



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

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Ref: TNT/CONF 358/02 'AA' (107)

October 2, 2023

Mr. Samuel Njoroge
Clerk
The National Assembly
Clerk Chambers
Parliament Building
NAIROBI

*DLSP
8
4/10/23*

*(3) H70
please acknowledge and
reply to the tableting,
H/O 4/10
D/S/435
Please deal
asap
4/10/23*

Dear *Clerk of NA*

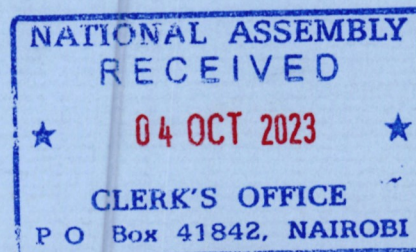
- RE: 1. THE DRAFT PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING REGULATIONS, 2023
2. DRAFT PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (CRIMINAL ASSETS RECOVERY FUND) REGULATIONS, 2023

The above captioned subject matter refers.

The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment Act) was enacted on 1st September, 2023 and came into force on 15th September, 2023. This has made it necessary to undertake a comprehensive review of various Regulations to align them with the amended Act.

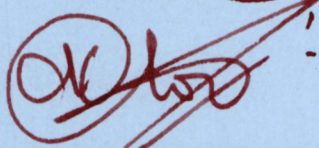
To this end, we have undertaken a comprehensive review of the 2013 Regulations and it is proposed that the Regulations be re-issued to incorporate the developments from the extensive review. In addition, we have formulated the draft Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023.

The draft Regulations are going through public participation and we request to concurrently share the same with the Committee on Delegated Legislation. This is in view of the strict timelines set to meet the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and the Financial Action Task Force (FATF) in addressing the deficiencies identified in the Kenya Mutual Evaluation Report (MER) in respect to Anti-Money Laundering and Combating Terrorism Financing (AML/CFT).



The purpose of this letter, therefore, is to submit the attached advance copies of the draft Regulations to the Committee for information and necessary action.

Yours

Sincerely


DR. CHRIS KIPTOO, CBS
PRINCIPAL SECRETARY/THE NATIONAL TREASURY

Encl.

Copy to: **Hon. Samuel Chepkonga, M.P.**
Chairperson
Committee on Delegated Legislation
Parliament Building
NAIROBI

The Cabinet Secretary
The National Treasury and Economic Planning
Treasury Building
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Mr. Saitoti Maika, MBS
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UAP Old Mutual Building, Upper Hill
NAIROBI



LEGAL NOTICE NO.

THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING ACT, 2009
(No. 9 of 2009)

**THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING REGULATIONS,
2023**

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DATE: 05 OCT 2023	DAY: THUR 05/10/2023
TABLED BY:	Hon. Silvanus Osondu, MP Majority Party Whip A. Shubuku

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LEGAL NOTICE NO.

THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING ACT, 2009
(No. 9 of 2009)

IN EXERCISE of the powers conferred by section 134 of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Cabinet Secretary for National Treasury and Economic Planning makes the following Regulations—

**THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING
REGULATIONS, 2023**

PART I—PRELIMINARY

- Citation. 1. These Regulations may be cited as the Proceeds of Crime and Anti-Money Laundering Regulations, 2023.
- Interpretation. 2. In these Regulations, unless the context otherwise requires—
- No. 9 of 2009. "Act" means the Proceeds of Crime and Anti-Money Laundering Act;
- "applicant" means a person or legal arrangement seeking to form a business relationship, or to carry out a one-off transaction, with a reporting institution;
- "beneficial owner" means a person who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted, and any person who ultimately exercises effective control over a legal person or arrangement;
- "business relationship" means an arrangement between a person and a reporting institution, where the purpose or effect of the arrangement is to facilitate the carrying out of transactions between the person and the reporting institution on a frequent basis;
- "competent authority" means a public authority other than a self-regulatory body with designated responsibilities for combating money laundering;

"customer" in relation to a transaction or an account, includes—

- (a) the person or legal arrangement in whose name a transaction or account is arranged, opened or undertaken;
- (b) a signatory to a transaction or account;
- (c) any person or legal arrangement to whom a transaction has been assigned or transferred;
- (d) any person or legal arrangement who is authorised to conduct a transaction; or
- (e) such other person or legal arrangement as the Centre may specify;

"Customs Officer" means an officer whose right or duty is to require the performance, or to perform the acts referred to in the East African Community Customs Management Act, 2004;

"eligible introducer" means any person who introduces an applicant for business to a reporting institution in Kenya and—

- (a) is regulated under the Act or any similar legislation in an equivalent jurisdiction, or is subject to rules of professional conduct relating to the prevention of money laundering; and
- (b) is based either in Kenya or in an equivalent jurisdiction;

"equivalent jurisdiction" means a jurisdiction having standards pertaining to measures on anti-money laundering comparable to Kenya as may be specified from time to time by the Centre in guidelines;

"express trust" means a trust created by a settlor usually by form of a document such as a trust deed or written deed of trust;

"group introducer" means an introducer who is part of the same group as the reporting institution to whom the applicant for business is introduced and is, for anti-money laundering purposes, subject to either the consolidated supervision of a regulator in Kenya or in an equivalent jurisdiction or is subject to the anti-money laundering regulations of a regulator in Kenya or in an equivalent jurisdiction;

"international organisation" means an entity established by formal agreements between member States that has the status of an international treaty and whose existence is recognized by law in the member countries;

"know your customer" means requirements consisting of obtaining full particulars of the customer's identity and having a sound knowledge of the purpose for which the customer is seeking to establish a business relationship with a reporting institution;

"Legal arrangements" means express trusts or other similar legal arrangements.

"Money Laundering Reporting Officer" means an officer appointed under regulation 10;

"money or value transfer services" means a financial service that involves the acceptance of cash, cheques, other monetary instruments or other stores of value in one location and the payment of a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer, or through a clearing network to which the money or value transfer services provider belongs;

"official documents" means the original or certified copies of documents, or official records set out in section 43(1) of the Act;

"one-off transaction" means any transaction carried out other than in the course of a business relationship;

"shell bank" means a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision; and

"wire transfer" means any transaction carried out on behalf of an originator through a financial institution by electronic means with a view to making an amount of funds available to a beneficiary person at a beneficiary financial institution, irrespective of whether the originator and the beneficiary are the same person.

Application.

2A. The preventative measures applicable to anti-money laundering under these regulations shall also apply to measures for combating terrorism financing and combating the financing of proliferation of weapons of mass destruction.

PART II— THE FINANCIAL REPORTING CENTRE

Functions of the Centre.

3. The Centre shall, in addition to functions set out in the Act—

(a) implement a registration system in respect of all reporting institutions;

- (b) supervise and enforce compliance with the Act or any directive, guideline or rules made in terms of the Act by reporting institutions and other persons to whom the provisions of the Act apply; and
- (c) annually review the implementation of the Act and submit a report thereon to the Minister.

Registration with the Centre.

4. (1) Every reporting institution shall register with the Centre within such time and manner as the Centre may specify.

(2) The Centre shall keep and maintain a register of every reporting institution registered under sub-regulation (1).

(3) A reporting institution shall notify the Centre, in writing, of any changes to the particulars furnished under this Regulation within ninety days after such change.

(4) Any reporting institution that fails to register with the Centre as required by sub-regulation (1) commits an offence.

(5) Despite the obligation to register with the Centre as set out in this regulation, every reporting institution shall report suspicious transactions in accordance with the Act.

PART III – OBLIGATIONS OF A REPORTING INSTITUTION

Obligations of reporting institutions.

5. A reporting institution shall adhere to the obligations set out in these Regulations in addition to the obligations set out in sections 44, 44A, 45, 45A, 46, 47 and 47A of the Act.

Risk Assessment.

6. (1) Every reporting institution shall undertake a risk assessment to enable it identify, assess, understand, monitor, manage and mitigate the risks associated with money laundering, terrorism financing and proliferation financing.

(2) In undertaking the risk assessment, a reporting institution shall –

- (a) document their risk assessments;
- (b) consider all the relevant risk factors including customers, countries or geographical areas, products, services, transactions or delivery channels, before determining what is the level of overall risk and the appropriate level and type of mitigation to be applied;

- (c) keep these assessments up to date; and
- (d) have appropriate mechanisms to provide risk assessment information to competent authorities and SRBs.

(3) On the basis of the results of the assessment, a reporting institution shall develop and implement Board approved policies, controls and procedures that will enable it to effectively manage and mitigate the identified risks.

(4) Every reporting institution shall put in place procedures and mechanisms for monitoring implementation of the controls and enhance them, where necessary.

(5) A reporting institution shall update its risk assessment policies or programs regularly but at least once every two years taking into account changes such as the entry of the institution into new markets and the introduction of new products and services.

New technologies.

7. (1) A reporting institution shall take reasonable measures to prevent the use of new technologies for money laundering, terrorism financing and proliferation financing purposes.

(2) A reporting institution shall conduct a money laundering, terrorism financing and proliferation financing risk assessment—

(a) prior to the introduction of a new product, new business practice or new technology for both new and pre-existing products;

(b) so as to assess money laundering, terrorism financing and proliferation financing risks in relation to—

(i) a new product and a new business practice, including a new delivery mechanism; and

(ii) new or developing technologies for both new and pre-existing products.

(2A) Reporting institutions shall take appropriate measures to manage and mitigate the risks.

(3) The outcome of such assessment shall be documented and be availed to the Centre or the reporting institution's supervisory body upon request.

Policies and procedures

7A. (1) A reporting institution shall have policies and procedures to address any money laundering, terrorism financing or proliferation

financing risks associated with non-face-to-face business relationships or transactions.

(2) The policies and procedures referred to in paragraph (1) shall apply when establishing customer relationships and when conducting on-going due diligence.

Cross border conveyance of monetary instruments.

8. (1) Any person intending to convey into or out of Kenya monetary instruments equivalent to or exceeding US\$10,000 or its equivalent in Kenya shillings or any other currency, shall before doing so declare the particulars of those monetary instruments to a customs officer at the port of entry or exit in the form prescribed in the Schedule.

(2) The customs officer shall submit the completed declaration forms to the Director General of the Centre in accordance with section 12(2) of the Act.

(3) Where the customs officer has reason to suspect that the person has not made a true declaration or has failed to declare the monetary instruments referred to in sub-regulation (1), the customs officer shall require that person to produce and show to the customs officer all the monetary instruments in his possession.

(4) Any temporary seizure done in accordance with section 12(4) of the Act, the customs officer shall acknowledge receipt of the monetary instrument by way of issuing an official receipt in the form prescribed in the Schedule.

(5) For purposes of conducting his duties under this regulation, the duties and powers of the customs officer to search and arrest under the East African Community Customs Management Act, 2004 shall apply.

(6) Where the customs officer has made a seizure pursuant to these Regulations, he shall in accordance with sections 12(5) and (6) immediately but not later than five days, report the details of the seizure and surrender the seized monetary instruments to the Agency Director.

Internal Control Obligations.

9. A reporting institution shall formulate, adopt and implement internal control policies, measures and other procedures to combat money laundering terrorism financing and proliferation financing risks and the size of the business, including —

- (a) compliance management arrangements (including the appointment of a compliance officer at the management level);
- (b) screening procedures to ensure high standards when hiring employees;

- (c) an ongoing employee training programme;
- (d) an independent audit function to test the system.
- (e) programmes for assessing risks relating to money laundering, terrorism financing and proliferation financing;

- (f) the formulation of a control policy that will cover issues of timing, degree of control, areas to be controlled, responsibilities and follow-up;

- (g) monitoring programmes in relation to complex, unusual or large transactions or suspicious activities;

- (h) enhanced due diligence procedures with respect to persons and business relations and transactions carrying high risk and with persons established in jurisdictions that do not have adequate systems in place to combat money laundering, terrorism financing and proliferation financing;

- (i) making employees aware of the procedures under the Act, these Regulations or directives, codes and guidelines issued thereunder or and any other relevant policies that is adopted by the reporting institution;

- (j) establishing and maintaining a manual of compliance procedures in relation to anti-money laundering, terrorism financing and proliferation financing;

- (k) providing for the necessary processes and working methods to ensure compliance with the Act, these Regulations and the internal rules;

- (l) provide for the responsibility of the management of the reporting institution in respect of compliance with the Act, these Regulations and the internal rules; and

Money
Laundering
Reporting
Officer.

10. (1) A reporting institution shall appoint a Money Laundering Reporting Officer.

(2) The Money Laundering Reporting Officer shall be of management level and shall have relevant and necessary competence, authority and independence.

(3) All staff in a reporting institution shall monitor and report to the Money Laundering Reporting Officer any suspicious activity on money laundering, terrorism financing and proliferation financing.

(4) The Money Laundering Reporting Officer shall report forthwith to the Centre, any transaction or activity that he has reason to believe is suspicious in the manner the Centre may specify.

(5) Where the Centre receives a report made by a Money Laundering Reporting Officer pursuant to sub-regulation (4), it shall acknowledge receipt of the report forthwith.

(6) In addition to the responsibilities provided in these regulations, the Money Laundering Reporting Officer shall ensure that—

- (a) he is informed of all suspicious activities available to the reporting institution and take action on suspicious disclosures from officers and employees of the reporting institution as soon as practical so as not to delay the reporting of such disclosures;
- (b) where a disclosure is made, he applies internal risk-management procedures on a suspicious transaction;
- (c) he reports disclosures deemed suspicious to the Centre in a manner provided for under paragraph (b);
- (d) officers and employees of the reporting institution are made aware of the Act as well as the audit systems adopted by the reporting institution; and
- (e) in liaison with the reporting institution's human resource department, screening procedures in place ensure high standards when hiring employees.

(7) The appointment or removal of the Money Laundering Reporting Officer shall be communicated to the Centre and the reporting institution's supervisory body within fourteen days of the appointment or removal.

(8) An Internal Auditor and a Chief Executive shall not qualify to be appointed as a Money Laundering Reporting Officer except in the circumstances where the Chief Executive is a sole proprietor.

Anonymous or
fictitious
accounts.

11. (1) No person shall, in the course of his conduct of business as a reporting institution, open or maintain an anonymous or fictitious account.

(2) A reporting institution shall, at the time of establishing a business relationship, take reasonable measures to determine whether the applicant for business is acting on his own behalf or on behalf of a third party.

(3) In determining what constitutes reasonable measures for the purpose of sub-regulation (2), all the circumstances of the case shall be taken into account and in particular, regard shall be given to any guideline or code applicable to the reporting institution and, in the absence of any guideline or code, to best practice which, for the time being, is followed in the relevant field of business and which is applicable to those circumstances.

(4) A reporting institution shall not knowingly establish or maintain a business relationship or conduct any transaction with a customer who is entering into a business relationship or conducting any transaction under a false name.

PART IV – DUE DILIGENCE REQUIREMENTS

Customer Due
Diligence.

12. (1) A reporting institution shall undertake customer due diligence measures.

(2) In carrying out the obligation under sub-regulation (1) a reporting institution shall- —

- (a) identify the customer whether permanent or occasional and verify that customer's identity using reliable, independent source documents, data or information;
- (b) identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner, such that the reporting institution is satisfied that it knows who the beneficial owners is and it understands the ownership and control structure of the customer in case of legal persons and arrangements;
- (c) understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship; and
- (d) conduct on going due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the reporting institution's knowledge of the customer, their business and risk profile, including where necessary the source of funds.

(3) A reporting institution shall take measures to satisfy itself as to the true identity of any applicant and beneficial owner seeking to enter into a business relationship with it, or to carry out a transaction or series of transactions with it, by requiring the applicant to produce an official record for the purposes of establishing the true identity of the applicant and beneficial owner, and for the purpose of verifying that identity.

(3) Every reporting institution shall, in the circumstances set out in sub-regulation (2), establish and verify in accordance with these Regulations, the following particulars regarding the applicant for business—

- (a) his identity;
- (b) the purpose and nature of his business or principal activity;
- (c) his financial status; and
- (d) the capacity in which he is entering into the business relationship with the reporting institution.

(4) The circumstances under sub-regulation (2) shall be carried out—

- (a) when establishing initial business relations;
- (b) when undertaking occasional or one-off transactions;
- (c) When carrying out occasional transactions that are wire transfers in the circumstances covered by regulation 27
- (d) when there is cause to be suspicious of money laundering and terrorism financing; and
- (e) when there is doubt about veracity or adequacy of previously obtained customer information including identification data.

(5). A reporting institution shall apply customer due diligence requirements to existing customers or clients on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when customer due diligence measures have previously been undertaken and the adequacy of data obtained.

Information on
natural persons.

13. (1) For the purposes of complying with the Act and these Regulations, where a reporting institution seeks to identify and verify the identity of a natural person, it shall in addition to the requirements set out in section 45(1A) (a) of the Act, request the following in relation to such person—

- (a) full names of the person; and
- (b) such other particulars as the Centre may prescribe.

(2) Additional measures that may be used to identify and verify the identity of the customer include—

- (a) postal address;
- (b) current physical or residential address;
- (c) utility bill including among others an electricity or a water bill;
- (d) occupation or employment details;
- (e) source of income;
- (f) nature and location of business activity;
- (g) income tax personal identification number (PIN) issued by Kenya Revenue Authority if such a number has been issued to the customer;
- (h) where applicable, written references from acknowledged persons attesting to the customer's identity; and
- (i) for accounts with more than one party and where one of the parties has identified the others, written confirmation shall be obtained to the effect that the first party has known the other(s) personally for at least twelve months.

Information on legal persons.

14. (1) For the purposes of complying with the Act and these Regulations, where a reporting institution seeks to identify and verify the identity of a legal person or other body corporate, it shall in addition to the requirements set out in section 45(1A)(b) of the Act, request the following in relation to such person—

- (a) its registered name;
- (b) evidence of registration or incorporation such as a certified copy of Certificate of Registration or Certificate of Incorporation, or Memorandum and Articles of Association or other similar documentation evidencing the legal status of the legal person or body corporate;
- (c) the address of the registered office and, if different, a principal place of business
- (d) certified copy of board resolution stating authority to open an account or transact business with the reporting institution, and designating persons having signatory authority thereof;

- (e) the full names, date of birth, identity or passport number and address of the natural persons managing, controlling or owning the body corporate or legal entity;
- (f) for corporate bodies, audited financial statements for the last full year;
- (g) for sole traders, un-audited financial statements for the last full year:

Provided that an exemption may be considered by a reporting institution for a new sole proprietorship business in the production of audited accounts or un-audited accounts if there exists practical difficulties in obtaining financial statements from it;

- (h) personal identification number; or
- (i) where applicable, written confirmation from the customer's prior bank, if any, attesting to customer's identity and history of account relationship.

(2) A reporting institution shall identify and take reasonable measures to verify the identity of beneficial owners through the following information—

- (a) the identity of the natural person (if any) who ultimately has a controlling ownership interest in a legal person; and
- (b) to the extent that there is doubt under (a) as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural person(s) (if any) exercising control of the legal person or arrangement through other means; and
- (c) where no natural person is identified under (a) or (b) above, the identity of the relevant natural person who holds the position of senior managing official.

Information on partnership.

15. For the purposes of complying with the Act and these Regulations, where a reporting institution seeks to establish the identity of partnerships, it shall obtain the following particulars—

- (a) the name of the partnership or where applicable its registered name;
- (b) the Partnership Deed;
- (c) its registered address or principal place of business or office;

- (d) its registration number;
- (e) the full names, date of birth, identity card number or passport number and address of every partner;
- (f) the person who exercises executive control over the partnership;
- (g) the name and particulars of each natural person who purports to be authorized to establish a business relationship or to enter into a transaction with the reporting institution on behalf of the partnership; and
- (h) un-audited financial statements for the last full year.

Provided that an exemption may be considered by a reporting institution for a new partnership in the production of un-audited financial statements.

Information on trusts.

16 (1) In relation to trusts, a reporting institution shall identify and verify the identity of—

- (a) any applicant seeking to enter into a business relationship with it or to carry out a transaction or series of transactions with it; or
- (b) a customer whether permanent or occasional, by taking reasonable measures to establish the true identity of that person by requiring the applicant or customer to produce an official record reasonably capable of establishing the true identity of the applicant or customer.

(2) For the purposes of complying with the Act and these Regulations, where a reporting institution seeks to establish the identity of a trust it shall obtain the following particulars—

- (a) its registered name, if any;
- (b) its registration number, if any;
- (c) evidence of registration or incorporation such as a Certificate of Incorporation or registration;
- (d) trust deed;
- (e) formative document such as partnership agreement, memorandum and articles of association;

- (f) official returns showing registered office and if different the principal place of business;
- (g) full names and details of the management company of the trust or legal arrangement, if any;
- (h) names of the relevant persons having senior management position in the legal person or trustees of the legal arrangement;
- (i) full names of the trustee, beneficiaries or any other natural person exercising ultimate effective control over the trust;
- (j) full names of the founder of the trust;
- (k) any other documentation from a reliable independent source proving the name, form and current existence of the customer; and
- (l) such other document or particulars as the Centre may prescribe.

3(3) The trustee of a trust shall disclose his status as a trustee to a reporting institution when forming a business relationship or carrying out an occasional transaction

(4)A reporting institution shall identify and take reasonable measures to verify the identity of beneficial owners through the following information—

- (a) for trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust including through a chain of control or ownership);
- (b) for other types of legal arrangements, the identity of persons in equivalent or similar positions.

Information on eligible introducers.

17 (1) Where an applicant for business is introduced to a reporting institution by an eligible introducer or a group introducer, it shall be sufficient compliance with these Regulations where the reporting institution—

- (a) obtains and maintains documentary evidence that the eligible introducer or group introducer is regulated for the purposes of preventing money laundering, terrorism financing and proliferation financing; and

(b) is satisfied that the procedures laid down by the eligible introducer or group introducer meet the requirements specified in the Act, or any code or guidelines issued by a supervisory body.

(2) A reporting institution relying on customer identification documentation in the possession of a group introducer shall not be required to retain copies of that customer identification documentation in his own records where he is satisfied that he may obtain that customer identification documentation from the group introducer upon request.

(3) A reporting institution shall comply with the requirements specified in any code or guidelines issued by its supervisory body, relating to the conduct of business with eligible introducers or group introducers.

Enhanced due diligence measures.

18 (1) Enhanced due diligence measures shall be applied to persons and entities that present a higher risk to the reporting institution through the following measures—

- (a) obtaining further information that may assist in establishing the customer's identity;
- (b) applying extra measures to verify the documents supplied;
- (c) obtaining senior management approval for the new business relationship or transaction;
- (d) establishing the person's or entity's source of funds; and
- (e) carrying out on going monitoring of the business relationship.

(2) Where higher risks are identified, either at national, sectoral or institutional level, a reporting institution shall address such risks through –

- (a) applying enhanced measures to manage and mitigate the identified risks; or
- (b) ensure that this information is incorporated into their risk assessments.

(3) Where it is determined that a beneficiary who is a legal person or a legal arrangement presents a higher risk, a reporting institution shall take enhanced measures including taking reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of payout.

(4) A reporting institution shall perform enhanced due diligence where the money laundering and terrorism financing risks are higher.

Simplified
customer due
diligence

18A. A reporting institution may apply simplified customer due diligence measures under the following circumstances -

(1) where lower risks have been identified, through an adequate analysis of risks by the country or the reporting institution; and

(2) the simplified measures are commensurate with the lower risk factors;

Provided that simplified customer due diligence measures shall not be applied by a reporting institution whenever there is suspicion of money laundering, terrorism financing or proliferation financing, or specific higher risk scenarios apply.

Establishment of
ultimate
beneficiaries.

19 (1) A reporting institution shall identify and verify the natural persons behind a legal person and legal arrangement.

(2) A reporting institution shall understand the nature of business, ownership and control structure when performing customer due diligence measures in relation to a customer that is a legal person or legal arrangement.

(3) In fulfilling the obligations under sub-regulations (1) and (2) a reporting institution shall obtain the following where applicable—

- (a) details of Incorporation or registration;
- (b) partnership agreement;
- (c) deed of trust;
- (d) particulars of directors and shareholders;
- (e) names of the relevant persons having senior management position in the legal person or trustees of the legal arrangement;
- (f) names of the trustees, beneficiaries or any other natural person exercising ultimate effective control over the trust;
- (g) any other documentation obtained from a reliable independent source proving the name, form and current existence of the customer.

(4) The relevant identification data in sub-regulation (3) may be obtained from a public register, the customer or other reliable sources.

Person
purporting to act

19A. Where a person purports to act on behalf of a customer, a reporting institution shall

- (a) Verify that the person is so authorised to act; and
- (b) Identify and verify the identity of the person so authorised.

Life insurance
related business

20 (1) For life or other investment-related insurance business, financial institutions shall, in addition to the customer due diligence measures required for the customer and the beneficial owner, conduct the following customer due diligence measures on the beneficiaries of life insurance and other investment related insurance policies, as soon as the beneficiary or beneficiaries are identified or designated, for a beneficiary—

- (a) that is identified as specifically named natural or legal persons or legal arrangements, taking the name of the person;
- (b) that is a legal arrangement or designated by characteristics or by category such as spouse or children, at the time that the insured event occurs or by other means such as under a will, obtaining sufficient information concerning the beneficiary to satisfy the financial institution that it will be able to establish the identity of the beneficiary at the time of the payout,

Provided that the verification of the identity of the beneficiary in (a) and (b) shall occur at the time of the payout.

(2) The information collected under sub-regulation (1) shall be recorded and maintained in accordance with the provisions of the Act and these Regulations.

(3) Reporting institutions shall include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced customer due diligence measures are applicable.

(4) Where it is determined that a beneficiary who is a legal person or a legal arrangement presents a higher risk, a reporting institution shall take enhanced measures including taking reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of payout.

Compliance.

21 (1) A reporting institution shall as soon as reasonably practical comply with the obligation under regulation 12(3), after it has entered into a business relationship with an applicant for business, with a view to—

- (a) agreeing with the applicant for business to carry out an initial transaction; or
- (b) reaching an understanding, whether binding or not, with the applicant for business that it may carry out future transactions.

(2) For the purposes of sub-regulation (1), where the applicant for business does not supply evidence of identity as soon as reasonably practicable, the reporting institution shall —

- (a) not open the account;
- (b) not commence any business relationship with the customer;
- (c) not perform the transaction;
- (d) where it has commenced a business relationship with the customer—
 - (i) discontinue any transaction it is conducting for him;
 - (ii) bring to an end the business relationship or any understanding it has reached with him; and
- (e) file a suspicious transaction report with the Centre.

(3) A reporting institution shall verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers.

(4) Where the business relationship has been established, a reporting institution may complete verification after that establishment —

Provided that—

- (a) this occurs as soon as reasonably practicable;
- (b) this is essential not to interrupt the normal conduct of business; and
- (c) the money laundering, terrorism financing and proliferation financing risks are effectively managed.

(5) A reporting institution shall adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.

(6) Notwithstanding the above, where a reporting institution forms a suspicion of money laundering or terrorism financing, and it reasonably believes that performing the customer due diligence process will tip-off the customer, the reporting institution is permitted not to pursue the customer due diligence process, and shall instead file a suspicious transaction report.

Politically
exposed persons.

22 (1) In relation to foreign politically exposed persons, a reporting institution shall, in addition to performing the customer due diligence measures—

- (a) put in place risk management systems to determine whether a customer or the beneficial owner is a politically exposed person;
- (b) obtain senior management approval before establishing such business relationships; (or continuing,) such business relationships for existing customers;
- (c) take reasonable measures to establish the source of wealth and the source of funds of the customer and beneficial owner identified as politically exposed person; and
- (d) conduct enhanced ongoing monitoring on that relationship.

(2) In relation to a domestic politically exposed person who has been entrusted with a prominent function by an international organisation, a reporting institution shall, in addition to performing the customer due diligence, —

- (a) take reasonable measures to determine whether a customer or the beneficial owner is such a person; and
- (b) in cases when there is higher risk business relationship with such a person, adopt the measures in regulation 22 (1) (b), (c) and (d).

(3) In relation to life insurance policies, a reporting institution shall—

- (a) take reasonable measures to determine whether the beneficiary and the beneficial owner of the beneficiary is a politically exposed person at the latest, at the time of the payout;
- (b) where higher risks are identified in addition to performing normal customer due diligence measures;

- (i) inform senior management before the payout of the policy proceeds;
- (ii) conduct enhanced scrutiny on the whole business relationship with the policyholder; and
- (iii) consider making a suspicious transaction report.

(5) In these Regulations, a politically exposed person means a person who has been entrusted with a prominent public function in Kenya or another jurisdiction including—

- (a) members of Cabinet;
- (b) senior executives of state owned corporations;
- (c) important political party officials;
- (d) senior military officials and other members of the disciplined forces;
- (e) members of the Judiciary;
- (f) State Officers;
- (g) senior Public Officers;
- (h) senior Officials of International Organisation;
- (i) Heads of State or Government;
- (j) any immediate family member or close business associate of a person referred to under this sub regulation; and
- (k) any other category of persons as the Centre may determine.

Foreign branches
or subsidiaries.

23 (1) A reporting institution shall ensure that its foreign branches and subsidiaries observe anti money laundering and counter financing of terrorism measures consistent with the Act and these Regulations.

(2) Where the minimum requirements of the host country are less strict than those applicable in Kenya, a reporting institution shall ensure that its branches and subsidiaries apply the requirements of the Act and these Regulations to the extent that the laws of the host country permit.

(3) A reporting institution shall inform the Centre and its supervisory body when their foreign branch or subsidiary is unable to observe

appropriate anti-money laundering and counter financing of terrorism measures.

(4) If the host country does not permit the proper implementation of anti-money laundering and countering financing of terrorism measures consistent with the measures set out under the Act and Regulations made thereunder, the Reporting institution shall apply appropriate additional measures to manage the money laundering and terrorism financing risks, and inform the Centre and their supervisory body.

Group-wide programmes

23A. In addition to the measures provided under regulation 9 and 23, a reporting institution shall implement group-wide programmes against money laundering, terrorism financing and proliferation financing, which shall apply to all branches and majority-owned subsidiaries of the reporting institution including—

- (a) policies and procedures for sharing information required for the purposes of customer due diligence and money laundering, terrorism financing and proliferation risk management;
- (b) the provision, at group-level compliance, audit, or anti- money laundering, counter financing of terrorism and counter proliferation financing functions, of customer, account, and transaction information from branches and subsidiaries when necessary for anti- money laundering, counter financing of terrorism and counter proliferation financing purposes which shall include information and analysis of transactions or activities which appear unusual (if such analysis was done). Similarly branches and subsidiaries should receive such information from these group-level functions when relevant and appropriate to risk management; and
- (c) adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off.

Correspondent relationships.

24 (1) In relation to cross-border correspondent banking and other similar business relationships, a financial institution which intends to establish a correspondent financial relationship either as the correspondent financial institution or the respondent financial institution shall undertake the following measures before establishing a business relationship—

- (a) gather sufficient information about a respondent institution to understand fully the nature of the respondent's business;
- (b) determine from publicly available information, the reputation of the institution and the quality of supervision, including whether it

has been subject to a money laundering and terrorism financing investigation or regulatory action;

- (c) assess the respondent institution's anti-money laundering and countering terrorism financing controls;
- (d) obtain approval from senior management before establishing new correspondent relationships;
- (e) clearly understand the respective anti-money laundering and countering terrorism financing responsibilities of each institution;
- (f) in respect to the correspondent financial institution's customers, be assured that it verifies the identity of its customers and conducts on-going monitoring;
- (g) verify the ownership and management structures of the correspondent financial institution including whether a politically exposed person has ownership or control of the financial institution.

(2) For purposes of this Regulation—

- (a) "correspondent financial relationship" means the provision of financial services by a local financial institution to another local financial institution or foreign financial institution; and
- (b) "respondent financial institution" means a financial institution in receipt of financial services from a correspondent financial institution.

(3) With respect to "payable-through accounts", a financial institution shall satisfy itself that the respondent financial institution—

- (a) has performed customer due diligence obligations on its customers that have direct access to the accounts of the correspondent financial institution; and
- (b) is able to provide relevant customer due diligence information upon request to the correspondent financial institution.

(4) In this regulation, payable through accounts refers to correspondent accounts that are used directly by third parties to transact business on their own behalf.

Prohibition on dealings with shell banks.

- 25** (1) A reporting institution shall not—
- (a) open a foreign account with a shell bank;
 - (b) permit its accounts to be used by a shell bank; or
 - (c) enter into or continue a correspondent financial relationship with—
 - (i) a shell bank; or
 - (ii) a respondent financial institution that permits its account to be used by a shell bank.
- (2) A reporting institution shall satisfy itself that a respondent financial institution does not permit its accounts to be used by shell banks.

Money or value transfer services.

- 26** A reporting institution that offers money or value transfer services as a product shall ensure that the provider of such services—
- (a) is licensed or registered by a competent authority ;
 - (b) has anti-money laundering and counter terrorism financing programmes in place; and
 - (c) is subject to an effective system for monitoring and ensuring compliance with anti-money laundering measures, counter terrorism financing measures and that such systems are regularly monitored for compliance.
 - (d) its agents are licensed or registered by a competent authority or the provider maintains a current list of its agents accessible by competent authorities in the countries in which the MVTs provider and its agents operate;
 - (e) that use agents include the agents in their anti-money laundering and counter terrorism financing programmes and monitor the agents for compliance with these anti-money laundering, counter terrorism financing programmes.

Wire transfers.

- 27** (1) A reporting institution undertaking a wire transfer shall ensure that information accompanying domestic or cross-border wire transfers always have the following information—
- (a) required and accurate originator information —

- (i) the name of the originator;
 - (ii) the originator account number where such an account is used to process the transaction or; in the absence of an account number, a unique transaction reference number shall be included which makes it possible to trace the transaction;
 - (iii) the originator's address, or national identity number, or passport number, or date and place of birth;
- (b) required beneficiary information –
- (i) the name of the beneficiary; and
 - (ii) the beneficiary account number where such an account is used to process the transaction or; in the absence of an account number, a unique transaction reference number shall be included which makes it possible to trace the transaction

(2) The requirements under sub-regulation (1) apply to reporting institutions in circumstances where the institution is acting as—

- (a) the ordering financial institution;
- (b) the beneficiary financial institution; or
- (c) the intermediary financial institution.

(3) Where several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries—

- (a) the reporting institutions shall ensure that the batch file contains required and accurate originator information, and full beneficiary information, that is fully traceable within the beneficiary country; and
- (b) the reporting institutions shall be required to include the originator's account number or unique transaction reference number.

(4) For domestic wire transfers, the ordering reporting institution shall ensure that the information accompanying the wire transfer includes originator information as indicated for cross-border wire transfers, unless

this information can be made available to the beneficiary financial institution and appropriate authorities by other means.

(5) For cross-border wire transfers,—

- (a) an intermediary financial institution shall ensure that all originator and beneficiary information that accompanies a wire transfer is retained with it;
- (b) Where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer, the intermediary reporting institution shall keep a record, for at least seven years, of all the information received from the ordering institution or another intermediary reporting institution;

(6) An intermediary financial institution and a beneficiary financial institution shall have risk-based policies and procedures for determining—

- (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and
- (b) the appropriate follow-up action.

(7) A money or value transfer service provider that controls both the ordering and the beneficiary side of a wire transfer shall –

- (a) take into account all the information from both the ordering and beneficiary sides in order to determine whether a suspicious transaction report has to be filed; and
- (b) file a suspicious transaction report in any country affected by the suspicious wire transfer, and make relevant transaction information available to the Financial Intelligence Unit.

(8) Wire transfers to and from persons or entities that are designated under the United Nations Security Council Resolution 1267 (1999), 1373 and other United Nations resolutions relating to the prevention of terrorism and terrorism financing are prohibited.

(9) For purposes of this Regulation—

- (a) "beneficiary" means a person or legal arrangement identified by the originator as the receiver of the requested wire transfer;

- (b) "beneficiary financial institution" means a financial institution which receives the wire transfer from the ordering financial institution directly or through an intermediary financial institution and makes the funds available to the beneficiary;
- (c) "cross-border wire transfer" includes any wire transfer where either the ordering financial institution or the beneficiary financial institution is located outside Kenya and any chain of wire transfer in which at least one of the financial institutions involved is located outside Kenya;
- (d) "domestic wire transfer" includes any wire transfer where the ordering financial institution and beneficiary financial institution are located in Kenya, and any chain of wire transfer that takes place entirely within the country, even though the system used to transfer the payment message may be located in another country;
- (e) "intermediary financial institution" means a financial institution in a serial or cover payment chain that receives and transmits a wire transfer on behalf of the ordering financial institution and the beneficiary financial institution, or another intermediary financial institution;
- (f) "ordering financial institution" means a financial institution which initiates the wire transfer and transfers the funds upon receiving the request for an wire transfer on behalf of the originator; and
- (g) "originator" means an account holder who allows the wire transfer from that account, or where there is no account, the person that places the order with the ordering financial institution to perform the wire transfer.

Reliance on third parties.

28 (1) A reporting institution may rely on a third party to perform elements of customer due diligence measures, or to introduce business, provided that the institution meets the criteria set out in these Regulations.

(2) A reporting institution relying on a third party shall enter into an agreement with the third party outlining the responsibilities of each party.

(3) Where a reporting institution relies on a third party to perform elements of customer due diligence measures as permitted, or to introduce business, the ultimate responsibility for customer due diligence measures remains with the institution that is relying on the third party.

(4) A reporting institution relying on a third party shall immediately obtain the necessary information concerning the relevant elements of customer due diligence measures as required by these Regulations.

(5) A reporting institution relying on a third party to perform elements of customer due diligence measures shall take adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to the customer due diligence requirements shall be made available from the third party without delay upon request.

(6) A reporting institution intending to rely on a third party shall ensure that the third party is regulated, supervised or monitored by a competent authority and has measures in place for compliance with, customer due diligence and record-keeping requirements in line with the Act and these regulations.

(7) Where a reporting institution intends to rely on a third party that is based in another country, the institution shall assess the money laundering, terrorism financing and proliferation financing risks that the country poses and the adequacy of customer due diligence measures adopted by financial institutions in that country.

(8) Where a reporting institution relies on a third party that is part of the same financial group to perform elements of customer due diligence, or to introduce business, that reporting institution shall ensure that the requirements of this regulation are met in the following circumstances—

- (a) the group applies customer due diligence and record-keeping requirements and programmes against money laundering, terrorism financing and proliferation financing;
- (b) the implementation of those customer due diligence and record-keeping requirements and anti-money laundering, counter terrorism financing and counter proliferation financing programmes is supervised at a group level by a competent authority; and
- (c) any higher country risk is adequately mitigated by the group's anti-money laundering, counter terrorism financing and counter proliferation financing policies.

(9) For purposes of this Regulation, the term "third party" means another financial institution or designated non-financial business or a person that is supervised or monitored by a competent authority.

On-going monitoring.

29 (1) A reporting institution shall monitor the business or account activity and transactions of their customers on a continuous basis.

(2) On-going monitoring of business or account activity and transactions may be conducted on a risk-sensitive basis.

(3) A reporting institution shall conduct on-going due diligence on its customers and develop risk based systems and procedures.

Ongoing due diligence measures

30 Reporting institutions shall conduct ongoing due diligence on the business relationship by—

- (a) scrutinising transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the financial institution's knowledge of the customer, their business and risk profile, including where necessary, the source of funds; and
- (b) ensuring that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records, particularly for higher risk categories of customers.

Numbered accounts.

31 (1) The requirements set out in these regulations shall apply to numbered accounts.

(2) A reporting institution shall monitor transactions involving a numbered account and shall report any suspicious activity on the account to the Centre.

Legitimacy of source funds.

32 (1) A reporting institution shall, for purposes of determining the legitimacy of funds and transactions, consider the following information—

- (a) for large, frequent or unusual cash deposits or withdrawals, written statement from the customer confirming that the nature of his business activities normally and reasonably generates substantial amounts of cash;
- (b) for large, frequent or unusual currency exchanges, written statement from the customer confirming the reason and need for acquired currencies;
- (c) for multiple or nominee accounts, or similar or related transactions, written statement from the customer confirming the reason and need for multiple or nominee accounts, or similar or related transactions;

- (d) for large, frequent or unusual transfers or payments of funds, appropriate documentation as to the identity of the recipient or sender of the transferred or paid funds, and the reason for the transfer or payment;
- (e) for large or unusual investments or requests for advice or services, written statement from the customer confirming that the investments or advice or services being requested are bona fide and consistent with the objectives of the customer's reasonable and normal business activities;
- (f) for large or unusual foreign transactions, written confirmation from the customer indicating the nature, reason and appropriate details of the foreign transactions sufficient to determine the legitimacy of such transactions.

(2) A reporting institution shall, in consultation with its regulatory body, set up policies setting out limits on the maximum cash transaction amounts non-customers can undertake with it.

(3) For purposes of sub-regulation (2), a regulatory body may issue guidelines or directions as it may consider necessary.

PART V – REPORTING REQUIREMENTS

Reporting of suspicious activities by reporting institutions.

33 (1) If a reporting institution becomes aware of suspicious activities or transactions which indicate possible money laundering, terrorism financing and proliferation financing activities, the reporting institution shall ensure that it is reported to the Centre within two days after the suspicion arose.

(2) Sufficient information shall be disclosed by the reporting institution indicating the nature of and reason for the suspicion, and where the reporting institution has additional supporting documentation that should also be made available.

(3) The Centre shall issue guidelines on the procedures for and format in which the suspicious transaction or activity reports shall be submitted and shall publish guidance in order to assist reporting institutions to fulfil their obligations under this regulation

Reporting of suspicious activities by supervisory bodies.

34 (1) A supervisory body and its staff shall, in accordance with section 36 of the Act, report to the Centre any suspicious transaction that the supervisory body or its staff may encounter within the normal course of its duties in the specified manner.

(2) The supervisory body shall send the report in sub-regulation (1) to the Centre in accordance with regulation 33(1).

Reporting of cash transactions.

35 (1) A reporting institution shall file reports with the Centre on all cash transactions equivalent to or exceeding US\$15,000 or its equivalent in any other currency carried out by it, whether or not the transaction appears to be suspicious.

(2) The report under sub-regulation (1) may be made in such format as the Centre may specify.

(3) Subject to sub-regulation (2), the report shall be sent to the Centre electronically—

- (a) by such means provided by the Centre for this purpose; or
- (b) any other method as may from time to time be determined by the Centre, whether as an alternative means or an exclusive means;
- (c) by the Friday in the week in which the transaction occurred or at such other time as the Centre may prescribe.

(4) If a person or reporting institution required to make a report under sub-regulation (3) does not at that time have the technical capability or for another reason, acceptable to the Centre, is unable to make a report in accordance with that sub-regulation, such person shall make a report substantially in the form as set out in sub-regulation (2), and shall provide such completed form to the Centre, including such further information as may be requested by the Centre, by—

- (a) sending it by facsimile to the Director at the facsimile number specified in writing by the Centre from time to time for this purpose;
- (b) delivering it to the Centre's offices or to an address specified, from time to time, in writing by the Centre; or
- (c) sending it by any other method as may be determined by the Centre, whether as an alternative means or as an exclusive means.

(5) A report under sub-regulation (1) shall be made at the end of the week in which the transaction occurred unless circumstances demand for the report to be made without delay in which case it shall be reported to the Centre immediately.

Tipping off.

36 A reporting institution which obtains information which is suspicious or indicates possible money laundering, terrorism financing or proliferation

financing activity shall not disclose such information to an unauthorised person but shall report it to the Centre as required by these Regulations.

Record keeping.

37 (1) A reporting institution shall ensure that it maintains and keeps records of all transaction, both domestic and international, for a minimum period of seven years from the date the relevant business or transaction was completed or following the termination of an account or business relationship.

(2) A reporting institution shall ensure that it keeps all records obtained through customer due diligence measures such as copies or records of official documents like passports, identification cards or similar documents, account files and business correspondence including the results of any analysis undertaken such as inquiries to establish the background and purpose of complex, unusual, large transactions for the period specified in sub-regulation (1).

(3) Where the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee if any, the amount and date of the instrument, the number if any of the instrument and details of any endorsements appearing on the instrument shall be retained.

(4) The record keeping requirements under these Regulations are made without prejudice to any other records required to be kept by or under any other written law.

(5) A reporting institution shall ensure that all customer due diligence information and transaction records under the Act and these regulations shall, as and when required be made available swiftly to domestic competent authorities upon appropriate authority.

Independent audit.

38 A reporting institution shall adopt an independent audit function to check compliance by the institution with the Act and these Regulations.

Annual compliance.

39 At the end of each calendar year, a reporting institution shall submit to the Centre by the 31st of January of the following calendar year or as may be required by the Centre, from time to time, a compliance report detailing the institution's compliance with the Act, these Regulations and the institution's internal anti-money laundering, counter terrorism financing and counter proliferation financing rules.

PART VI – GENERAL PROVISIONS

Powers of the Centre to issue directives and guidelines.

40 (1) The Centre may issue instructions, directions, guidelines or rules to reporting institutions as it may consider necessary, for the better carrying out of its functions under the Act or regarding the application of the Act.

(2) Any instructions, directions, guidelines or rules issued under sub-regulation (1) may—

- (a) be either general or specific;
- (b) prescribe particulars or matters including forms considered necessary or expedient for the operation, or use in the operation of the Act or of these Regulations;
- (c) be revoked or varied by subsequent instructions, directions, guidelines or rules;
- (d) be given to such persons and in such manner as the Centre considers appropriate.

(3) The Centre may, where it considers appropriate, delegate powers to a supervisory body to issue instructions, directions, guidelines or rules regarding the application of the Act to reporting institutions regulated or supervised by the supervisory body:

Provided that a supervisory body shall consult the Centre before issuing any instructions, directions, guidelines or rules under this regulation.

(4) Notwithstanding sub-regulations (1), (2) and (3), the Centre or a supervisory body may by notice in writing, issue a directive to any reporting institution to whom the provisions of this Act apply, to—

- (a) provide the Centre or that supervisory body —
 - (i) with the relevant information, reports or statistical returns specified in the notice, at the time or at the intervals specified in the notice;
 - (ii) within the period specified in the notice;
 - (iii) with any relevant document in its possession or custody or under its control;

- (b) cease or refrain from engaging in any act, omission or conduct in contravention of the Act or of these Regulations or of any direction or guidance issued thereafter;
- (c) perform such acts as may be necessary to remedy an alleged non-compliance with the Act or of these Regulations; or
- (d) perform such act as may be necessary to meet any obligation imposed by the Act or these Regulations.

(5) The Centre or supervisory body may examine a document submitted to it in terms of subsection (4)(a) or make a copy thereof or part thereof.

Sharing of information.

41 (1) The Centre may make information collected by it available to any financial regulatory authority, supervisory body, fiscal or tax agency, or investigative agency or any competent authority or the appropriate law enforcement authority within or outside Kenya to facilitate the administration and enforcement of the provisions of the Act and these Regulations.

(2) The Centre may request a supervisory body, a monetary or financial regulatory authority to provide it with such information for purposes of supervising and enforcing compliance of the provisions of the Act and these Regulations.

Mechanisms for suitability of reporting institutions.

42 (1) A supervisory body or a self-regulatory body having oversight over a reporting institution, shall put in place mechanisms to determine the suitability of—

- (a) the reporting institution for the grant of a licence or authority by the supervisory body;
- (b) persons managing or controlling the reporting institution.

Penalty.

43 Any person, reporting institution or supervisory body or self-regulatory body who contravenes the provisions of these Regulations commits an offence and shall, on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or both fine and imprisonment.

(r. 4(1))

REGISTRATION FORM

CONTACT DETAILS

Industry:
(e.g. bank, microfinance institution, insurance company, sacco society, casino, telecommunications, real estate agent, stockbroker, forex bureau, Other:
(Specify) _____

Organization name: _____

Your name: _____

Title/position: _____

Telephone details: _____

Facsimile details: _____

Cellular telephone details: _____

Physical address: _____

Postal address: _____

E-mail address: _____

Regulator/Supervisor: _____

Contact Details of Regulator/Supervisor: _____

Alternative contact for your institution (name, telephone and email only)

Signature: _____

MONETARY INSTRUMENT DECLARATION

(Cash in whatever currency and form)

(r. 8(2))

This Declaration is to be completed in Quadruplicate by persons entering or leaving Kenya with monetary instruments equivalent to or exceeding of US\$ 10,000 or its equivalent in Kenya shillings or any other currency.

I, the undersigned, hereby declare that I have the following monetary instruments in my possession:

Description and Type of Monetary Instrument	Amount of Monetary Instrument	
	In Figures	In words

Description and Type of Monetary Instrument	Amount of Monetary Instrument	
	In Figures	In words

I am ordinarily resident in (Country)

Full Names

Passport/ID No.

Country, Date of Issue and Expiry date.....

Address in country of residence.....

Address in Kenya.....

Signature (Declarant)..... Date

For official use

Port of Entry/Exit

Dated at..... Time

this..... day of 20

Official Stamp

.....
Customs Officer

DETAILS OF CUSTOMS OFFICER

Name..... Agency.....

Rank.....

Contact.....

NOTES

1. This form should be presented at the point of entry/exit to the Customs Officer who shall stamp all copies.
2. The Customs Officer reserves the right to physically verify the amounts.
3. It is an offence not to declare or to under declare monetary instrument in your possession under the provisions of Proceeds of Crime and Anti-Money Laundering Act, 2009.

4. Any person who discloses the information contained in this form to an unauthorised person commits an offence.

(r. 8(5))

RECEIPT AND NOTICE OF SEIZURE

PORT OF ENTRY/EXIT

To.....		
of.....		
ID/Passport No..... Country & Date of Issue.....		
1. Take notice that the monetary instruments described hereunder have been temporarily seized:		
Description and type of Monetary Instrument	Serial No.	Amount
2. Further take notice that forfeiture proceedings are intended to be initiated against the seized monetary instruments under the Proceeds of Crime and Anti-Money Laundering Act, 2009.		
Dated at..... Time.....		
this..... day of 20.....		
..... Authorized Officer		

DETAILS OF SEIZING OFFICER	
Name.....	Agency.....
Rank.....	
Contact.....	

Any person who discloses the information contained in this form to an unauthorized person commits an offence.

Made on the, 2023.

NJUGUNA NDUNGU

Cabinet Secretary to the National Treasury and Economic Planning



LEGAL NOTICE NO.

**THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING
ACT
(No. 9 of 2009)**

IN EXERCISE of powers conferred by section 113(1) of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—

**THE PROCEEDS OF CRIME AND ANTIMONEY LAUNDERING
(CRIMINAL ASSETS RECOVERY FUND) REGULATIONS, 2023**

Citation. 1. These Regulations may be cited as may be cited as the Proceeds of Crime and Anti-money Laundering (Criminal Assets Recovery Fund) Regulations, 2023.

Interpretation. 2. In these Regulations, unless the context otherwise requires—

“Act” means the Proceeds of Crime and Anti-money Laundering Act, 2009;

No. 18 of 2012. “Accounting Standards Board” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

“Administrator” means the Administrator of the Fund in accordance with section 111 of the Act;

“Advisory Board” has the meaning assigned to it in section 2 of the Act;

“Agency” has the meaning assigned to it in section 2 of the Act;

“Cabinet Secretary” has the meaning assigned to it in section 2 of the Act;

“Director” means the Agency Director appointed under section 53(2) of the Act; and

“Fund” has the meaning assigned to it in section 2 of the Act.

Purpose of the Regulations.

3. The purpose of these Regulations is to provide a framework for the administrative operations of the Fund and the utilization of properties and monies standing to the credit of the Fund as required under section 113(1) of the Act.

Other sources of funds.

4. In addition to the sources of funds specified in section 110 of the Act, the Fund shall consist of—

- (a) any moneys from incidental compensation and restitution orders;
- (b) income generated from the investments of the Fund; and
- (c) money accruing to the Fund from the management of confiscated or forfeited property under the Act.

Payments out of the Fund.

5. There shall be paid out of the Fund—

- (a) moneys derived from concluded confiscation

and forfeiture orders stipulated in Parts VII to X of the Act, into the Consolidated Fund;

- (b) five percent of the total proceeds recovered or realized from any property seized or forfeited to the Government, to the Agency;
- (c) claims by a third party in respect of a forfeiture order issued in accordance with section 93 of the Act; and
- (d) moneys in respect of administrative expenses incurred in pursuance of the objects and purposes for which the Fund is established.

Withdrawals
from the Fund.

6. Any withdrawal from the Fund shall only be for the purposes of payments envisaged under regulation 5 of these Regulations.

Role of the
Advisory Board.

7. The Asset Recovery Advisory Board shall—

- (a) generally advise the Agency on the administration and management of the Fund;
- (b) advise the Agency on the preparation of the estimates of revenues and expenditure of the Fund; and
- (c) advise the Agency on the preparation of the annual financial and non-financial reports and statements of the Fund.

Administration
of the Fund.

8. (1) Pursuant to section 111 of the Act, the Agency through the Director shall be the administrator of the Fund.

(2) The functions of the administrator of the Fund shall be to—

- (a) open and operate such bank accounts with the approval of the Board and the National Treasury;
- (b) supervise and control the day-to-day administration of the Fund;
- (c) in consultation with the Advisory Board, develop such policies as may be necessary for the attainment of the objects of the Fund;
- (d) cause to be kept books of accounts and other books and records in relation to the Fund of all activities and undertakings financed from the Fund;
- (e) be the custodian of the property, assets and equipment of the Fund; and
- (f) prepare estimates of annual revenue and expenditure of the Fund and submit them to the Advisory Board for advice before adoption.

(3) The Agency shall comply with the ordinary Government budget cycle in the preparation of the estimates for the Fund.

Secretariat of the Fund.

9. (1) There shall be a secretariat to support the functions of the administration of the Fund.

(2) The Director shall designate such officers in the Agency to be the staff of the secretariat.

(3) The Director may assign duties to the staff of the secretariat in respect of the administration and management of the Fund.

Financial year.

10. The financial year of the Fund shall be the period of twelve months commencing on the 1st July in each year and ending on the thirtieth June.

Bank accounts of the Fund.

11. (1) The administrator shall cause bank accounts in the name of the Fund to be maintained for the Fund in a bank regulated by the Central Bank of Kenya in accordance with the Public Finance Management Act, 2012.

(2) All moneys payable to the Fund shall be paid into the bank accounts of the Fund.

(3) The bank accounts of the Fund shall be operated by the Director and two other persons nominated by the Director from among the staff of the Agency.

(4) The bank accounts of the Fund shall be submitted to the Auditor-General within three months after the end of each financial year in accordance with the Public Audit Act, 2015.

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Overdrawn accounts.

12. The Administrator shall ensure that the bank accounts of the Fund are not overdrawn.

Investment of surplus funds.

13. The Administrator may, with the approval of the Cabinet Secretary, invest any surplus funds of the Fund in Government securities.

Retention of receipts and earnings.

14. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year shall be retained by the Fund for the purposes of the Fund.

Annual estimates.

15. (1) At least three months before the commencement of each financial year, the Administrator shall cause to be prepared the estimates of the revenue and expenditure of the Fund for that year.

(2) The annual estimates shall make provision for the estimated revenues and expenditures of the Fund for the financial year and, in particular, the estimates shall provide for—

- (a) revenues projected to be received by the Fund from the sources of funds provided for under the Act and these Regulations;
- (b) moneys for the administrative expenses of the Fund;
- (c) the maintenance of the assets, equipment and properties of the Fund; and
- (d) any other lawful expenditure that promotes the objects and purpose of the Fund.

Annual reports.

16. The Administrator shall prepare annual financial and non-financial reports in accordance with the format prescribed by the Public Sector Accounting Standards Board and submit them to the Advisory Board for consideration and advice.

Records of the Fund.

17. (1) The Administrator shall cause to be kept all proper books and records of account of the income, expenditure, assets, liabilities, equipment and properties of the Fund.

(2) Within a period of three months from the end of each financial year, the Administrator shall submit to the

Advisory Board the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the financial year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of that financial year.

(3) The financial statements prepared under paragraph (2) shall be prepared in accordance with the format prescribed by the Public Sector Accounting Standards Board.

Financial and procurement Regulations.

18. The Fund shall be governed by all relevant financial and procurement laws and Regulations as applicable

Administrative expenses.

19. The administrative expenses of the Fund shall be three percent of the proceeds recovered or realized from any property seized or forfeited to the Government.

Winding up of the Fund.

20. The winding up of the Fund shall be in accordance with the provisions of the Public Finance Management Act, 2012.

Made on the, 2023.

NJUGUNA NDUNG’U,
*Cabinet Secretary for the
National Treasury and Economic Planning.*