

Legal Alert

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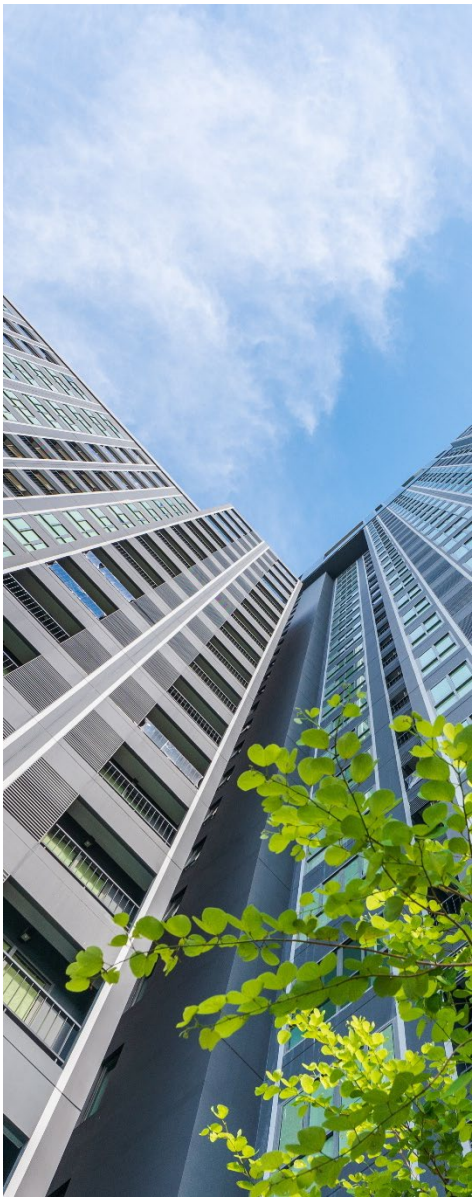
The Trust Administration Act, 2026: What trustees, settlors and beneficiaries need to know?

The Trust Administration Act, 2026 (“the Act”) is now law. It came into effect on 25 September 2026, repealing both the Trustee Act (Cap. 167) and the Trustees (Perpetual Succession) Act (Cap. 164). The overhaul consolidates decades of fragmented trust law into a single modern framework. The result is one unified regime governing the registration, incorporation, governance, and supervision of trusts in Kenya.

All written trusts must now be registered to be enforceable, with incorporation being carried over from the repealed framework as an additional step for trusts that require separate legal personality. The Act also introduces a dedicated office of the Registrar of Trusts (“the Registrar”) under the Business Registry Service (“the BRS”) effectively severing the Registrar of Companies’ mandate over trusts. While both the Registrar of Trusts and the Registrar of Companies are expected to operate under a common BRS umbrella, they will function as distinct entities with separate, independent mandates tailored to their respective legal frameworks. The Act also introduces mandatory beneficial ownership (“BO”) reporting, detailed annual returns, enhanced record-keeping and filing requirements, clearer trustee duties over all the functions exercised under the trust, enhanced penalties especially for trustees, stronger enforcement powers of the Registrar and the ability to seek exemption from the provisions of the Act for charitable trusts.

24 months

transition window from 25 September 2026 for existing trusts to align with the new regime.



With new compliance obligations, reporting requirements and enforcement mechanisms, trustees, settlors, and beneficiaries, should promptly review their trust structures, statutory obligations, beneficial claims, governance arrangements and existing records, to ensure alignment with the new regime or seek exemptions where necessary. This helps mitigate legal and regulatory risks that could arise as a result of the Act coming into force, including unenforceability or invalidity of the trust, personal liability for trustees, disqualification from acting as a trustee, or the risk of administrative sanctions.

The Act grants a twenty-four (24) month transition window from 25 September 2026, which has already commenced. Existing trusts that were established under the previous framework should be reviewed to assess their compliance with the new requirements.

Below are some salient highlights on the changes introduced by the Act:

A. Registration and incorporation are now distinct.

Under the repealed framework, incorporation was the only formalisation step for the recognition of trusts by the Registrar of Companies. The Act now requires that all written trusts shall be registered in order to be enforceable. Enforceability means that the trust and its terms can be recognised and upheld by the courts, enabling trustees, beneficiaries and any other interested parties to exercise their powers and safeguard their claims respectively.

Notably, the Act allows persons with valid claims under implied trusts or those arising out of testamentary arrangements to apply to the High Court ("the Court") for recognition. Implied trusts that seek the Courts validation of existence would typically grapple with the precariousness of the judicial process which makes the court route highly uncertain.

It should be noted that registration under the Act only confirms that a trust exists and complies with the formal requirements without creating a separate legal person. By contrast, incorporation is the subsequent step after registration, that gives a trust separate legal personality. This confers it with all the capabilities of a legal person. This means that a registered trust may therefore apply for incorporation where it needs to hold property separately from the trustee, enter into contracts, or sue and be sued in its own name. The incorporation process mirrors the registration process but with a name-reservation step as its main distinction. This two-tier framework allows trusts that do not require separate legal personality to remain registered without incorporation, while enabling other structures to obtain separate legal personality where needed.

B. Trust deeds and applications must contain minimum statutory contents.

This represents a notable shift from the previous regime, under which the contents of a trust deed were left largely to the settlor's discretion, subject only to general trust law principles and common practice. During registration applications, a trust deed must now explicitly identify the trust's nature and purpose, establishment date, settlor, trustees, enforcers, trust agents, trust property, beneficiaries or beneficiary classes, and beneficial owners. The trust deed must also address key governance matters, including how trustees are appointed and removed and how the trust is to be administered.

For the registrar, this standardisation of mandatory trust deed content is likely to promote greater consistency in the structure and governance of trusts, making trust arrangements easier to understand, administer and supervise across the sector. Notably, however, this standardisation approach to the content of a trust deed may not align neatly with existing trusts, particularly where the terms of the trust deed afford limited or no scope for amendment.





C. The establishment of the Registrar of Trusts.

The establishment of the Registrar of Trusts with an expanded supervisory role changes the institutional framework for trust supervision. The Act transfers responsibility for trusts from the Registrar of Companies to the Registrar of Trusts and introduces rigorous ongoing compliance supervision. Under the previous framework, trust administration formed part of the Registrar of Companies' wider mandate and focused on basic administrative functions.

The newly established Registrar of Trusts is a dedicated office with immense supervisory powers. Whereas the preceding Registrar focused on processing trust formation documents, the new office is mandated to maintain registers of trusts and BO as well as actively monitor compliance. The Registrar also exercises statutory enforcement powers, including the authority to oversee dissolutions, revoke a trust's registration or incorporation, and disqualify non-compliant trustees for up to three (3) years. The new framework extends the Registrar's role beyond registration to ongoing supervision of a trust's compliance. Trusts should therefore seek to maintain a constructive compliance relationship with the Registrar by ensuring timely filings, accurate records and prompt responses to regulatory requirements.

D. Corporate trustees licensing and local accountability requirements.

The Act defines a corporate trustee as an entity registered in Kenya and licensed to act as a trustee under the Act. It also recognises that a company can be licensed to act as a trustee under a different statutory framework. The Act therefore recognises that a corporate trustee can be licensed under a different framework, including the Capital Markets Act (Cap. 485A) or the Retirement Benefits Act (Cap. 197). As such, to qualify, the entity must be incorporated under the Companies Act, have the provision of corporate trustee services as its main object, satisfy applicable licensing requirements, and meet any additional requirements that may be prescribed in future regulations.

Corporate trustees shall also be required to have a local contact person who is a natural person resident in Kenya. The local contact requirement provides the regulator with an identifiable person resident in Kenya for communications concerning the corporate trustee's compliance obligations and supports clearer regulatory communication and accountability.



E. Beneficial Ownership reporting is mandatory for all trusts.

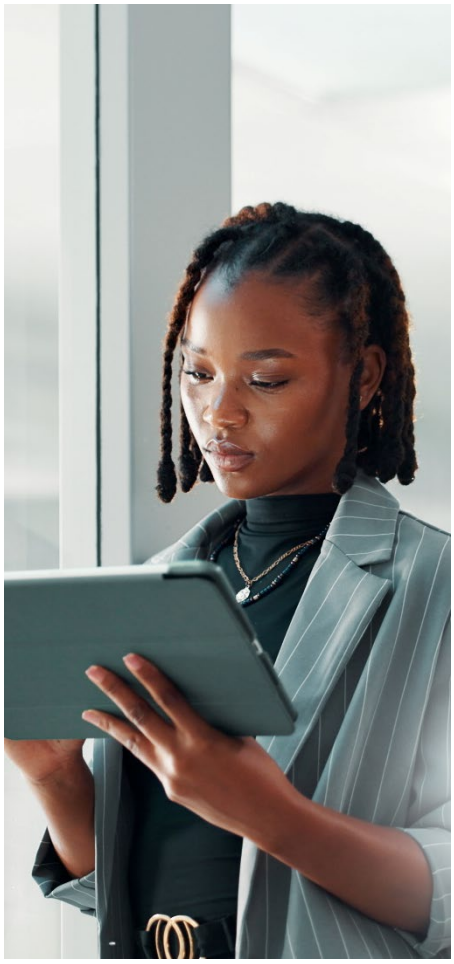
The Act introduces a statutory framework for the identification and disclosure of the beneficial owners of trusts. The repealed framework did not require trusts to compile, maintain or lodge a register of beneficial owners with the Registrar, which had triggered concerns about potential illicit financial flows (IFFs) through local and foreign trust arrangements, including from the Financial Action Task Force (FATF) in 2024. The trust BO requirements share several features with the framework under the Companies Act (Cap. 486), although the filing and record-retention periods differ. For instance, while companies are generally required to file amendments to the register within fourteen (14) days, trusts shall be required to do so within twenty-one (21) days. Further, while companies are expected to retain BO records for ten (10) years after cessation of a person's BO status, trusts shall be required to retain similar records for seven (7) years.

Under the new legislation, every trust must compile and maintain a register of its beneficial owners and lodge a copy with the Registrar. Trusts incorporated before the commencement of the Act have specifically been granted twenty-four (24) months from its commencement to lodge their BO registers, although this period may be extended by the Registrar upon application by the trustee or a trust agent, under a merited consideration.

F. Expansion of transparency through detailed annual returns and digital filing requirements.

I. Annual returns

Under the repealed Trustee PS Act, the annual reporting obligation was relatively narrow, requiring trustees to only furnish particulars such as the names and addresses of serving trustees at the close of each reporting period, typically the yearly anniversary of the trust's incorporation. The Act expands this framework by mandating the filing of annual returns for all trusts, while leaving their precise content to future regulations. This could broaden the annual reporting framework beyond simple updates to trustee particulars. In the future, trusts and trustees may be required to disclose a broader range of information concerning the trust's governance, administration, compliance status, beneficial interests, financial affairs, or other matters considered necessary for regulatory oversight. Presently, the absence of prescribed reporting requirements creates uncertainty about the ultimate scope of the obligation.



II. Digital filing

The Act establishes a framework for electronic filing, with discretion over the arrangements largely reserved for the Registrar. The Registrar may require any document lodged under the Act to be filed electronically, subject to prescribed conditions. This power complements the Registrar's broader record-keeping functions. The Act empowers the Registrar to keep records and direct trusts to maintain records electronically, without requiring the Registrar to preserve physical records received from trusts. Electronic records must remain retrievable and reproducible in hardcopy, placing responsibility on trusts to maintain retrievable records. The precise arrangements for electronic lodgment also remain subject to future subsidiary regulations. The BRS framework may serve as the filing platform, given that the Registrar operates within BRS, but the arrangements remain to be confirmed.

Trusts should prepare for a shift toward predominantly digital interactions with the Registrar, including the possibility that filings currently made in physical form may become subject to mandatory electronic submission requirements. Trustees should ensure all records are maintained in an organised, accessible, granular (where possible) and electronically retrievable format, as future regulations may introduce demanding e-filing and digital record-keeping obligations. Trustees should prepare for a predominantly digital compliance environment and ensure that records can be retrieved and reproduced on demand.

G. Overarching Trustee duties are now expressly codified.

Trustee duties are intended to operate as limitations to trustee powers. While the repealed framework under the Trustees Act had a section dedicated to general trustee powers alone, the Trust Administration creates a separate section dedicated to trustee duties as well. The Act codifies these duties to operate alongside powers, which is a departure from the repealed framework, which only occasionally carved out limitations for powers exercised over trust property and investment decisions. Trustees now face heightened expectations of compliance and accountability, with fiduciary and non-fiduciary duties explicitly set out in statute for both minor and major functions carried out in trustee capacity.

Notably, the statutory standard of care is elevated by the Act linking a trustee's obligations to individual expertise. That is, professional trustees, or those acting in a business capacity, shall be held to a higher benchmark than lay trustees where it's established that they possess or profess special skill. This is also reinforced separately through the duty to undertake legal and financial due diligence before investment decisions, and to particularly seek qualified advice where requisite skill on the side of the trustee is lacking.

Trustees shall also be presumed to know the contents of the trust deed and expected to act within its terms. The presumption also has implications for co-trustees acting jointly. Trustees shall therefore be required to remain informed about the trust's administration, and exercise appropriate oversight of decisions taken jointly. Where uncertainty arises over how powers should be exercised by a sole trustee or co-trustees, trustees shall be required to seek the Court's guidance rather than relying on personal or collective judgment, or even inferring the settlor's intention.

In addition to this, the Act also codifies the no-personal-benefit rule from common law, barring trustees from profiting from their position or knowingly permitting others to do so, including through transactions with co-trustees that involve trust property. Exceptions that were once available flexibly through simple disclosure and beneficiary consent, have now been substituted strictly with court-approved or statutorily permitted instances.

Trustees also have a duty to preserve the value of trust property and avoid disposals that frustrate the trust's purpose. The scope of this obligation, alongside the duty to obtain qualified advice where necessary, may require careful consideration since the standard for what amounts to value preservation could be too broad and highly dependent on circumstances.

It is therefore important to note that all major and minor trustee decisions shall therefore be assessed against the applicable duties of prudence and care.





H. Trustee composition requirements.

The Act distinguishes between two primary types of trusts with regard to the minimum number and type of trustees to be maintained at one given time. These categories are family, and the charitable and non-charitable trusts. The trustee categories on the other side are based largely on whether the trustee is a natural or a legal person.

The Act requires a family trust to have at least one trustee. A charitable or non-charitable purpose trust shall maintain at least three natural trustees or one corporate trustee. These differing requirements reflect a balance between flexibility for family trusts and additional governance safeguards for charitable and non-charitable purpose trusts. Charitable and non-charitable purpose trusts may lack direct human beneficiaries to oversee management, making internal checks and balances particularly relevant. Having at least three natural trustees supports those checks, while a single corporate trustee is assumed to operate natively within the regulated corporate framework and thus achieving equivalent outcomes. In contrast, family trusts serve as private vehicles for estate planning and wealth preservation with their scale differing from trust to trust. The single-trustee requirement allows flexibility in the administration of family trusts and may reduce additional administrative costs and requirements for simpler family wealth arrangements.

I. Trust agents have a narrower professional role.

The Trust Administration Act carries over the concept of Trust Agents from the repealed Trustee Act but limits their mandate. A person appointed to undertake trust agent functions must be an Advocate of the High Court of Kenya, a Certified Secretary or a Certified Accountant. This differs from the repealed framework, which allowed a wider range of eligible persons to act as trust agents, including bankers handling money on behalf of the trust or the trustee. While the Act also appears to create an open-ended list of functions that can be delegated to a trust agent, it only identifies administrative and functional roles.

Under the Act, trust agents shall assist with trust formation and setup, provide advisory services, prepare registration or incorporation documents, provide a registered office address for a family trust and lodge statutory documents on behalf of a trust. The principal change is therefore not the introduction of agents in trust administration, but the creation of a more defined and regulated role for trust agents. Trustees should review the scope and legal basis of delegated functions, particularly those involving the handling of trust property, to assess whether the agent remains empowered under law to perform them.

J. Charitable trusts may seek tailored exemptions from any provision of the Act.

The Act states that a charitable trust registered or incorporated under the new framework may apply to the Attorney-General for exemptions from any provision of the Act. The application must also state explicitly the reasons for which the exemption is sought. The Attorney-General may grant the exemption on such terms as may be considered necessary, subject to the prior approval of the National Assembly committee responsible for delegated legislation. However, trusts should note that exemptions will be considered upon application and on a case-by-case basis. Applications for exemptions will also not apply automatically to all analogous trusts once granted to one charitable trust.

A charitable trust may wish to consider whether there are grounds to seek exemption from specific statutory obligations that create administrative or financial difficulties. Possible areas for consideration include financial reporting formats, annual filing deadlines, governance requirements concerning the number or residency of trustees, investment restrictions affecting trust property, and disclosure requirements that may expose beneficiaries or staff to security risks. These are potential grounds for an application, not established categories of exemption under the Act. Any relief remains subject to the statutory approval process and the terms imposed.

The thorough approval process provides safeguards for departures from the Act's general requirements through review by the Attorney-General and the relevant National Assembly committee. A charitable trust seeking an exemption should explain its reasons clearly and address the implications for compliance and accountability.



K. A revised penalty system.

The Act introduces sanctions alongside statutory duties and provides for trustee liability for specified breaches. The revised penalties include sanctions for conduct relating to the handling of trust property, reflecting the importance of protecting beneficiaries' interests and the integrity of a trust. Trustees shall also face financial penalties for reporting and transparency offences.

Non-compliance shall attract fines, imprisonment for natural trustees, disqualification from acting as a trustee, or revocation of a trust's registration or incorporation. The revised sanctions include penalties for failure to preserve trust property or improper disposal. A natural trustee may face a fine of up to KES 5 million or imprisonment for up to five years, while a corporate trustee may face a fine of up to KES 20 million. Failure to respond to specified information requests shall attract a fine of up to KES 1 million for a natural trustee and KES 3 million for a corporate trustee. A natural trustee may also face imprisonment for up to two years. Separate sanctions shall apply to offences relating to filing of annual returns, statutory notifications, powers of attorney, information requests and maintenance of required registers. Failure to file BO information shall attract financial penalties and expose a trustee to a three (3) year disqualification.

Below is a brief overview of the notable sanctions:

Offending Conduct	Type of Trustee	Pecuniary Sanction	Custodial Alternative
Failure to preserve trust property or improper disposal.	Natural Trustee	Up to KES 5,000,000	Up to 5 years
	Corporate Trustee	Up to KES 20,000,000	N/A
Failure to comply with information requests by enforcer, settlor, court order or POCAMLA reporting.	Natural Trustee	Up to KES 1,000,000	Up to 2 years
	Corporate Trustee	Up to KES 3,000,000	N/A
Failure to give notice to the registrar for the donation of Power of Attorney	Natural Trustee	Up to KES 500,000	Up to 2 years
	Corporate Trustee	Up to KES 2,000,000	N/A

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L. A systematic framework for dissolution of trusts.

The Act introduces a more structured process for trust dissolution, including safeguards against erroneous dissolution and mechanisms for restoration. The process includes the ability to withdraw an application for dissolution before finalisation, administrative restoration by the Registrar where dissolution occurred erroneously, and a separate judicial route for restoration by court order. Upon restoration, a trust is treated as if it had never been dissolved and maintains its previous legal status. However, the handling of trust property upon dissolution remains subject to the terms of the trust deed and the general provisions of the law.

The Act's dissolution provisions provide safeguards for trustees, beneficiaries and creditors against erroneous or premature termination, and address the treatment of trust property following dissolution. It is advisable that trustees winding up a trust consider the possibility of restoration and any resulting claims concerning property that may have been improperly disposed of. Trustees should also ensure that the applicable requirements under the Act and the trust deed are satisfied before initiating the dissolution process.

Conclusion

The Trust Administration Act, 2026 represents a consequential consolidation and reform of Kenya's trust law, repealing a fragmented regime in favour of a single framework. Alongside procedural changes, the Act introduces new requirements concerning transparency, accountability and supervision.

Settlors, trustees and corporate service providers should begin reviewing existing trust deeds, governance arrangements and beneficial ownership records against the new requirements. Advance planning will help identify gaps and allow time to address them before the applicable deadlines. Legal advice is therefore important in determining the changes required for trust structures.

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