



GOVERNMENT OF BERMUDA

NAMLC CONSULTATION PAPER

Proposed Amendments to the Trustee Act 1975

NOVEMBER 20, 2025

THE NATIONAL ANTI-MONEY LAUNDERING COMMITTEE (NAMLC)
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I. INTRODUCTION AND BACKGROUND

Amendments to the Trustee Act 1975

1. The National Anti-Money Laundering Committee (NAMLC) pursuant to its statutory mandate in section 49 (1) (a) of the Proceeds of Crime Act 1997 (" POCA"), is mandated to advise the Minister of Justice and the Minister of Finance in relation to detection and prevention of money laundering (ML), terrorist financing (TF), and the financing of proliferation (PF). In this regard NAMLC continues to ensure that actions are taken to ensure Bermuda's framework is effective and adheres to the Financial Action Task Force (FATF) 40 Recommendations and Eleven Immediate Outcomes to combat ML, TF and PF (hereinafter referred to as "the Standards").
2. NAMLC has considered the recent changes made to Recommendation 25 of the FATF Standards which mandates transparency of beneficial ownership information for legal arrangements generally and has identified provisions within the Trustee Act 1975 (hereinafter referred to as "the Act") that require strengthening through amendments. The legislative amendments that are proposed are aimed at enhancing the jurisdiction's oversight of legal arrangements, to ensure the risks that are associated with this type of legal arrangements are assessed and appropriately mitigated. The amendments are aimed at ensuring that the basic and beneficial ownership information kept by Trustees is adequate, accurate and up to date and can be accessed by law enforcement and other competent authorities for investigation and to facilitate international cooperation. They also seek to ensure that the requirements are subject to oversight by authorities and there are sanctions that can be applied for failing to comply with the requirements.

II. THE PROPOSED CHANGES

3. The following items have been identified as amendments that are required to ensure compliance with the revised FATF Standards:
 - A. Designation of an authority or authorities:** The proposed amendment aims to ensure that one or more authorities are designated under the Act to oversee compliance with the requirements and are equipped with sufficient powers to impose sanctions in the event of breach. The FATF Standard does not require the appointment of a single supervisory authority. However, the relevant information can be maintained jointly by several Government authorities or any other authority. Consideration is being given to designating an authority for overseeing compliance with the Trustee Act. This may require relevant persons to be registered with such Authority to ensure that they can carry out their responsibilities effectively.

- B. Information to be kept and period for which the information must be kept:** The proposed amendment is to ensure that requisite information for all categories of persons is captured, including Trustees, investment and tax advisors and managers and the information retention period is stipulated as 5 years after Trustee involvement with the trust ceases in keeping with the revised FATF requirements under Recommendation 25, criteria 25.4 and 25.5. Information held should be kept updated in compliance with criterion 25.6.
- C. Definition of Beneficial Ownership and Control :** The revised FATF Standards defines beneficial ownership in the context of legal arrangements to include class of beneficiaries, objects of power (if applicable) and any other person who may have an equivalent position and who exercises ultimate effective control over the legal arrangement whether alone or jointly with another person or with the consent under the trust instrument or by law. There is no definition of beneficial owner in the Trustee Act. There is therefore need to include the definition of beneficial ownership in the Trustee Act, ensuring that the categories of persons that may be deemed to be beneficial owners are aligned with criterion 25.4 of the FATF Standards. Control in this context is to include control whether alone or jointly with another person or with consent under the trust instrument or by law.
- D. Sanctions:** There is need for an amendment to ensure that penalties are effective, proportionate and dissuasive for Trustees failing to perform duties relative to meeting the obligations to keep adequate, accurate and up to date information, or failing to provide timely access to competent authorities. It is proposed that the penalty under section 54A includes all contraventions committed by the Trustee. This is in keeping with FATF Recommendation 25, criteria 25.11. Penalties are also proposed in relation to section 13 B (3) and (4) which address failure to keep records and retain adequate beneficial ownership information, as well as failure to keep current and accurate information of the regulated agents and service providers who provide service to the trust of which they are a trustee.
- E. Other Obligations-Inclusion of new section under section 13AA (1):** An amendment is proposed to Section 13AA to include non-professional trustees (NPTs) as persons required to keep accurate and adequate records in relation to assets, liabilities, additions to the trust and distributions, purchases and sales and income and expenses and ensuring that the information held is accurate, updated and accessible for the stipulated retention period.

The proposed amendments are hereto annexed for ease of reference.

Conclusion

4. NAMLC therefore seeks the cooperation of industry to review this Consultation Paper, and should you have any observations concerning the proposed amendments, you may provide written comments and feedback no later than **December 4, 2025** to the email address below:

- Via e-mail: info-NAMLC@gov.bm

Annex I
Proposed Changes to the Trustee Act 1975

| Section | Current Provision | Proposed Amendments in red |
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| 1 | <p>Interpretation No definition of beneficial owner or legal arrangements</p> | <p>Suggest definition of beneficial owner [as it relates to legal arrangements] be inserted using wording that is consistent and in alignment with current FATF language¹.</p> <p>“(1) Beneficial Owner” includes:</p> <ul style="list-style-type: none"> a) the settlor, b) the trustee(s), c) the protector (if any), d) <u>each beneficiary², or where the individual(s) benefitting from the trust have not been determined, the class of beneficiaries in whose interest the trust is set up or operates or objects of a power³;</u> e) any other natural person(s) exercising ultimate effective control⁴ over the trust (including through a chain of control/ownership). <p><u>(2) When the trustee and any other party to the trust is a legal person, the beneficial owner of that legal person should be identified.</u></p> <p><u>(3) Control means</u> a power whether exercisable alone or jointly with another person or with the consent of another person under the trust instrument or by law to</p> <ul style="list-style-type: none"> (a) dispose of or invest (other than an investment manager) 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; and/or (e) appoint or remove trustees. <p>Designating an authority for overseeing compliance with the Trustee Act. This may require relevant persons to be registered with such</p> |

¹ The Proceeds of Crime Regulations would be reviewed to ensure consistency across legislation in respect to the definition of beneficial owner.

² Beneficiaries- person(s) who is or are entitled to the benefit whether directly or indirectly of any trust arrangement. Beneficial owner means natural person (s) who ultimately owns or controls a customer and or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person. Ultimate effective control over a trust includes situations in which ownership or control is exercised through a chain of ownership or control.

³ Object of Power means (a) a person identified by the trustee as a member of a class of possible beneficiaries, for whom there is yet no identifiable trust property or fixed interest. (b) The trustee must have a clear and realistic belief that under the terms of the trust, the possible beneficiary may in fact benefit from the trust property in the future which may be expressed through a letter of wishes provided by the settlor

⁴ Control means a power (whether exercisable alone or jointly with another person or with the consent of another person under the trust instrument or by law to (i) dispose of or invest (other than an investment manager) trust property; (ii) direct, make or approve trust distributions; (iii) vary or terminate the trust; (iv) add or remove a person as a beneficiary or to or from a class of beneficiaries; and/or (v) appoint or remove trustees.

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| | Designation of an Authority-designating an authority for overseeing compliance with the Trustee Act. This may require relevant persons to be registered with such Authority to ensure that they can carry out their responsibilities effectively. | Authority to ensure that they can carry out their responsibilities effectively |
| 13 A (2) | All records required to be kept under subsection (1) shall be retained throughout the trust relationship. 13 A (2) currently reads “All accounts and records required to be kept under subsection (1) shall be retained for a minimum period of five years from the date on which they are prepared.” | All records required to be kept under subsection (1) shall be retained for at least five years after their involvement with the trust ceases, throughout the trust relationship. |
| 13A (3) | A trustee who knowingly contravenes subsection (1) or (2) shall be subject to a penalty of twenty thousand dollars. | A trustee who knowingly contravenes subsection (1), (2) or (2A) shall be subject to a penalty of twenty thousand dollars for each such contravention. |
| 13 AA (1) | A non-professional trustee shall keep or cause to be kept accurate and adequate records (including underlying documentation) with respect to his knowledge of proof of the identity, residential address and relevant information about- (a) the settlor; (b) the protector; (c) the beneficiaries; (d) any other natural person exercising ultimate effective control over the trust, of the trust of which he is a trustee, and shall keep the information current, accurate and updated on a timely basis. | A non-professional trustee shall keep or cause to be kept accurate and adequate records (including underlying documentation) with respect to his knowledge of proof of the identity, residential address and relevant information about- (a) the trustees; (b) the settlor; (c) the protector; (d) each beneficiary or class of beneficiaries; (e) Objects of power ⁵ (if applicable) (f) any other natural person exercising ultimate effective control ⁶ over the trust, of the trust of which he is a trustee, and shall keep the information current, accurate and updated on a timely basis. |
| Under section 13AA (1) new section to include | | (1) “A non-professional trustee shall keep or cause to be kept accurate, adequate and current information (including the underlying documentation) of the trustees’ trusteeship appropriate to the trust and the trust property with respect to: (a) assets; (b) liabilities; (c) additions to trust and distributions, (d) purchases and sales; and (e) income and expenses, (2) All records required to be kept under subsection (1) shall be retained for at least five years after the trustee’s involvement with the trust. (3) A trustee referred to in subsection (1) shall keep accurate, adequate and current information 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) A trustee is required to disclose his or her status to regulated financial institutions and designated non-financial businesses and professions when forming a business |

⁵ Object of Power means (a) a person identified by the trustee as a member of a class of possible beneficiaries, for whom there is yet no identifiable trust property or fixed interest. (b) The trustee must have a clear and realistic belief that under the terms of the trust, the possible beneficiary may in fact benefit from the trust property in the future which may be expressed through a letter of wishes provided by the settlor.

⁶ Control means a power (whether exercisable alone or jointly with another person or with the consent of another person under the trust instrument or by law to (i) dispose of or invest (other than an investment manager) trust property; (ii) direct, make or approve trust distributions; (iii) vary or terminate the trust; (iv) add or remove a person as a beneficiary or to or from a class of beneficiaries; and/or (v) appoint or remove trustees.

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| | | relationship or carrying out an occasional transaction (5) A trustee is required to cooperate to the fullest extent possible with competent authorities with necessary information relating to the trust. |
| 13 AA (2) | All records required to be kept under subsection (1) shall be retained through the trust relationship. | All records required to be kept under subsection (1) shall be retained for at least five years after the trustee's involvement with the trust ceases. throughout the trust relationship. |
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| 54A(1) | Where a non-professional trustee knowingly and willfully contravenes section 13AA, the court may impose a civil penalty in the amount of twenty thousand dollars. | Where a non-professional trustee knowingly and willfully contravenes 13AA [to include all sections including the new sections added], the court may impose a civil penalty in the amount of twenty thousand dollars for each such contravention. |
| 13B (1) and (2) | <p>Information to be retained by exempted company and exempted trustee</p> <p>13B (1) Any company exempted under an order made pursuant to section 10(2) of the Trusts (Regulation of Trust Business) Act 2001, shall retain adequate identification information in respect of—</p> <ul style="list-style-type: none"> (a) trustees; (b) settlors; (c) protectors; (d) beneficiaries; (e) any other natural person exercising ultimate effective control over the trust; or (f) where the individuals (or some of the individuals) benefiting from the trust have not been determined, the class of persons in whose main interest the trust is set up, or operates <p>for the trusts for which it acts as trustee or trust administrator, and shall keep the information current, accurate and updated on a timely basis.</p> <p>(1) Any other trustee, whether exempted under an order made pursuant to section 10(2) of the Trust (Regulation of Trust Business) Act 2001 or referred to in paragraph 7 of the Trusts (Regulation of Trust Business) Exemption Order 2002, shall retain adequate identification information in respect of—</p> <ul style="list-style-type: none"> (a) trustees; (b) settlors; (c) protectors; (d) beneficiaries; (e) any other person exercising ultimate effective control over the trust; or (f) where the individuals (or some of the individuals) benefiting from the trust have not been determined, the class of persons in whose main interest the trust is set up, or operates, <p>for the trust for which they act as trustee or trust administrator, and shall keep the information current, accurate and updated on a timely basis.</p> | <p>Suggest to change (f) in (1) and (2) to make consistent with the proposed amendments to 13A above relating to “objects of power”.</p> <p>Note: a comparison of the wording currently in (f) of 13B (1) and (2) against the proposed wording for “objects of power” above will be done to assure consistency and alignment with FATF language.</p> |
| 13B | (2) Any company, or other trustee, exempted under an order made pursuant to section 10(2) of the Trusts (Regulation of Trust Business) Act 2001, which knowingly and wilfully contravenes— | <ul style="list-style-type: none"> (3) – renumbered to (3) (4) – renumbered to (4) (5) Any company, or other trustee, exempted under an order made pursuant to section |

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| | <p>(a) the provisions of subsection (1), in the case of such company that is exempted; or</p> <p>(b) the provisions of subsection (2), in the case of such trustee that is exempted,</p> <p>shall be guilty of an offence and liable on summary conviction to a fine of \$75 per day for every day that such company or trustee fails to comply as required.</p> | <p>10(2) of the Trusts (Regulation of Trust Business) Act 2001, which knowingly and wilfully contravenes—</p> <p>(c) the provisions of subsection (1), in the case of such company that is exempted; or</p> <p>(d) the provisions of subsection (2), in the case of such trustee that is exempted;</p> <p>(e) or the provisions of subsections (3) or (4)</p> <p>shall be guilty of an offence and liable on summary conviction to a fine of up to \$20,000.</p> |
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