

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

BERMUDA NATIONAL TRUST AMENDMENT ACT 2021

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WHEREAS it is expedient to amend the Bermuda National Trust Act 1969 to increase the number of persons who may be elected to the Council of the Bermuda National Trust, to remove appointments to the Council by entitlement, to provide for the Council to make by-laws as to its rules of procedure and as to the conduct of the business and affairs of the Trust, and to provide for the Council to appoint the auditor that audits the Trust's accounts each year;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Bermuda National Trust Act 1969 ("the principal Act"), may be cited as the Bermuda National Trust Amendment Act 2021.

Amends section 1

2 Section 1(1) of the principal Act is amended by inserting the following definition—

“by-laws” means by-laws made by the Council under section 11A;”.

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Amends section 8

3 Section 8(2) of the principal Act is amended by inserting after “Schedule” the words “and, to the extent the by-laws do not conflict with the provisions of the Schedule, the by-laws”.

Amends section 9

4 Section 9 of the principal Act is amended—

(a) by repealing subsection (1) and substituting—

“(1) There shall be a Council of the Trust which shall consist of not more than thirteen members of whom—

(a) three shall be appointed by the Governor acting on the advice of the Minister; and

(b) not more than ten and not fewer than six shall be elected annually from among the members at the annual general meeting of the trust.”;

(b) by repealing subsection (2);

(c) by repealing subsection (3) and substituting—

“(3) The Council shall be deemed fully constituted and all acts and proceedings of the Council shall be deemed valid in all respects notwithstanding a vacancy in the membership or a defect in the appointment or election of a member thereto.”; and

(d) by inserting after subsection (3)—

“(3A) The quorum for any meeting of the Council shall be one half of the number of the members of the Council for the time being.”.

Amends section 10

5 Section 10 of the principal Act is amended in subsections (1) and (2) by deleting “regulation” each time it appears and substituting “by-law”.

Amends section 11

6 Section 11 of the principal Act is amended—

(a) in subsection (1), by repealing paragraphs (a) and (b);

(b) in subsection (2), by deleting “subsection (1)(c), (d) or (e)” and substituting “subsection (1)”; and

(c) by repealing subsection (4) and substituting—

“(4) The negative resolution procedure shall apply to regulations made under subsection (1).”.

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Inserts section 11A

7 The principal Act is amended by inserting after section 11—

“Council may make by-laws

11A (1) Subject to this Act and any regulations made under it, the Council may make by-laws—

(a) as to its own rules of procedure;

(b) as to the conduct of the business and affairs of the Trust.

(2) By-laws made under subsection (1) shall be approved by the Trust at a general meeting before they come into operation.

(3) For the avoidance of doubt—

(a) by-laws made under subsection (1) are not statutory instruments, and the Statutory Instruments Act 1977 shall not apply to such by-laws;

(b) if by-laws made under subsection (1) conflict with this Act or any regulations made under it, the provisions of this Act, or (as the case may be) the regulations, shall prevail.”.

Amends section 12

8 Section 12(2) of the principal Act is amended by deleting “elected each year at the annual general meeting and approved by the Minister” and substituting “appointed by the Council”.

Transitional

9 The amendments made by section 4 to section 9 of the principal Act shall take effect as of the date of the next annual general meeting of the Bermuda National Trust following this Act receiving the Governor’s assent.

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EXPLANATORY MEMORANDUM

This Bill would amend the Bermuda National Trust Act 1969 (“the principal Act”) to provide for: (a) an increase in the number of persons who may be elected to the Council of the Bermuda National Trust, (b) the removal of appointments to the Council by entitlement; (c) the Council to make by-laws as to its rules of procedure and as to the conduct of the business and affairs of the Trust; and (d) the Council to appoint the auditor that audits the Trust’s accounts each year. In this explanatory memorandum, references to a particular section are references to that section of the principal Act.

Clause 1 is self-explanatory.

Clause 2 amends section 1(1) to add a definition of “by-laws”, which are by-laws made by the Council under the new section 11A (inserted by clause 7).

Clause 3 amends section 8(2) to clarify that by-laws may provide for the procedure for calling and holding general meetings of the Bermuda National Trust, but only to the extent that the by-laws do not conflict with the provisions of the Schedule to the principal Act (Regulations Governing the Calling and Holding of General Meetings of the Trust).

Clause 4 amends section 9 to increase the number of persons who may be elected to the Council, to remove appointments to the Council by entitlement by repealing subsection (2), to re-word subsection (3) as a consequence of the amendments to subsection (1), and to provide that a quorum for any meeting of the Council shall be one half of the number of members of the Council for the time being.

Clause 5 amends subsections (1) and (2) of section 10 by replacing the word “regulation”, each time it appears in those subsections, with “by-law”. This reflects the amendments made to section 11 (see clause 6) and the new section 11A (inserted by clause 7).

Clause 6 amends subsection (1) of section 11 by repealing paragraphs (a) and (b), which empower the Council to make regulations as to the procedure of the Council and as to the conduct of the business and affairs of the Trust, and subsections (2) and (4) are amended accordingly. These powers will in future be exercisable by the Council through by-laws (see clause 7, which inserts the new section 11A).

Clause 7 inserts the new section 11A, which empowers the Council to make by-laws as to its rules of procedure and as to the conduct of the business and affairs of the Trust. Such by-laws are not statutory instruments, but the by-laws must not conflict with any provisions of the principal Act or regulations, and must be approved by the Trust at a general meeting before they come into operation.

Clause 8 amends section 12(2) to provide that the Council is to appoint the auditor that audits the Trust’s accounts each year. The section currently provides that such auditor is to be elected each year at the annual general meeting and approved by the Minister.

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Clause 9 is a transitional provision which provides for the amendments under clause 4 to come into effect as of the date of the next annual general meeting of the Bermuda National Trust following the Governor's assent to this Act.