya, a certified public secretary, or a certified accountant holding a valid practising certificate under the Accountants Act.	This provides clarity on the professional qualifications applicable to trust agents and ensures that persons undertaking regulated professional functions are subject to the relevant professional and ethical standards.
2	Clause 64 Accounting Records	The provision does not sufficiently establish the financial reporting and assurance requirements applicable to trusts. There is lack of clarity on whether trusts with assets or annual income exceeding Ksh. 50 million should be subject to statutory audit requirements, as is common in risk-based financial reporting and assurance frameworks. There is also lack of clarity on the following areas a) who is responsible for preparing annual financial statements b) the circumstances requiring an independent audit or review	The Institute recommends that Clause 64 be amended by introducing new subclauses to provide that: a) The trustees of a trust shall prepare annual financial statements in accordance with the prescribed financial reporting standards. b) A trust whose assets or annual income exceed fifty million shillings, or such other threshold as may be prescribed, shall have its financial statements independently audited. c) A trust that does not meet the threshold under subsection (b) may be subject to an independent	This establishes clear accountability for financial reporting and introduces a proportionate and risk-based assurance framework for trusts. The proposed Ksh 50 million threshold provides an objective starting point for determining when an external audit may be warranted, while allowing regulations to accommodate changes in economic conditions and differences in the size and risk profile of trusts.

NO.	CLAUSE	ISSUE OF CONCERN	ICPAK RECOMMENDATION	JUSTIFICATION
		c) the criteria for determining which trusts should be subject to mandatory external audit.	review or other assurance engagement, having regard to the size, nature, public interest and risk profile of the trust. d) An audit or independent review required under this section shall be undertaken by a person authorised under applicable law to provide the relevant professional services	
3.	Clause 75 Annual Returns	The Bill requires trusts to file annual returns but leaves the content of the returns entirely to Regulations. The absence of minimum statutory financial disclosures may limit effective oversight of the financial position, ownership and compliance status of trusts.	Amend Clause 75(2) to provide that The annual returns referred to under subsection (1) shall contain, at a minimum, a) a summary of the trust's assets and liabilities, b) income and expenditure, distributions made during the financial year, c) material related-party transactions, where applicable, d) details of the auditor or independent reviewer and the status of the trust's financial statements, where applicable, and e) such other information as may be prescribed by Regulations.	Establishes a minimum statutory level of financial disclosure while retaining flexibility for additional requirements to be prescribed through Regulations.

NO.	CLAUSE	ISSUE OF CONCERN	ICPAK RECOMMENDATION	JUSTIFICATION
4	Clause 76 Trust Agent	The Bill permits a Certified Accountant to act as a trust service provider for purposes of lodging statutory documents, providing an address or keeping records. However, it does not sufficiently clarify the accounting, financial reporting and tax-related functions that may be undertaken by a Certified Accountant in the administration of a trust	Amend Clause 76 (3) to provide that A Certified Accountant appointed as a trust service provider may, within the scope of the Accountants Act and applicable professional standards, provide accounting, financial reporting, tax compliance, financial record-keeping and related compliance services to the trust	This will provide clarity on the role of an accountant acting as a trust agent and also ensure that professional services remain within the scope of the Accountants Act and applicable standards. It will also strengthen the financial administration and compliance of trusts.
5	Clause 83 Fees Payable to the Registrar	Although Clause 83 provides for fees to be prescribed, subsection (2) permits the Registrar to determine fees where no fees have been prescribed or where services are provided in circumstances not covered by the prescribed fees. The Bill does not provide clear principles or safeguards governing the exercise of this residual discretion.	The Institute recommends that the Bill should establish clear parameters for the Registrar's exercise of discretion to determine fees where no fee has been prescribed, including requirements for reasonableness, transparency, proportionality and public accessibility of such fees. Amend Clause 83 to provide that: a) the applicable fee schedule, including any fees determined by the Registrar, shall be publicly accessible b) any revision of prescribed fees shall be undertaken in accordance with the applicable law and communicated to affected stakeholders in advance.	It will reduce the potential for arbitrary or inconsistent charges and give trustees and professional advisers certainty regarding the cost of compliance.

4. ICPAK RECOMMENDATIONS

ICPAK considers the objectives of the Trust Administration Bill, 2026 and recognises its potential to strengthen the governance and accountability of trusts in Kenya. The Institute recommends that the Bill further be strengthen as follows

(i) There is need for the Bill to recognise certified public accountants holding valid practising certificates under the Accountants Act as eligible trust agents, particularly in relation to financial reporting and compliance functions.

(ii) A proportionate and risk-based framework should be established for the audit or independent review of trust financial statements, taking into account factors such as the size of the trust, value of assets, nature of activities and public interest.

(iii) Annual returns should contain sufficient financial and non-financial information to facilitate effective regulatory oversight, including details of trust assets and liabilities, income and expenditure, trustees, beneficiaries and other relevant parties.

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20 AUG 2026
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

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Salim Ahmed
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AWasike
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REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY GENERAL
&
STATE DEPARTMENT FOR JUSTICE, HUMAN RIGHTS AND CONSTITUTIONAL AFFAIRS

Ref: DOJ/LJM/3/4 TY

Date: 19th August, 2026

Mr Samuel Njoroge
The Clerk of the National Assembly
Departmental Committee on Justice and Legal Affairs
Main Parliament Buildings
P.O. Box 41842 - 00100
NAIROBI

RE: WRITTEN SUBMISSIONS ON THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026)

We refer to the letter Ref. NA/DDC/JLAC/2026/055 dated 28th July 2026, calling for comments on the Bill referred to above. We are grateful for the opportunity to participate in this process.

General comments

The Trust Administration Bill, 2026 is good and necessary, and should be supported in principle. This Bill represents a significant opportunity to modernise Kenya's legal trust framework and strengthen transparency, accountability and protection of beneficiaries and trust property.

However, the Bill requires further consideration before enactment. These include clarification of the legal status and effect of registration of a trust; harmonisation of the concepts of registration and incorporation; strengthening of the fiduciary duties and accountability of trustees; enhanced protection of beneficiaries and creditors; clarification of the role and independence of enforcers; and refinement of the provisions governing charitable, family and non-charitable purpose trusts.

There is also a need to ensure coherence between the Bill and other relevant legislation dealing with succession, property, taxation, insolvency, companies, anti-money laundering, data protection and charitable organisations. Transitional provisions should

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of Departmental Committees

be included to address the status of existing trusts, existing trust deeds, trustees, beneficiaries and property upon commencement of the proposed Act.

Kindly find below our comments on specific clauses of the Bill.

Matrix of Proposed Amendments

Clause	Proposed Amendment	Justification
Clause 4 – Creation of a trust	Amend the clause to read: "A trust is created where a person (the settlor) transfers, conveys or assigns property, wholly or partly, to a trustee to be held, administered, managed or disposed of in accordance with the terms of the trust deed, by operation of law or by order of the Court, for the benefit of an identifiable or ascertainable person or class of persons, or for the achievement of a specific lawful purpose."	The current provision does not expressly identify the settlor or clearly distinguish the roles of the settlor and trustee. It is also important to expressly require that a purpose of a trust be lawful, particularly in view of Clause 6. The amendment improves clarity and consistency in terminology and avoids ambiguity regarding whether a trust must always involve transfer of legal ownership.
Clause 4 – "ownership of property of a person is transferred"	Replace "ownership of property of a person is transferred" with "property is transferred, conveyed or assigned".	A trust may involve different forms of property and interests in property. The phrase "ownership of property of a person" is unnecessarily restrictive and may create uncertainty in relation to beneficial interests, equitable interests and other forms of property capable of being held in trust.
Clause 4 – "administered and controlled"	Replace "administered and controlled" with "held, administered, managed or disposed of".	"Controlled" is broad and potentially inconsistent with the fiduciary character of a trustee's role. The proposed terminology more accurately reflects the functions ordinarily undertaken by trustees

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL

RE: COMMITTEE STAGE AMENDMENTS TO THE TRUST ADMINISTRATION BILL, 2026

NOTICE is given that the Chairperson of the National Assembly Departmental Committee on Justice and Legal Affairs, Hon. George Murugara intends to move the following amendment to the Trust Administration Bill, 2026, at the Committee Stage—

LONG TITLE

THAT the long title of the Bill be amended by deleting the words "and reform"

CLAUSE 2

THAT, Clause 2 of the Bill be amended——

(a) by deleting the definition of "beneficial owner" and substituting therefor the following definition——

"beneficial owner" means the natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement;

(b) in the definition of "trust deed", by inserting the words "and includes reference to a constitution or trust instrument" immediately after the word "thereof;

(c) by inserting the following definition in proper alphabetical sequence——

"reporting institution" has the meaning assigned to it under the Proceeds of Crime and Anti-Money Laundering Act.

CLAUSE 3

THAT the Bill be amended by deleting clause 3 and substituting therefor the following new clause—

Application of the Act.

3. (1) This Act shall apply to a trust——

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(a) registered or incorporated under this Act;

(b) created by an order of a Court; and

(c) created by or under any other written law.

(2) Nothing in this Act shall limit, invalidate or otherwise affect a trust or fiduciary obligation arising under customary law, equity, a will, court order or any written law, or the jurisdiction of a court to recognise, enforce, vary or supervise such trust or fiduciary obligation.

CLAUSE 4

THAT the Bill be amended by deleting clause 4 and substituting therefor the following new clause—

Creation of a trust.

4. A trust is created where——

(a) an identifiable property, or an interest in property, is transferred to, vested in or placed under the control of a trustee, or the owner declares that the property is held in trust;

(b) the property is held for the benefit of one or more beneficiaries or a class of beneficiaries, or for the furtherance of a specified lawful purpose;

(c) the trustee is appointed to administer, control or dispose of the property in accordance with the terms of the trust deed, the operation of law or an order of a court; and

CLAUSE 5

THAT the Bill be amended by deleting clause 5 and substituting therefor the following new clause—

Recognition and enforceability of trusts.

5. (1) A trust may be in writing or implied.

(2) A trust which is written shall be registered or incorporated in accordance with this Act.

(3) A written trust shall not be enforceable unless it is registered or incorporated under this Act and the terms of the trust deed.

(4) A person claiming an interest under a written trust that has not been registered or incorporated under this Act may apply to the court for recognition of enforcement of the written trust.

CLAUSE 8

THAT the Bill be amended by deleting clause 8(3).

CLAUSE 13

THAT clause 13 of the Bill be amended by inserting the following subclause immediately after subclause (1)—

(1A) A settlor shall not exercise the powers provided under this section unless such powers have expressly been provided in the trust deed.

CLAUSE 22

THAT clause 22 of the Bill be amended—

(a) in subclause (2)(e), by inserting the words "if any" immediately after the words "initial enforcers of the trust";

(b) in subclause (2)(f), by deleting the word "cour" and substituting therefor the word "court"

CLAUSE 25

THAT clause 25 of the Bill be amended—

(a) in subclause (1)—

(i) by inserting the words "is formed for an unlawful purpose or" immediately after the word "trust" appearing in paragraph (a);

(ii) by deleting paragraph (b);

(iii) by deleting paragraph (d);

(b) by adding the following subclause immediately after subclause (2)—

(3) In making a determination under subsection (2), an applicant shall be given an opportunity to be heard or to regularise an application to meet the requirements for registration.

CLAUSE 26

THAT clause 26 of the Bill be amended by inserting the words "and in the prescribed manner" immediately after the words "court order".

CLAUSE 28

THAT clause 28 of the Bill be amended to chronologically renumber the subclause.

CLAUSE 31

THAT clause 31 of the Bill be amended—

(a) in subclause (1)—

(i) by inserting the words "is formed for an unlawful purpose or" immediately after the word "trust" appearing in paragraph (a);

(ii) by deleting paragraph (b);

(iii) by deleting paragraph (d);

(b) by adding the following subclause immediately after subclause (2)—

(3) In making a determination under subsection (2), an applicant shall be given an opportunity to be heard or to regularise an application to meet the requirements for registration.

CLAUSE 32

THAT clause 32 of the Bill be amended—

(a) by renumbering the existing provision as subclause (1);

(b) by adding the following subclauses immediately after subclause (1)—

(2) The incorporation of a trust shall not —

(a) extinguish or otherwise affect the trust created under the trust deed; and

(b) convert the beneficial interest of a beneficiary into a shareholding or other proprietary interest in the incorporated trust.

(3) The trustees of an incorporated trust shall continue to act in a fiduciary capacity and shall be subject to the duties, powers, liabilities and obligations imposed under this Act and in the trust deed.

(4) The substitution, disqualification, resignation or other change in the status of a trustees of an incorporated trust shall not affect the continued existence or legal identity of a trust.

CLAUSE 36

THAT clause 36(1) of the Bill be amended—

(a) by deleting paragraph (b);

(b) in paragraph (d), by inserting the words "or other applicable laws" immediately after the word "Regulations".

CLAUSE 37

THAT clause 37(1) of the Bill be amended by inserting the words "Subject to this Act and any other written law" immediately before the words "a person".

CLAUSE 39

THAT clause 39 of the Bill be amended

(a) in subclause (3), by inserting the words "subject to the Public Trustee Act" immediately after the words "Court may";

(b) in subclause (4), by deleting paragraph (e) and substituting therefor the following paragraph—

(e) the declaration of bankruptcy or Insolvency of the trustee.

CLAUSE 41

THAT clause 41(1) of the Bill be amended by inserting the expression "and 38" immediately after the expression "37".

CLAUSE 46

THAT clause 46(3) of the Bill be amended by inserting the words "in default" immediately after the word "trustees".

CLAUSE 48

THAT clause 48(4) of the Bill be amended by inserting the following proviso—

Provided that a trustee shall obtain any approval required under any other written law prior to lodging the amendment.

CLAUSE 51

THAT clause 51 of the Bill be amended—

(a) by renumbering the existing provision as subclause (1);

(b) by adding the following subclause immediately after subclause (1)—

(2) Subject to the provisions of this Act, a trustee may make any investment relating to the assets of the trust.

(3) In exercising any power of investment, or otherwise, a trustee shall undertake appropriate legal and financial due diligence and shall seek the necessary advice from persons qualified to render such advice in relation to the investment in question.

(4) A trustee shall not invest assets of the trust unless the trustee is authorised to do so in the trust deed and the investment is —

(a) in accordance with the purposes, terms and duration of the trust;

(b) in accordance with the interests and circumstances of the beneficiaries;

(c) commensurate to the liquidity requirements of the trust;

(d) commensurate to the nature and extent of the risks associated with the investment;

(e) does not pose any actual or potential conflict of interest to the trust or the trustee; and

(f) prudent and in the best interest of the trust.

(5)A trustee shall, from time to time, review the investments of the trust and consider whether they should be varied considering diversification and potential risk of the investment .

(6) A trustee shall not be liable for breach of trust due to continuing to hold an investment which has ceased to be an investment authorized by the trust deed or by the general law.

(7) A trustee lending money on the security of any trust property on which the trustee can lend shall not be liable for breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the court that —

(a) in making the loan, the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether the surveyor or valuer carried on business in the locality where the property is situate or elsewhere;

(b) the amount of the loan does not exceed two third parts of the value of the property as stated in the report;

(c) the loan was made under the advice of the surveyor or valuer expressed in the report.

(8) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorized investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(9) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the grounds that in making the loan the trustee dispensed either wholly or partly with the production or investigation of the lessor's title.

(10) A trustee shall not be chargeable with breach of trust only upon the grounds that in effecting the purchase, or in lending money upon the security, of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the court the title accepted be such as a person acting with prudence and caution would have accepted.

(11) The provision of this section shall apply to the transfer of existing and new securities and to investments made prior to the commencement of this Act.

CLAUSE 54

THAT clause 54(1) of the Bill be amended by inserting the words "Subject to this Act and any other written law" immediately before the words "where a trustee".

CLAUSE 58

THAT clause 58 of the Bill be amended—

(a) by inserting the words "any other written law" immediately after the words "this Act".

(b) by deleting clause 58(3);

(c) in subclause 58(6) by adding the following paragraph immediately after paragraph (d)—

(e) any other information as may be prescribed in the Regulations.

CLAUSE 61

THAT clause 61(1) of the Bill be amended by inserting the following subclause immediately after subclause (1)—

(1A) In addition to the liability under subsection (1), a trustee who commits or is a party to a breach of trust is liable —

(a) where the trustee is a natural person, to a fine not exceeding one million shillings;

(b) where the trustee is a body corporate, to a fine not exceeding five million shillings.

CLAUSE 63

THAT clause 63(1)(a) of the Bill be amended by inserting the words "registration or" immediately after the word "certificate of"

CLAUSE 75

THAT clause 75(3) of the Bill be amended by deleting the words "five hundred" and substituting therefor the words "three thousand".

CLAUSE 76

THAT clause 76 of the Bill be amended by deleting the proviso in subclause (3).

CLAUSE 77

THAT clause 77(1) of the Bill be amended by deleting the words "a Registrar" and substituting therefor the words "Office of the Registrar".

CLAUSE 83(3)

THAT clause 83(3)(d) of the Bill be amended by deleting the words "to the" appearing immediately after the word "donated".

CLAUSE 96

THAT the Bill be amended by inserting the following new clause immediately after clause 96—

Consequential amendment to Cap. 499B.

96A. The Business Registration Service Act is amended—

(a) in the long title, by inserting the word "trusts" immediately after the word "firms";

(b) in section 4(1), by inserting the word 'trusts' immediately after the word "bankruptcy".

CLAUSE 97

THAT clause 97(2)(b) of the Bill be amended by inserting the words "and trustees" immediately after the words "existing trusts".

We thank you and assure you of our continued support.

End