A BILL

entitled

TRUSTEE AMENDMENT ACT 2026

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WHEREAS it is expedient to amend the Trustee Act 1975 to streamline record-keeping requirements, to provide for the appointment of a supervisor for certain trustees and to include provision relating to confidentiality and transparency as it relates to information required to be kept by trustees, and to make consequential amendments to the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;

Be it enacted by The King'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 Trustee Act 1975 (the "principal Act"), may be cited as the Trustee Amendment Act 2026.

Amends section 1

2 In section 1 of the principal Act (interpretation), insert the following definitions in alphabetical order—

" "Minister" means the Minister of Finance;

"supervisory authority" means a supervisory authority designated under section 63A;".

Inserts new Part IIA

3 The principal Act is amended by inserting after section 25 the following new Part—

"PART IIA

RECORD-KEEPING REQUIREMENTS AND COMPLIANCE

Accounts and records

25A (1) A trustee shall keep or cause to be kept accurate and adequate records (including underlying documentation) with respect to proof of the identity and residential address of each of the following persons in relation to the trust—

(a) the settlor;

(b) the trustees;

(c) the protector (if any);

(d) the beneficiaries;

(e) where the beneficiaries have not (or have not all) been determined, the class of persons in whose main interest the trust is set up, or operates;

(f) any other individual who has control over the trust (as defined in section 25B).

(2) A trustee shall keep or cause to be kept accurate and adequate accounts and records (including underlying documentation) of the trustee's trusteeship appropriate to the trust and trust property with respect to—

(a) assets;

(b) liabilities;

(c) additions to trust and distributions, purchases and sales; and

(d) income and expenses.

(3) A trustee shall keep or cause to be kept an accurate and adequate record of the names and addresses of the regulated agents and service providers who provide service to the trust of which he is the trustee.

(4) All accounts and records required to be kept under this section shall be—

(a) kept current, accurate and updated on a timely basis; and

(b) retained for at least five years after the trustee's involvement with the trust ceases.

(5) Failure to comply with this section may render a trustee liable to a civil penalty under section 54A.

(6) Subject to section 25C, this section applies to trustees—

(a) whether they are professional or non-professional trustees;

(b) whether they are individuals or a body corporate;

(c) whether or not they are required to hold a licence under the Trusts (Regulation of Trust Business) Act 2001;

(d) whether or not they are exempted by or under an exemption order made under section 10 of that Act; and

(e) whether or not they are subject to the requirements of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008.

Meaning of "control"

25B (1) For the purposes of section 25A(1), "control" means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to—

(a) dispose of, advance, lend, invest (other than as an investment manager), pay or apply trust property;

(b) direct, make or approve trust distributions;

(c) vary or terminate the trust;

(d) add or remove a person as a beneficiary or to or from a class of beneficiaries;

(e) appoint or remove trustees or give another individual control over the trust; or

(f) direct, withhold consent to or veto the exercise of a power mentioned in the preceding paragraphs.

(2) Where an individual is the beneficial owner, as defined by section 6 of the Beneficial Ownership Act 2025 ("the 2025 Act"), of a body corporate or other entity which has control over the trust, the individual is to be regarded as having control over the trust.

(3) But an individual does not have control over a trust solely as a result of—

(a) his consent being required in accordance with section 24(1)(c) (power of advancement); or

(b) the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are of full age and capacity and (taken together) absolutely entitled to the property subject to the trust.

(4) Any requirement in this Act to keep information relating to a person listed in section 25A(1) who is a body corporate or other entity includes information relating to the beneficial owner of that body or entity, as defined by section 6 of the 2025 Act.

(5) For the purposes of subsections (2) and (4), it is immaterial whether the 2025 Act applies to the body corporate or entity in question.

Exemption — non-professional trustee

25C A non-professional trustee shall be exempt from the requirements of section 25A in circumstances where he—

(a) is co-trustee of a trust and at least one other co-trustee is a licensed trustee under the Trusts (Regulation of Trust Business) Act 2001; or

(b) appoints a person who is a licensed trustee under the Trusts (Regulation of Trust Business) Act 2001 to maintain the trust records of the trust of which he is a trustee.

Confidentiality

25D (1) Subject to section 25E, a requirement imposed by or under this Act has effect despite any obligation as to confidentiality or other restriction on the disclosure of information relating to the persons listed in section 25A(1) in relation to a trust imposed by statute, contract or otherwise.

(2) Accordingly, a disclosure made or the sharing of such information in accordance with this Act does not breach—

(a) any obligation of confidence in relation to the information so disclosed; or

(b) any other restriction on access to or disclosure of the information so accessed (however imposed).

(3) Compliance by a person with any requirement under this Act to disclose or provide information is an absolute defence to any claim brought against that person in respect of any act done or any omission made by him in good faith in compliance with this Act.

Privileged information

25E A person shall not be required under this Act to provide or produce information or to answer questions which the person would be entitled to refuse to provide, produce or answer on the grounds of legal professional privilege in proceedings in the Court.

Application of Public Access to Information Act 2010

25F (1) Notwithstanding any provision of the Public Access to Information Act 2010, this section shall have effect.

(2) For the purposes of this Act, no person who—

(a) obtains information relating to the persons listed in section 25A(1) in relation to a trust directly or indirectly for the purposes of, or pursuant to, this Act; and

(b) receives a request under the Public Access to Information Act 2010 for such information relating to information so requested,

shall disclose the request or such information so requested.

Application of Personal Information Protection Act 2016

25G Nothing in this Act authorises a disclosure in contravention of any provision of the Personal Information Protection Act 2016 of personal information (as defined by that Act).

Other identification and record-keeping etc. requirements not limited or restricted

25H Nothing in this Act, unless expressly provided to the contrary, shall limit or otherwise restrict any obligation or requirement imposed by or under the Beneficial Ownership Act 2025, the Proceeds of Crime Act 1997, or any other statutory provision requiring the identification, collection, maintenance, updating, verification or production of information relating to persons listed in section 25A and 25B of this Act.”.

Amends section 54A

4 In section 54A of the principal Act (civil penalty)—

(a) delete subsection (1) and substitute—

“(1) Where a trustee knowingly and wilfully contravenes—

(a) section 25A; or

(b) regulations made under section 63B requiring registration with, and provision of information or submission of returns to, a supervisory authority,

the court may impose a civil penalty up to a maximum amount of $20,000 for each contravention.”;

(b) in subsection (2), delete “pursuant to section 13AA” and substitute “under subsection (1)”;

(c) in subsection (4), delete “non-professional”.

Inserts sections 63A to 63B

5 After the heading “Part VI General Provisions” in the principal Act, insert—

“**Designation of supervisory authority**

63A (1) The Minister may by order designate one or more supervisory authorities for the purpose of overseeing compliance with this Act by trustees.

(2) Different supervisory authorities may be designated in relation to different descriptions of trustees.

(3) This section does not apply to trustees who are prohibited from carrying on trust business without a licence granted by the Bermuda Monetary Authority under the Trusts (Regulation of Trust Business) Act 2001.

Regulations and orders

63B (1) The Minister may make regulations for the purposes of this Act, prescribing anything that is necessary or expedient for the carrying out of the provisions of this Act or to give effect to it.

(2) Without prejudice to the generality of subsection (1), the regulations may in particular—

(a) require trustees to register with a supervisory authority, on payment of such fee as may be prescribed;

(b) require trustees to provide information and submit such returns as may be required by the supervisory authority within prescribed timelines;

(c) prescribe the purposes for which, and the persons to whom, the supervisory authority may disclose information provided by the trustees;

(d) provide that failure to comply with the regulations may result in the imposition of a civil penalty under this Act.

(3) Regulations and orders made under this Act shall be subject to the negative resolution procedure; save that regulations prescribing a fee for registration with a supervisory authority shall be subject to the affirmative resolution procedure. ”.

Consequential amendments

6 (1) In consequence of the new Part IIA inserted by section 4, the following provisions of the principal Act are repealed—

(a) the definition of “ultimate effective control” in section 1;

(b) section 13A (accounts and records);

(c) section 13AA (accounts and records - non-professional trustees);

(d) section 13AB (exemption-non-professional trustee);

(e) section 13B (information to be retained by exempted company and exempted trustee).

(2) In the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, in regulation 3 (meaning of beneficial owner)—

(a) at the beginning of paragraph (3), by inserting before "In the case of trust" the words "For the purposes of these regulations";

(b) after paragraph (3)(b) insert—

"(ba) the trustees;

(bb) the protector (if any);";

(c) in paragraph (3)(c), delete "any individual" and substitute "any other individual";

(d) paragraph (4), delete the definition of "control" and substitute—

"(a) dispose of, advance, lend, invest (other than as an investment manager), pay or apply trust property;

(b) direct, make or approve trust distributions;

(c) vary or terminate the trust;

(d) add or remove a person as a beneficiary or to or from a class of beneficiaries;

(e) appoint or remove trustees or give another individual control over the trust; or

(f) direct, withhold consent to or veto the exercise of a power mentioned in the preceding paragraphs. ".

Commencement and transitional provision

7 (1) This Act comes into effect on Assent (" the commencement date").

(2) No civil penalty shall be imposed on a non-professional trustee under section 54A(1) of the principal Act (as amended by section 5 of this Act) for any act or omission occurring during the period of six months beginning with the commencement date, if that act or omission would not have constituted a contravention of section 13AA of the principal Act (accounts and records — non-professional trustees) before its repeal by this Act.

TRUSTEE AMENDMENT BILL 2026

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Trustee Act 1975 to streamline record-keeping requirements, to provide for the appointment of a supervisor for certain trustees and to include provision relating to confidentiality and transparency as it relates to information required to be kept by trustees, and to make consequential amendments to the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008.

Clause 1 provides the title.

Clause 2 inserts new definitions into section 1 of the principal Act for the purposes of these amendments.

Clause 3 inserts new Part IIA into the principal Act. New section 25A aligns the record keeping duties of all trustees in relation to information required to be kept in relation to a trust including its settlors, trustees, beneficiaries, protectors (if any) and other persons with control over the trust (as defined in section 25B). Adequate accounts and records relating to the trust property must be retained, as well as information relating to regulated agents and service providers etc. All accounts and records must be kept current, accurate and updated on a timely basis, and retained for a period of five years after the trustee's involvement with the trust ceases. Failure to comply with the section may render a trustee liable to a civil penalty under section 54A. New section 25C re-enacts section 13AB, which provides an exemption for non-professional trustees who have a licensed co-trustee or who appoint a licensed trustee to keep the records. Section 25D confirms that the trustee obligations under section 25A have effect despite anything to the contrary in the trust, a contract or other enactment, but section 25E confirms that legal professional privilege exemptions are not overridden. Sections 25F and 25G prohibit the disclosure of specified information under the Public Access to Information Act 2010 or in contravention of the Personal Information Protection Act 2016. New section 25H confirms that nothing in the principal Act limits the specified record keeping, etc. requirements imposed by or under the Beneficial Ownership Act 2025 and Proceeds of Crime Act 1997.

Clause 4 broadens section 54 of the principal Act so that civil penalties for breach of record keeping duties may be imposed by a court on any trustee (the provision currently applies only to non-professional trustees). The maximum amount of the civil penalty is $20,000 for each contravention of section 25A or regulations made under new section 63B (inserted by clause 5).

Clause 5 inserts new sections 63A and 63B into the principal Act. Section 63A empowers the Minister to designate one or more supervisory authorities for the purpose of overseeing compliance with the principal Act by trustees, other than trustees who are prohibited from carrying on trust business without a licence granted by the Bermuda Monetary Authority under the Trusts (Regulation of Trust Business) Act 2001. Section 63B is a regulation-making power. Regulations may in particular require trustees to register with a supervisory authority and provide information and submit returns to the supervisory authority, and prescribe the purposes for which, and the persons to whom, the supervisory authority may disclose information provided by the trustees.

Clause 6 makes consequential amendments. Sections 13A, 13AA, 13AB and 13B of the principal Act, which set out differing record-keeping duties for different types of trustee, with different consequences for breach, are repealed in consequence of the new Part IIA. Clause 6 also makes consequential amendments to regulation 3(3) and 3(4) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (meaning of beneficial owner in the case of a trust) for consistency with section 25A of the principal Act (inserted by clause 3).

Clause 7 provides that the Bill shall come into operation on assent, and provides a six month transitional period to give non-professional trustees time to comply with new record-keeping requirements under section 25A before a civil penalty can be imposed for breach.