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REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT- SECOND SESSION (2023)

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE PROCEEDS OF CRIME AND
ANTI-MONEY LAUNDERING (CRIMINAL ASSETS RECOVERY FUND)
REGULATIONS, 2023

(LEGAL NOTICE NO. 151 OF 2023)

DECEMBER, 2023

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 DEC 2023	DAY: Tuesday
TABLED BY:	Hon. Samuel Chepkonga (Chairperson, Delegated Legislation Committee)
CLERK AT THIS TABLE:	Inzef Mwale

The Directorate of Audit, Appropriations & Other Select Committees
The National Assembly
Parliament Buildings
NAIROBI.

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ABBREVIATIONS AND SYNONIMS

AML	Anti-Money Laundering
CFT	Counter-Financing of Terrorism
CPF	Counter-Financing of Proliferation
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
L.N	Legal Notice
MER	Mutual Evaluation Report
ML	Money Laundering
PF	Proliferation Financing
POCAMLA	Proceeds of Crime and Anti-Money Laundering Act
POTA	Prevention of Terrorism Act
POCAMLR	Proceeds of Crime and Anti-Money Laundering Regulations
TF	Terrorism Financing

CHAIRPERSON'S FOREWORD

The Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, of 2023 were made *vide* LN No. 151 of 2023, pursuant to powers conferred on the Cabinet Secretary for National Treasury and Economic Planning under section 113(1) of the Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009 hence, is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (*No 23 of 2013*).

The Regulations were published in the Gazette as LN No. 151 of 2023 on 6th October, 2023, forwarded to the Clerk of the National Assembly and laid on the table of the House on 12th October, 2023 being the third sitting day since publication, hence within the Statutory timelines contemplated under section 11(1) of the Statutory Instruments Act. They were subsequently referred to the Committee on Delegated Legislation for consideration on 12th October, 2023.

Pursuant to section 16 of the Statutory Instruments Act, 2013 which requires the Committee to confer with the regulation –making authorities before making its decision, the Committee held a meeting with National Treasury and Economic Planning and Asset Recovery Agency on 30th November, 2023 to deliberate on the Regulations.

Having examined the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, of 2023 in accordance with the Constitution, the Statutory Instruments Act (*No 23 of 2013*) and the Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009, the Interpretations and General Provisions Act (*Cap 2*), the Committee recommends that the House **APPROVES the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023 for operationalization by the Ministry.**

I wish to sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate. I also wish to thank the Committee Membership for their diligence during the consideration of these Regulations.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) it is my pleasure and duty to present to the House, the **Committee's Report on its Consideration of the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023.**

HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Committee on Delegated Legislation is established under *Standing Order No. 210* and is mandated to consider statutory instruments submitted to National Assembly for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. During the scrutiny, the Committee is guided by the principles of good governance, rule of law considers whether the instrument-
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) Accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

Chairperson

Hon. Chepkonga Kiprono Samuel, CBS, M.P.

Ainabkoi Constituency

UDA

Vice-Chairperson

Hon. Githinji Robert Gichimu, M.P.

Gichugu Constituency

UDA

Committee Members

Hon. Mbui Robert, CBS, M.P

Kathiani Constituency

WDM-Kenya

**Hon. (Maj) (Rtd) Dekow Barrow Mohamed,
M.P**

Garrisa Township Constituency

UDA

**Hon. Julius Lekakeny Ole Sunkuli, EGH,
EBS, M.P.**

Kilgoris Constituency

KANU

Hon. Kamene Joyce, M.P

Machakos County

WDM-Kenya

Hon. Onchoke, Mamwacha Charles, M.P.

Bonchari Constituency

UPA

Hon Kimaiyo, Gideon Kipkoech, M.P.

Keiyo South Constituency

UDA

Hon. Komingoi, Kibet Kirui, M.P.

Bureti Constituency

UDA

Hon. Chebor, Paul Kibet, M.P

Rongai Constituency

UDA

Hon. Yakub Adow Kuno, M.P

Bura Constituency

UPIA

**Hon. (Maj) (Rtd) Abdullahi, Bashir Sheikh,
M.P.**

Mandera North Constituency

UDM

Hon. Mwirigi John Paul, M.P.

Igembe South Constituency

Hon. Odoyo, Jared Okello, M.P.

Nyando Constituency

UDA

Hon. Chepkorir Linet, M.P.

Bomet County

UDA

**Hon. Ruku, Geoffrey Kariuki Kiringa,
M.P.**

Mbeere North Constituency

DP

Hon. Mwale, Nicholas S. Tindi M.P.

Butere Constituency

ODM

Hon. Mugabe Innocent Maino, M.P.

Lukuyani Constituency

ODM

ODM

Hon. Munyoro Joseph Kamau, M.P

Kigumo Constituency

UDA

Hon. Lenguris Pauline, M.P.

Samburu County

UDA

Hon Mnyazi Amina Laura, MP.

Malindi Constituency

ODM

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises –

Ms. Esther Nginyo
Clerk Assistant I (Team Leader)

Mr. Dima Dima
Principal Legal Counsel I

Mr. Jacknorine Buleemi
Clerk Assistant III

Ms. Winny Otieno
Clerk Assistant III

Mr. Brian Langwech
Clerk Assistant III

Ms Fiona Wanjiru
Legal Counsel II

Mr. Daniel Ominde
Research Officer III

Mr. Manwel Leparachao
Serjeant at Arms

Mr. Charles Ayari
Audio Officer

2.0 CONSIDERATION OF THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (CRIMINAL ASSETS RECOVERY FUND) REGULATIONS, 2023 (LEGAL NOTICE NO. 151 OF 2023)

2.1 Introduction

5. The Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023 (*Legal Notice No. 151 of 2023*) were made pursuant to powers conferred on the Cabinet Secretary for National Treasury and Economic Planning by section 113(1) of the Proceeds of Crime and Anti-Money Laundering Act (No. 9 of 2009) hence, is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (*No 23 of 2013*).
6. The Regulations were published in the Gazette as LN No. 151 of 2023 on 6th October 2023, forwarded to the Clerk, National Assembly and laid on the table of the House on 12th October, 2023 being the third sitting day since publication, hence within the Statutory timelines contemplated under section 11(1) of the Statutory Instruments Act. Thereafter, the Regulations were referred to the Committee on Delegated Legislation for consideration.
7. Pursuant to section 16 of the Statutory Instruments Act, 2013 which requires the Committee to confer with the regulation-making authorities before making its decision, the Committee held a meeting with the National Treasury and Economic Planning on Thursday, 30th November, 2023 to deliberate on the Regulations.
8. The primary objective of the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023 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 Proceeds of Crime and Anti-Money Laundering Act, 2009.

2.2 Summary of the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023 (Legal Notice No. 151 of 2023)

9. The objects and 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.
10. The provisions of the Regulations are as follows –
 - a) **Regulation 1** provides for citation. The Regulations may be cited as the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023
 - b) **Regulation 2** provides for the interpretation of terms used in the Regulations.
 - c) **Regulation 3** provides for the purpose of the Regulations and its scope in application.
 - d) **Regulation 4** provides for the sources of funds for the Agency.

- e) **Regulation 5** provides for how the funds shall be paid.
- f) **Regulation 6** provides that any withdrawal from the Fund shall only be for the purposes of payments envisaged under regulation 5 of these Regulations.
- g) **Regulation 7** provides for the establishment of the Asset Recovery Advisory Board and its role to the Agency.
- h) **Regulation 8** provides for framework for the administration of the fund by the Agency.
- i) **Regulation 9** establishes the Secretariat of the Fund to support the functions of the Administration of the Fund.
- j) **Regulation 10** provides that 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 of June.
- k) **Regulation 11** provides for the manner in which the Administrator shall cause the establishment of a bank account in a bank regulated by the Central Bank of the Kenya.
- l) **Regulation 12** provides that the Administrator shall ensure that the bank accounts of the Fund are not overdrawn.
- m) **Regulation 13** provides that the Administrator may, with the approval of the Cabinet Secretary, invest any surplus funds of the Fund in Government securities.
- n) **Regulation 14** stipulates that 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.
- o) **Regulation 15** gives guidance on annual estimates and appropriation of funds for the Agency.
- p) **Regulation 16** provides that the Administrator shall prepare annual reports for consideration by the Advisory Board.
- q) **Regulation 17** states how 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.
- r) **Regulation 18** provides that the Fund shall be governed by all relevant financial and procurement laws and Regulations as applicable.
- s) **Regulation 19** provides that 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.
- t) **Regulation 20** provides that the winding up of the Fund which shall be in accordance with the provisions of the Public Finance Management Act, 2012.

2.3 Legislative Context

11. The Legal Notice on the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023 is made pursuant to section 113(1) of the Proceeds of Crime and Anti-Money Laundering Act, 2009. The section empowers the Cabinet Secretary for the National Treasury and Economic planning to make Regulations for better carrying out of the provisions of the Proceeds of Crime and Anti-Money Laundering Act.
12. Section 113(2) of the Act requires affirmative resolution to the effect that the Regulations are to be laid before Parliament before they take effect.

2.4 Policy Background

13. In providing for the policy background the Ministry indicated that the country's efforts to combat Money Laundering (ML), Terrorism Financing (TF) and Proliferation Financing (PF) is largely anchored in the:
 - i. Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA)
 - ii. Prevention of Terrorism Act, 2012 (POTA).
14. They are also anchored in the attendant Regulations hereunder namely:
 - i. the Proceeds of Crime and Anti-Money Laundering Regulations, 2023; and
 - ii. the Prevention of Terrorism Act (Implementation of United Nations Security Council Resolutions on Suppression of Terrorism Regulations), 2023.
15. Further, the Criminal Assets Recovery Fund, established pursuant to section 109 of the Proceeds of Crime and Anti-Money Laundering Act had not been operationalized as there were no regulations in place.
16. The Ministry cited the High Court in the Anti-Corruption and Economic Crimes Division Civil Suit No. E002 of 2022, Assets Recovery Agency-vs- Peter Oluwaafemi Olaiwon noted that the fund was not operationalized and directed that:

“A structural interdict is hereby issued requiring the Cabinet Secretary of the National Treasury to fast-track and as soon as practicable issue and place before Parliament for approval, the regulations for the operationalization of the fund (the Criminal Recovery Fund) and within six (6) months from today file a report in Court on the progress”.
17. In addition, Kenya underwent an Anti- Money Laundering and Financing of Terrorism (AML/CFT) mutual evaluation peer review by Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) that was aimed at assessing Kenya’s compliance with the Financial Action Taskforce Recommendations. Kenya was found to be deficient in some areas which includes lack of a framework for assets management. In this regard, Kenya was required to submit a post observation report to Financial Action Task Force on the progress made in addressing the deficiencies by 17th October, 2023.
18. Based on the foregoing, the regulations were developed pursuant section 113(1) of POCAMLA 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.

3.0 COMMITTEE OBSERVATIONS

19. Having examined the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, of 2023 in line with the Constitution of Kenya 2010, , the Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009, the Statutory Instruments Act (*No. 23 of 2013*) and the Interpretation and General Provisions Act (Cap. 2) Laws of Kenya, the Committee made the following observations –

3.1 Statutory Timelines

20. THAT the Regulations were published in the Gazette as L.N. No. 151 of 2023 on 6th October 2023, received by the Clerk of the National Assembly and e laid on the table of the House on 12th October, 2023 being the third sitting day since publication, hence within the Statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

3.2 Public Participation

21. The Explanatory Memorandum provides a detailed justification for making the Regulations and it indicates that public consultation was conducted in accordance with the provisions of Article 10 and Article 118 and Article 201 of the Constitution of Kenya 2010 read together with section 5, 5A and the schedule to the Statutory Instruments Act (No. 23 of 2013).

22. In attempt to demonstrate the extent of public participation, the National Treasury and Economic Planning apprised the Committee during the meeting that the regulations were advertised in the daily nation newspaper, the Financial Reporting Center’s website and the Assets Recovery Agency’s website, inviting stakeholders and members of the Public to submit their written comments, views, representation and any written memorandum on the regulations to the Agency. On 4th October 2023, a public participation meeting was held at the Kenyatta International Convention Center to receive views on the regulations from stakeholders and members of the public.

23. The Regulations were subsequently published in the Kenya Gazette vide gazette supplement number 179 on 6th October, 2023 by the Cabinet Secretary for the National Treasury and Economic Planning.

3.3 Regulatory Impact Statement

24. Pursuant to the provisions of Section 5A (2) of the Statutory Instruments Act, 2013, an impact assessment has not been prepared for this statutory instrument as it falls within the exceptions provided under section 9 of the Statutory Instruments Act.

3.4 Reservations by the Committee


25. The Committee took note of the error and observed that Regulation 4 seemed to be amending the parent Act by the use of the word ‘in addition’ which seems to add more sources of funds to the ones stated under the Section 110 of the Proceeds of Crime and Anti-Money Laundering Act No. 9 of 2009. The Regulation Making Authority

acknowledged the error in Regulation 4 and undertook to correct it by way of a corrigendum.

26. Under Regulation 5, the Committee observed that sub-regulation (b) and (e) were providing for administrative money to the Agency, a fact that the Regulation Making Authority acknowledged and undertook to correct by way of a corrigendum.

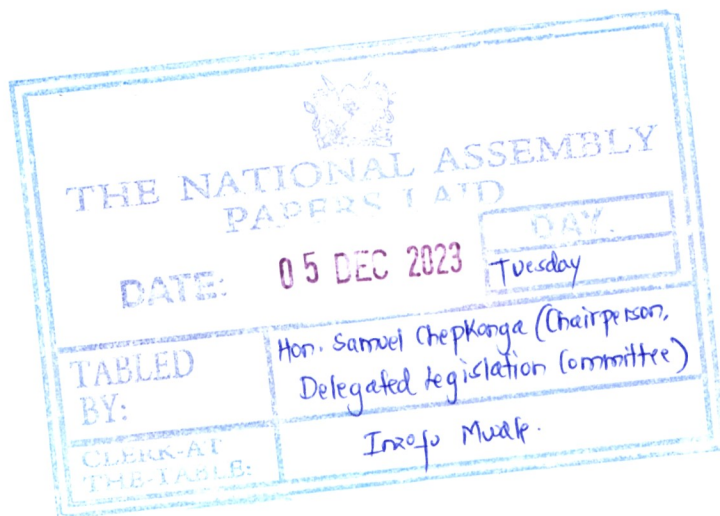
4.0 COMMITTEE RECOMMENDATION

27. Having examined the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023 *L.N No. 151 of 2023*, in accordance with the Constitution, the Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009, the Statutory Instruments Act (*No 23 of 2013*) and the Interpretations and General Provisions Act (*Cap 2*), the Committee recommends that the House **APPROVES** the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, of 2023 *L.N No. 151 of 2023* for operationalization by the Ministry.

Signed.....

Date.....

**THE HON. CHEPKONGA SAMUEL KIPRONO, CBS, MP
(CHAIRPERSON)**



ANNEXURES

- 1. Adoption List**
- 2. Legal Notice Number 151 of 2023 and the Explanatory Memorandum**
- 3. Committee Minutes**

(Legislative Supplement No. 65)

LEGAL NOTICE NO. 151

**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 for the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—

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

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

Citation.

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

Interpretation.

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

“Accounting Standards Board” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

No. 18 of 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.

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.

Purpose of the Regulations.

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

Other sources of funds.

(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.
5. There shall be paid out of the Fund—
- Payments 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) three percent of the total proceeds recovered or realized from any property seized or forfeited to the Government, to the Centre;
- (d) claims by a third party in respect of a forfeiture order issued in accordance with section 93 of the Act; and
- (e) moneys in respect of administrative expenses incurred in pursuance of the objects and purposes for which the Fund is established.
6. Any withdrawal from the Fund shall only be for the purposes of payments envisaged under regulation 5 of these Regulations.
- Withdrawals from the Fund.
7. The Asset Recovery Advisory Board shall—
- Role of the Advisory Board.
- (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.
8. (1) Pursuant to section 111 of the Act, the Agency through the Director shall be the administrator of the Fund.
- Administration 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.
9. (1) There shall be a secretariat of the Fund to support the functions of the administration of the Fund. Secretariat 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.
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. Financial year.
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. Bank accounts of the Fund.
- (2) All moneys payable to the Fund shall be paid into the bank accounts of the Fund.
- (3) The bank accounts statements 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. No. 34 of 2015.
12. The Administrator shall ensure that the bank accounts of the Fund are not overdrawn. Overdrawn accounts.
13. The Administrator may, with the approval of the Cabinet Secretary, invest any surplus funds of the Fund in Government securities. Investment of surplus funds.
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. Retention of receipts and earnings.
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. Annual estimates.
- (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.

16. (1) 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.

Annual reports.

(2) The administrator's report shall form part of the agency annual report on its activities and operations during the financial year.

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.

Records 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.

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

Financial and procurement Regulations. 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.

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

Winding up of the Fund.

Made on the 5th October, 2023.

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

EXPLANATORY MEMORANDUM TO LN 151 ON THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (CRIMINAL ASSETS RECOVERY FUND) REGULATIONS, 2023

PART I

Name of the Statutory instrument:	The Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023.
Name of the parent Act:	The Proceeds of Crime and Anti-Money Laundering Act(POCAML), No 9 of 2009.
Enacted pursuant to:	Section 113(1) of the Proceeds of Crime and Anti-Money laundering Act.
Name of the Ministry/ Department:	National Treasury and Economic Planning.
Gazetted on:	6 th October 2023
Tabled on:	

PART II

1. The Purpose of the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023

The purpose of the 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 Proceeds of Crime and Anti-Money Laundering Act.

2. The legislative Context

Section 109 of the Proceeds of Crime and Anti-Money Laundering Act provides for the establishment of the Criminal Assets Recovery Fund which shall consist of monies and properties derived from the fulfilment of the forfeiture orders.

Further, section 111 of POCAML provides that the Fund shall be administered by the Assets Recovery Agency.

The regulations were developed pursuant to section 113(1) of the Proceeds of Crime and Anti-Money Laundering Act.

3. Policy Background

The Criminal Assets Recovery Fund, established pursuant to section 109 of the Proceeds of Crime and Anti-Money Laundering Act had not been operationalized as there were no regulations in place.

The High Court in the Anti-Corruption and Economic Crimes Division *Civil Suit No. E002 of 2022, Assets Recovery Agency-vs- Peter Oluwaafemi Olaiwon* noted that the fund was not operationalized and directed that:

“A structural interdict is hereby issued requiring the Cabinet Secretary of the National Treasury to fast-track and as soon as practicable issue and place before Parliament for approval, the regulations for the operationalization of the fund (the Criminal Recovery Fund) and within six (6) months from today file a report in Court on the progress”.

In addition, Kenya underwent an Anti- Money Laundering and Financing of Terrorism(AML/CFT) mutual evaluation peer review by Eastern and Southern Africa Anti-Money Laundering Group(ESAAMLG) that was aimed at assessing Kenya’s compliance with the Financial Action Taskforce Recommendations. Kenya was found to be deficient in some areas which includes lack of a framework for assets management. In this regard, Kenya was required to submit a post observation report to Financial Action Task Force on the progress made in addressing the deficiencies by 17th October 2023.

Based on the foregoing, the regulations were developed pursuant section 113(1) of POCAMLA 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.

4. Consultation Outcome

The regulations were advertised in the daily nation newspaper, the Financial Reporting Center’s website and the Assets Recovery Agency’s website, inviting stakeholders and members of the Public to submit their written comments, views, representation and any written memorandum on the regulations to the Agency. On 4th October 2023, a public

participation meeting was held at the Kenyatta International Convention Center to receive views on the regulations from stakeholders and members of the public.

The regulations were subsequently published in the Kenya Gazette vide gazette supplement number 179 on 6th October 2023 by the Cabinet Secretary for the National Treasury and Economic Planning.

5. Guidance

The Assets Recovery Agency will sensitize stakeholders and the general public on the provisions of the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023 to create awareness on the same

6. Impact

6.1 Impact on fundamental rights and freedoms

These regulations do not limit the fundamental rights and freedoms as enshrined in the Constitution.

6.2 Impact on the private sector

The private sector is one of the key stakeholders that enhance recovery of proceeds of crime through sharing of information on proceeds of crime. The implementation of the regulations shall strengthen the private sector to ensure compliance with systems and procedures in combating money laundering and economic crimes.

6.3 Impact on the public sector

The public sector contributes to the recovery of proceeds of crime through sharing information and cooperation with the Agency in the recovery of proceeds of crime. The statutory instruments will enhance the public sector awareness and their obligation in promoting accountability and probity in the utilization of public resources.

6.4 An impact assessment statement

An impact assessment has not been prepared for this statutory instrument as it falls within the exceptions provided under section 9 of the Statutory Instruments Act.

7. Monitoring and Review

The Assets Recovery Agency shall monitor the application of the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023 and ensure compliance with the set standards.

A review of the regulations shall be done by the Cabinet Secretary of National Treasury and Economic Planning with the approval of Parliament.

8. Contact Person

The Assets Recovery Agency is mandated to implement the regulations, therefore the contact person of the Agency is;

Brig.(Rtd.) Alice M Mate
Director: Assets Recovery Agency
Email: directorara@assetsrecovery.go.ke



REPUBLIC OF KENYA
THE NATIONAL TREASURY
AND ECONOMIC PLANNING



REPUBLIC OF KENYA
MINISTRY OF INTERIOR AND
NATIONAL ADMINISTRATION

PUBLIC NOTICE

CALL FOR SUBMISSION OF COMMENTS AND PUBLIC PARTICIPATION ON THE REVIEW OF THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING REGULATIONS, 2013, THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (CRIMINAL ASSETS RECOVERY FUND) REGULATIONS, 2023 AND THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON SUPPRESSION OF TERRORISM) REGULATIONS, 2022

The National Treasury and Economic Planning and the Ministry of Interior and National Administration are conducting public participation on proposed amendments to the Proceeds of Crime and Anti-Money Laundering Regulations, 2013; the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023 and the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on the suppression of Terrorism) Regulations, 2022 to align the said regulations with the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act 2023 which came into effect on 15th September 2023.

The draft Proceeds of Crime and Anti-Money Laundering Regulations, 2023 can be found on the websites of the National Treasury and Economic Planning and the Financial Reporting Centre at www.treasury.go.ke and www.frc.go.ke respectively, while the draft Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023 can be found on the website of the Assets Recovery Agency at www.assetsrecovery.go.ke and the draft Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on the suppression of Terrorism) Regulations, 2023 can be found on the websites of the Ministry of Interior and National Administration and the Financial Reporting Centre at www.interior.go.ke and www.frc.go.ke respectively.

Stakeholders and members of the public are invited to submit written comments on the draft regulations in the prescribed format as follows:

Name of Regulation			
Regulation/Clause	Issues of concern	Justification	Recommendation

Written comments, views, representations and any written memoranda on the draft Proceeds of Crime and Anti-Money Laundering Regulations, 2023 and the draft Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on the suppression of Terrorism) Regulations, 2023 may be forwarded to MEKenya@frc.go.ke or by hand delivery to the **Financial Reporting Centre at 15th Floor, Old Mutual Towers, Upperhill** on or before **2nd October 2023 by 5:00 PM**. Written comments, views, representations and any written memoranda on the draft Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023 may be forwarded to info@assetsrecovery.go.ke or by hand delivery to the **Assets Recovery Agency at 22nd Floor, Old Mutual Towers, Upperhill** on or before **2nd October 2023 by 5:00 PM**.

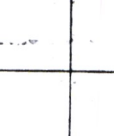

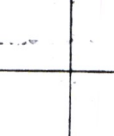

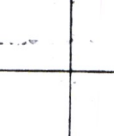

There will be a meeting on **Wednesday, October 4, 2023 at the Aberdare Room, Kenyatta International Convention Centre** from **8.00 am to 1.00 pm** to receive views from stakeholders and members of the public on the three sets of regulations.

PROF. NJUGUNA NDUNG’U, CBS
CABINET SECRETARY, NATIONAL
TREASURY & ECONOMIC PLANNING

PROF. KITHURE KINDIKI, EGH
CABINET SECRETARY, MINISTRY
OF INTERIOR AND NATIONAL
ADMINISTRATION


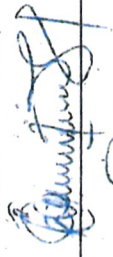



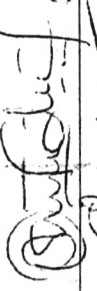



PUBLIC PARTICIPATION ON THE REVIEW OF THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING REGULATIONS, AND THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON SUPPRESSION OF TERRORISM) REGULATIONS, 2022

WEDNESDAY, OCTOBER 4, 2023 AT THE KENYATTA INTERNATIONAL CONVENTION CENTRE FROM 8.00 AM TO 1.00 PM

No.	Name	Institution	Signature
1	Ben Kandi	ARA	
2	Solomon Mbugwe	C.S.U.D.P	
3	Ben Kandi	ARA	
4	Solomon Mbugwe	C.S.U.D.P	
5	Ben Kandi	ARA	
6	Solomon Mbugwe	C.S.U.D.P	











PUBLIC PARTICIPATION ON THE REVIEW OF THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING REGULATIONS, AND THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON SUPPRESSION OF TERRORISM) REGULATIONS, 2022

WEDNESDAY, OCTOBER 4, 2023 AT THE KENYATTA INTERNATIONAL CONVENTION CENTRE FROM 8.00 AM TO 1.00 PM

No.	Name	Institution	Signature
1	William Tui	N.C.P.B	
2	Christopher Akhoo	Nairobi County Government	
3	Samuel Oburo	DEM	
4	Erick Odupe	KOTINDI SHS	
5	Benson Wanjau	A.R.A	
6	Allan Oshome	PRIME PIX MEDIA	
7	Caxton Muisita	PRIME PIX MEDIA	
8	Karuri MBOI	JAMIA MSQ	
9	Francis Ngũgĩ	A.S-e NRI	





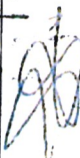





PUBLIC PARTICIPATION ON THE REVIEW OF THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING REGULATIONS, AND THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON SUPPRESSION OF TERRORISM) REGULATIONS, 2022

WEDNESDAY, OCTOBER 4, 2023 AT THE KENYATTA INTERNATIONAL CONVENTION CENTRE FROM 8.00 AM TO 1.00 PM

No.	Name	Institution	Signature
	Fredrick Mwarini	SLO	
	Big A M. Iliko	ARA	
	SATTOU MARIKA	FRC	
	ALFRED MULUMBI	FRC	
	Joseph Mwanzi	National Treasury	
		MPS	
	Joy Wanjiru	Barista	
	Kennedy Miori	FRC	
	Jarveo Mwangye	FRC	

PUBLIC PARTICIPATION ON THE REVIEW OF THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING REGULATIONS, AND THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON SUPPRESSION OF TERRORISM) REGULATIONS, 2022

WEDNESDAY, OCTOBER 4, 2023 AT THE KENYATTA INTERNATIONAL CONVENTION CENTRE FROM 8.00 AM TO 1.00 PM

No.	Name	Institution	Signature
1	VICTOR CHIRIBALA	KENYA REVENUE AUTHORITY	
2	ROBERT K. KIRER	KENYA REVENUE AUTHORITY	
3	JENNIFER GITIRI	ASSETS RECOVERY AGENCY	
4	MICHAEL OUNJEL	CENTRAL BANK OF KENYA	
5	JACOB ONDARI	MFRA	
6	MARGARET NUTHEE	FRC	
7	NEFERO KOBAL	FRC	
8	Chweya Matigano	FRC	
9	Ressah Shueig	FRC	
10	ZIPPORAH NYENGA	UT	

A COMPILATION OF COMMENTS FROM THE PUBLIC, GOVERNMENT AGENCIES AND STAKEHOLDERS ON THE DRAFT THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING REGULATIONS, 2013, DRAFT THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (CRIMINAL ASSETS RECOVERY FUND) REGULATIONS, 2023 AND POTAREGULATIONS, 2023

A. PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING REGULATIONS, 2023

1. TRANSPARENCY INTERNATIONAL

PROPOSED AMENDMENTS TO THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (CRIMINAL ASSETS RECOVERY FUND) REGULATIONS, 2023

REGULATION	Specific Provisions in the draft Bill you wish to Comment about.	Proposed amendment	Rationale for Amendment Recommendation	Action Taken
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.	(1) 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. (2) The administrator's report shall form part of the agency annual report on its activities and operations during the financial year	Section 54E of Proceeds of Crime and Anti-Money Laundering Act, 2009 requires the Agency to make a report on its activities and operations during the financial year and submit the report to the Attorney-General who then submits it to the president. The regulations should be explicit about the inclusion of the fund administration as part of the agency report.	Proposal taken:

General comments

1. There is a need to amend section 110(f) of the Proceeds of Crime and Anti-Money Laundering Act, 2009 to remove monies or property recovered from the Anti-Corruption and Economic Crimes Act, 2003 as one of the sources of the criminal assets recovery fund. This is because the Ethics and Anti-Corruption Commission (EACC) is not listed as a member of the ARA advisory board under 55A and it is only fair that they also have a say in the reuse of the recovered funds and assets. Further, because EACC is an independent institution with status and powers of a commission under chapter 15 of the constitution, it would legally not be party to such a board in any case. The EACC has a mandate to recover funds and property arising from corruption and economic crimes and has a mechanism to deal with such funds and property as provided under Anti-Corruption and Economic Crimes Act, 2003

Applies to the

Act. Will be relooked when the amending Act

2. KENYA BANKERS ASSOCIATION

Section/ Clause	Copy and paste here the specific provisions in the draft you wish to comment on	Proposed Amendment (Provide the exact wording of how your proposed amendment should read)	Justification	Action Taken
	The arrangement of the regulations as numbered in the table of contents is misaligned with the rest of the body from sections 30 onwards	As is. 30— Numbered accounts 31— Legitimacy of source funds 32—Penalty 33—Transition provision 34— Reporting of cash transactions 35— Tipping off 36— Record keeping 37— Independent audit 38— Annual compliance 39—Powers of the Centre to issue directives and guidelines 40— Sharing of information	Correct Arrangement. 30- Ongoing Due Diligence 31— Numbered accounts 32— Legitimacy of source funds 33—Reporting of Suspicious activities by reporting institutions 34—Reporting of Suspicious activities by supervisory bodies. 35— Reporting of cash transactions 36— Tipping off	To provide accurate Contents references. Proposal taken: The regulations have been aligned in the final draft.

41—Mechanisms for suitability of financial institutions	37—Record keeping
42—Penalty	38—Independent audit
	39—Annual compliance
	40—Powers of the Centre to issue directives and guidelines
	41—Sharing of information
	42—Mechanisms for suitability of financial institutions
	43—Penalty

PART PRELIMINARY

I- "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.

"Wire transfer" means any wire transfer transaction carried out on behalf of an originator through a financial institution by electronic means and **settled through the defined wire transfer settlement systems** 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.

To distinguish between wire transfers and instant payments which are settled in Real-time (45 seconds) To clarify, for practical utility, the definition of "Beneficial Owner" and to align with The Companies (Beneficial Ownership Information) Regulations, 2020

On wire Transfer: no action On Beneficial Ownership: The proposal limits itself to companies Act and does not cover any other person

"Beneficial owner" means a natural person who ultimately owns or controls a customer or the natural person on whose behalf a transaction is being conducted, and includes any natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted and

"Beneficial owner" means the natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted and

The proposal to add a natural Person is taken and now reads as follows:
"Beneficial owner" means a natural person who ultimately owns or controls a customer or the natural person on whose behalf a transaction is conducted, and includes any natural person who ultimately exercises effective control

exercises effective control over a legal person or arrangement;

includes those persons who exercise ultimate effective control over a legal person or arrangement. beneficial owner of a company shall be a natural person who meets any of the following conditions in relation to the company— (a) holds at least ten percent of the issued shares in the company either directly or indirectly; (b) exercises at least ten percent of the voting rights in the company either directly or indirectly; (c) holds a right, directly or indirectly, to appoint or remove a director of the company;

over a legal person or arrangement;

Section 7(1)

The term “**New Technologies**” has not been defined.

d) exercises significant influence or control, directly or indirectly, over the company
To have the term defined under Section 2, which has the interpretation of terms.

The rationale of the description is to give a general guidance to reporting institution as to what new technologies may comprise of.

On New Technologies: Defining new technologies is limiting Particulars in S. 7 are tandem to Rec. 15 and therefore no need to define

Section 8

(1) Any person intending to convey into or out of Kenya monetary instruments equivalent to or exceeding US\$10,000 or its

(1) Any person intending to convey into or out of Kenya monetary instruments equivalent to or exceeding US\$15,000 or its

Uniformity with the POCAMLA Amendment Act

The threshold for conveying monetary instrument under POCAMLA did not

		equivalent in Kenya shillings or any other currency	equivalent in Kenya shillings or any other currency		change. What was amended was the Cash transaction threshold.
Section 9e (From Regulations)	2013	Deleted	Providing employees, including MLRO, from time to time, with training to facilitate recognition and handling of suspicious transactions	This section has been removed from the new regulations. It should be added back as it gives institutions regulatory backing for training	MLRO are part of employees. The requirement is broadened under S. 9 (c) and allows for ongoing
Section 9 (1)		provide for the responsibility of the management of the reporting institution in respect of compliance with the Act, these Regulations, and the internal rules; <u>and</u>		paragraph incomplete. Clarify whether there is another clause following	Proposal taken: Will be corrected during clean up
Sec 10 Sec 4, Sec 6(a, b,c) Money Laundering Reporting Officer Section 12(3)		These Sections have addressed the Money Laundering Reporting Officer as 'He'	The Money Laundering Reporting Officer should be addressed in both gender titles i.e., a 'He/She'	The regulations to be gender-neutral and use appropriate pronouns	addressed by CAP 2
		(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	Align the sub-section numbers since subsection three is repeated	Subsection (3) is repeated despite having different content	Amend the second subsection (3) to To be re-aligned

	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—			
Section 12 (3) (c)	His financial status	Clarify what is meant by 'financial status'	'Financial status' is vague	Financial status is given the ordinary meaning
Section 12 (4) (c)	(c) When carrying out occasional transactions that are wire transfers in the circumstances covered by regulation 27.	Delete reference to Section 27 as far as section (12 (1)(b) is concerned.	Reporting Institutions are not able to demonstrate; understand the ownership and control structure of the beneficial owner of customer in case of legal persons and arrangements; as this beneficiary may not reside in the bank's books are in another bank.	Substitute regulation 27 with regulation 32
Section 13 (1)	(a) full names of the person; and (b) Such other particulars as the Centre may prescribe.	Clause (a) may not be necessary as the requirement is covered under section 45(1a) of the act. Clause (b) is vague	(a) Full names are already contained in documents required under section 45(1a) (b) It is not clear how the centre will prescribe this and in what format	Full names are necessary to capture any other name that may not be in the official documents requested.

Section 14(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 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.

In addition to the existing text, bullet (d) With assistance from the Business Registration Service (BRS), a formal request may be placed requesting for the list of UBO's submitted

This will ensure what is shared with the bank is the same as what is held in the registry upon incorporation. There is also an annual return submitted, this will also ensure that the information is up to date. (Source: BRS link.)

Referred to BRS to consider

Section 14

(f) for corporate bodies, audited financial statements for the last full year;

Provided that an exemption may be considered by a reporting institution for a ~~new~~ sole proprietorship and **corporate** body business in the production

Delete new and add corporate body as shown. This leaves reporting institutions with the discretion to

Exemption only applies to new partnership who have difficulties obtaining un-audited statements
Add the text

	<p>(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 or in a case of a new corporate body which has not been existence for more than a year</p>	<p>of audited accounts or un-audited accounts if there exists practical difficulties in obtaining financial statements from it;</p>	<p>obtain audited financial statements as there exists practical difficulties in obtaining this from customers</p>	
<p>Section 15</p>	<p>(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.</p>	<p>Provided that an exemption may be considered by a reporting institution for a new partnership in the production of un-audited financial statements.</p>	<p>Delete new as shown. This leaves reporting institutions with the discretion to obtain audited financial statements as there exists practical difficulties in obtaining this from customers.</p>	<p>Can be addressed through separate guidance</p>
<p>Section 19(1) Establishment of Ultimate Beneficiaries</p>	<p>A reporting institution shall identify and verify the natural persons behind a legal person and a legal arrangement</p>	<p>Establishment of Ultimate Beneficiaries for Foreign Entities whose majority shareholders are foreigners in a country with no clear guidelines on documentation</p>	<p>There is no standardization on documentation based on a specific foreign country and this pose a challenge in support document collection and verification</p>	<p>Can be addressed through separate guidance</p>

Section 19A

Where a person purports to act on behalf of a customer, a reporting institution shall (a) Verify that the person is so authorized to act; and (b) Identify and verify the identity of the person so authorized.

c) Where a lawyer is acting on behalf of a client, the client shall be required to provide a duly signed letter confirming their appointment of the lawyer

To provide clarity on requests made by lawyers acting on behalf of clients

The general provision covers all persons including lawyers

Section 21 (1)

(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—

Correct the reference to section 12(3) to the correct sub-section 12 (3) 2. Align 21(1) and 21 (2).

Avoid ambiguity on the sub-section referred to

Proposal taken: To be aligned

Section 21(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

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, 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

Avoid conflict with allowance made under 21 (1) that accounts/relationships may be established with applicants that do not at the outset provide evidence of identity

Standard requires not to commence with the business relationship

Section 22

<p>before or during the course of establishing a business relationship or conducting transactions for occasional customers.</p>	<p>conducting transactions for occasional customers</p>		
<p>(1) In relation to foreign politically exposed persons, a reporting institution shall, in addition to performing the customer due diligence measures—</p>	<p>1. Include a new clause to clarify when does a person cease to be regarded as a politically exposed person. Else clarify its perpetual status.</p>	<p>To bring out clarity to definition of PEP and benchmark with Global standard definitions e.g., There are individuals who are still labelled as PEPs however it is long since such individuals were entrusted with a prominent public function.</p>	<p>Covered by (a) FATF recommends a risk-based approach can be provided in a guidance without amending the regulation.</p>
<p>(a) put in place risk management systems to determine whether a customer or the beneficial owner is a politically exposed person;</p>	<p>A person shall be declassified as a PEP in two years upon leaving a public office.</p>	<p>EU Directive and Financial Conduct Authority-FCA recommends at least 12 Months while FATF recommends a risk-based approach.</p>	
<p>(b) obtain senior management approval before establishing such business relationships; (or continuing,) such business relationships for existing customers;</p>			
<p>(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</p>			
<p>(d) conduct enhanced ongoing monitoring on that relationship.</p>	<p>2. Proposed addition to clause 22:</p>	<p>2. Providing more specific guidance on the risk management systems that financial institutions should put in place for dealing with foreign politically</p>	
<p>(2) In relation to a domestic politically exposed person who has been entrusted with a prominent</p>	<p>Financial institutions should also adopt the below PEP risk management Processes:</p>		

	<p>function by an international organisation, a reporting institution shall, in addition to performing the customer due diligence, —</p> <p>(a) take reasonable measures to determine whether a customer or the beneficial owner is such a person; and</p> <p>(b) in cases when there is higher risk business relationship with such;</p>	<p>1.Risk Assessment: Conduct an initial risk assessment to determine the level of risk associated with the PEP.</p> <p>2.Obtain detailed information on the source of wealth and source of funds of the PEP.</p> <p>3.Politically Exposed Persons Database:</p> <p>Consider using public/commercially available databases that track PEPs to aid in identifying and verifying the status of individuals.</p> <p>4.Periodic Re-Evaluation: Periodically re-evaluate the risk associated with PEPs.</p> <p>5.Documentation and Record Keeping: Maintain comprehensive records of all due diligence conducted on PEPs.</p> <p>6.Exit Strategy: Establish criteria and procedures for exiting the business relationship if the risks associated with a PEP become unacceptable.</p>	<p>exposed persons will enhance compliance financial across institutions</p>	
Section 22	Clause 5	<p>Align numbering of clauses in section 22. Clause 4 is missing and or clause 5 should read clause 4.</p>	<p>To align Section 22 numbering correctly.</p>	<p>Proposal taken: To be aligned by AG</p>

PART II	THE FINANCE REPORTING CENTRE	THE FINANCIAL REPORTING CENTRE	Typing Error	Proposal taken:
23(5)	f) State Officers	f) Senior State Officers	Level of seniority and influence should be considered in the list of PEPs	To be aligned by AG State Officer is defined in the Constitution and any other person who is a senior officer is covered by senior public officer.
Section 27(1)	A reporting institution undertaking wire transfers shall ensure that information accompanying domestic or cross-border wire transfers always have the required information	A reporting institution undertaking wire transfers shall ensure that there is no wire stripping.	This will assist in curbing an illegal practice of removing information from wire transfer messages so that the identity of potentially sanctioned countries, entities, or individuals	Provision ensure there is no wire stripping
Section 27(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.	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	Provide for practicality in carrying out real-time screening of domestic wire transfers and meet POTA requirements to identify and take action of TF within 24 hours.	FATF standards requires there are exemptions which is in the provision
Section 27(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	Include the definition of the term “Financial Group.”	Provide clarity since there is no definition of the term “Financial Group” in the POCAMLA or the Regulations. This will	Financial group is defined in the POCAMLA Additional (d)- does not apply since Non-operating

<p>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.</p>	<p>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 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.</p> <p>(d) Whereas the Financial Group-wide programmes shall not apply to non-Operating Holding Companies</p>	<p>provide legal basis for the guidance and operationalization</p>	<p>holding group companies form part of a group</p>
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Section 32(1)	<p>A reporting institution shall for the purposes of determining legitimacy of funds and transactions, consider the following information; sections a to f</p>	<p>The section to remain as is but clarify the threshold for "large" in the subsections a to f.</p>	<p>Clarity on definition of large or is it left to the institution to determine. For section a) the understanding is USD10, 000 and for b, d, e, and f this will be determined by the institution in line with the customer profile.</p> <p>Term large is relative because it depends on the customer profile.</p>
Section 33(1)	<p>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.</p>	<p>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 business days after the suspicion is established.</p>	<p>1. Provide clarity that it is two business days</p> <p>2. The addition will provide guidance where filing an STR/SAR will interfere with an ongoing investigation.</p> <p>CAP 2 gives a guide on computation of days.</p>
		<p>(2) In circumstances where filing an SAR/STR will interfere with a related criminal investigation, a terrorist financing investigation, and or a proliferation financing investigation, the reporting institution may be able to delay the filing, but only upon specific notification from law</p>	

Section 35 (3) (c) Reporting of Cash Transactions	A reporting Institution shall File Report with the FRC on all Cash transactions equivalent to or exceeding US\$15,000 or its equivalent by the Friday in the week in which the transaction occurred or at such other time the Centre may prescribe	Report with the FRC on all Cash transactions equivalent to or exceeding US\$15,000 or its equivalent to be filed within seven days i.e. one week in which the transaction occurred or at such other time the Centre may prescribe	The justification of this Report being filled for seven days is left to the institution to determine the day of the week of its convenience.	This proposal will mean that reporting institutions shall be reporting cash transaction daily and will cause confusion.
Section 38	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 the transaction appears to be suspicious.	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 the transaction appears to be suspicious. (1)When determining reporting of the amount equivalent in any other currency carried out by it, the reporting institution will apply the prevailing daily mean exchange rate established by the Central Bank of Kenya.	This addition will streamline reporting of equivalent amounts in other currencies across financial institutions. To clarify on the exchange rate to be adopted in cash transaction monitoring and supervisory obligations (as informed by currency movements), (e.g., USD 10,000 being equated to 1Million KShs.) (Will the centre clarify KES equivalent, or shall the prevailing exchange be what will be	There is no rationale for this amendment. Guidance can be issued where there is an issue.

Section 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 fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or both fine and imprisonment	A person who violates or fails to comply with the provisions. of subsection (1) shall be liable— (a) in case of a legal person, to a penalty not exceeding twenty million shillings. (b) in the case of a natural person, to a penalty not exceeding one million shillings; and (c) to additional penalties not exceeding one hundred thousand shillings in each case for each day or part thereof during which such violation or non-compliance continues.	applicable for conversion to local currency?) To align this regulation with the POCAMLA new Act 2023	This is not proportional for all reporting Institutions and it still does not exclude the penalties in the Act.
High Risk Countries	Introduce a section on this focus area.	Reporting institutions to conduct customer due diligence for business relationship and transactions with a person from a country identified as high-risk proportionate to the risks, business relationship and transactions with natural and legal persons and other reporting persons from countries for which this is called for by the FATF.	Guides reporting institutions in relation to dealing FATF or high-risk countries	Guidelines to be issued

2 (i) Kenya Bankers – continued

Section/ Clause	Copy and paste here the specific provisions in the draft you wish to comment on	Proposed Amendment (Provide the exact wording of how your proposed amendment should read)	Justification
Regulation 2- Definitions	No definition of “Centre”	Include definition of “Centre” as defined in the parent Act.	This provides clarity and avoids ambiguity
No definition of “Reporting Institution”	Include “Reporting institution” as defined in the parent Act.	Definition of “Reporting institution” as defined in the parent Act.	This provides clarity and avoids ambiguity
Regulation 8 (i)	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	Any person intending to convey into or out of Kenya monetary instruments equivalent to or exceeding US\$15,000 or its equivalent in Kenya shillings or any other currency, shall before doing so declare the particulars of those monetary instruments to	To align with the minimum threshold under the Fourth Schedule the new Act. The threshold for conveying monetary instrument under POCAMLA did not change. What was amended was the Cash transaction threshold. Reference is made to the POCAMLA

3. KENYA FOREX AND REMITTANCE ASSOCIATION

SECTION/ CLAUSE	ISSUES OF CONCERN	PROPOSED AMENDMENT (PROVIDE THE EXACT WORDING OF HOW YOUR PROPOSED AMENDMENT SHOULD READ.)	JUSTIFICATION/RECOMMENDATION	ACTION TAKEN
Sec 9 (a)	(a) compliance management arrangements (including the appointment of a compliance officer at the management level)	(a) compliance management arrangements (including the appointment of a Money Laundering Reporting officer) b) For small businesses, including forex and money remitters, the Money Laundering Reporting officer may be an outsourced personnel so long as they have access to the reporting institution's information.	<p>For some of institutions, the Money Laundering Reporting Officer is different from Compliance Officer.</p> <p>The proposal will also align with provisions of Regulation 10 (2) (of the draft Regulations) as read with Sections 44 (2) and 47 (a) of the Principal Act.</p> <p>In addition, the forex bureaus and money remitters are mostly small entities and may not afford to employ a full time MLRO at managerial level due to lack of capacity.</p> <p>Notably, other reports to be submitted to the Centre under Regulations 35 and 39 of the same draft, can be filed by any employee of the institution and not necessary MLRO.</p> <p>The MLRO is only critical in circumstances of reporting suspicious transactions.</p> <p>This will ensure that the small businesses are not encumbered to employ a full time MLRO which may be very expensive and collapse such entities.</p>	<p>Because of the nature of the work of MLRO, it is not possible to out source</p> <p>The reporting entity can employ an MLRO based on the requirements of the POCAMLA.</p>

Sec 9 (c)	(c) an ongoing employee training programme;	<p>(c) an ongoing employee training programme as may be provided by the Centre at no cost.</p> <p>The Reporting institution shall endeavour to ensure that every employee at the managerial level including an outsourced Money Laundering reporting officer shall attend a training organised by the Centre at least once every year;</p>	<p>The Forex bureaus and money remitters, may not have capacity to organise trainings for themselves.</p> <p>The Government (Centre) should organise these trainings at no cost since there are inadequate trainers in the market.</p> <p>The government also has reliable information and machinery and should assist the institutions in trainings which will assist them in compliance.</p>	<p>The obligation to train is on the employer. Joint training can be done on need basis</p>
Sec 9(h)	(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	<p>(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;</p> <p>For customers with dual citizenship, FATF listing for both countries will be considered to establish the</p>	<p>The regulation is silent on customers who hold duo citizenship for countries with different listing.</p> <p>The Centre to assist with a list of FATF listings of the said jurisdictions.</p>	<p>EDD is based on jurisdictions and not citizenship. FRC issues circulars on high risk countries.</p>

	money laundering, terrorism financing and proliferation financing;	adequacy of due diligence measures.		
10 (2)	(2) The Money Laundering Reporting Officer shall be of management level and shall have relevant and necessary competence, authority and independence.	(2) The Money Laundering Officer shall have the relevant and necessary competence, authority and independence; Provided that such a person may be an outsourced personnel for small reporting institutions, so long as such personnel has access to the institution's information.	Most forex bureaus and money remitters have fewer employees and do not have the capacity to employ a manager who is a Money Laundering Reporting Officer. Notably, other reports to be submitted to the Centre under Regulations 35 and 39 of the same draft, can be filed by any employee of the institution and not necessary MLRO.	Duties of an MLRO are clearly stated in the Regulations. Small entities can appoint a person of managerial level as stipulated under regulation 10.
11(1)	(1) No person shall, in the course of conduct of his business as a reporting institution, open or maintain an anonymous or fictitious account	(1) No person shall knowingly , in the course of conduct of his business as a reporting institution, open or maintain an anonymous or fictitious account	Despite undertaking all the necessary procedures and verifications of Identity details, some clients may without the knowledge of the institution open such accounts. The same spirit is entrenched under Regulation 11 (4) of the same draft.	Proposal partly taken: Recommendation 10 prohibits keeping anonymous or fictitious account. Delete the word "knowingly" in regulation 11 (4).

12 (2) (a)	<p>(2) In carrying out the obligation under sub-regulation (1) a reporting institution shall-</p> <p>(a) identify the customer whether permanent or occasional and verify that customer's identity using reliable, independent source documents, data or information</p>	<p>(2) In carrying out the obligation under sub-regulation (1) a reporting institution shall-</p> <p>(a) identify the customer whether permanent or occasional and verify that customer's identity using reliable, independent source documents, data or information which is provided by the Central Bank of Kenya and/or the Centre. The said data shall</p>	<p>The nature of businesses carried out by forex bureaus and money remitters is over the counter and a one off transaction. It may not be practically possible to verify the information with independent sources documents, data or information.</p> <p>The proposal has the same wording with Section 45 (1) of the Principal Act.</p> <p>In the alternative, the verification database, should be availed by the regulators at no cost. The Forex bureaus and Money remitters are small entities and do not have capacities to procure such independent database of verifying identities.</p>	<p>It upon the Reporting Institution to use to laisse with the respective competent authority and law enforcement to verify the identity of the customer.</p>
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		be provided by the said regulators at no cost.		
13.(2)	(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	(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; or (c) Mobile number	Since there is no mechanism for validation of postal address and residential places, the institutions may not be able to validate the customer details. On the other hand, mobile numbers issuance is through a verifiable process with reporting to CBK on any anomalies.	Comment taken (c) mobile or telephone number
14 (2)(a)	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	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 as registered with the appropriate Authority;	The Government should provide access to the Database for registration of legal persons with mechanism of verifying the Beneficial Ownership. e.g. companies, trust etc	To be addressed by BO regulations /BRS

	requirements set out in section 45(1A)(b) of the Act, request the following in relation to such person— (a) its registered name;			
14 (2)(g)	(g) for sole traders, un-audited financial statements for the last full year	for sole traders, un-audited financial statements or management accounts for the last full year	Most customers of forex bureaux are individuals or sole proprietors. Most of whom may not have financial statements but management accounts.	Management accounts are only for internal accounts of the business
16 (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)	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; (b) its registration number	All trusts should be formally registered and issued with a unique identifier. The inclusion of the words “if any” suggests you can open accounts for a non-registered entity.	Comment taken: delete “if any”

	its registration number, if any;			
18A	Simplified customer due diligence	<p>(Include a new clause under 18A as follows before the existing Clause 18A)</p> <p>Definition of Simplified Due Diligence _</p> <p>Simplified Due Diligence means obtaining fewer pieces of customer data including-</p> <p>a) inferring the purpose and nature of the transactions or business relationship established based on the type of transaction carried out or the relationship established, without collecting additional information or</p>	<p>To ensure that there is clear distinction between SDD and Enhanced Due Diligence.</p> <p>There is need to differentiate what is Simplified Due Diligence and Enhanced Due Diligence and as such a definition should be provided.</p>	The distinction is clear

		<p>carrying out additional measures related to understanding the nature and purpose;</p> <p>b) Verifying the identity of the customer and the beneficial owner after the establishment of the business relationship</p>		
37(5)	<p>(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 available to</p>	<p>(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 within a reasonable time, but in any case not later than thirty days from the date of receipt of the request, to domestic competent authorities upon appropriate authority.</p>	<p>This is to ensure its in line with Sec 44 (9) of the Principal Act.</p>	<p>The provision of S. 44(9) refers to Suspicious transactions while that of regulation 37 refers to record keeping.</p>

<p>domestic competent authorities upon appropriate authority.</p>	<p>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 punishment.</p>	<p>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 punishment.</p> <p>Provided that in the case of forex bureaus and money remitters, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or both fine and punishment.</p>	<p>The forex bureaus and money remitters are small entities with much lower capital base of Kshs. 60 million while the banks have capital base of Kshs. 1 billion.</p> <p>The proposed fine may wipe out the entire profit of the such entities and a threat to their business survival.</p> <p>The proposed fines are unfavourable to business growth.</p>	<p>5 million is the upper limit allowed by law. Penalties are at the discretion of the court based on mitigating factors</p> <p>Noted</p>
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GENERAL COMMENTS

1. There seem to be an overlap on the role of Central Bank of Kenya and Finance Reporting Centre, both of whom are now regulators of the Forex Bureaus and Money Remitters.

We propose that the two regulators should agree and have a coordinated regulatory process. It is thus our proposal that where the reporting institution is in doubt on whom to report to between the two regulators, the institution shall report to the CBK and such reporting shall be deemed to be sufficient.

2. There already exist CBK Prudential guidelines to Forex Bureaus which equally give guidelines on Anti-money laundering issues. There is now the Proceeds of Crime and Anti-Money Laundering Regulations 2023, which forex bureaus and money remitters should equally comply with.

It is thus our proposal that the two sets of Regulations should be harmonised into one so that the forex bureaus and money remitters are not confused which regulations to follow.

3. SAFARICOM

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

No	Regulation	Current Provision	Proposed amendment	Justification	Action Taken
1.	3(c) on <i>functions of the Centre</i>	3. The Centre shall, in addition to functions set out in the Act— (c) annually review the implementation of the Act and submit a report thereon to the Minister.	3. The Centre shall, in addition to functions set out in the Act— (c) annually review the implementation of the Act and submit a report	This is in alignment with the recent amendment to the Principal Act.	Proposal taken

thereon to the
**Cabinet
Secretary.**
Minister.

2. 4(1) on *Registration with the Centre* Every reporting institution shall register with the Centre within such time and manner as the Centre may specify.

Amend as below. Every reporting institution shall register with the Centre within such **thirty days** of **these regulations coming into effect** time and manner as the Centre may specify.

Proposal not practical

3. 6(2)(d) on *Risk Assessment* Have appropriate mechanisms to provide risk assessment information to competent authorities and SRBs.

Amend as below.

Have appropriate mechanisms to provide risk assessment information to competent authorities and **Self Regulatory Bodies.** Request that the acronym as bolded be provided in full for avoidance of doubt in risk interpretation.

Proposal taken:
SRB to be written in full

4. 6(3) on *Risk Assessment* The outcome of such assessment shall be documented and be availed to the Centre or the reporting institution's supervisory body upon request.

Amend as below.

The outcome of such assessment shall be documented and **Self Regulatory Bodies.** The request for the assessment should be made officially.

Proposal Rejected:
It is implied that all communications are written.
Supervisors communicate officially through written requests.

be availed to the Centre or the reporting institution's supervisory body upon **written** request.

5. 10(7) on Money Laundering Reporting Officer 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.

Amend as below. 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.

6. 22(6) on *Politically exposed persons* **Proposing inclusion as per amendment** "A person who is no longer a politically exposed person entrusted with a public function shall be subject to risk-based due diligence for a

Defining the inactivity period ensures that enhanced due diligence measures are not continuously applied on individuals /entities that are not high risk and ensures that customers are not subjected to unnecessary scrutiny

Take note of the numbering in the new amendments, there is no regulation 22(6)

period of least 12 months after the date they ceased to be entrusted with that public function.

Reporting institutions may apply measures for a longer period to address risks of money laundering, terrorist financing or proliferation in relation to that person, where a reporting institution has assessed that politically exposed person as posing a higher risk.”

22) **Proposing** “Reporting Institutions shall make use of information that is reasonably available to them in identifying Politically exposed persons, family members or known close associates which may include Public domain information and Reliable Public Registers.” This is to ensure that a Determining information relating to reporting institution is only politically exposed is upto the reporting institution as guided by regulation 22(4)

6. 23(1) on *foreign branches or subsidiaries* 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. Amend as below. A reporting institution shall ensure that its foreign branches and subsidiaries observe those of anti money laundering and counter financing of terrorism measures consistent with the Act and these Regulations. Amend as below. A reporting institution shall ensure that its foreign branches and subsidiaries observe those of anti money laundering and counter financing of terrorism measures consistent with the Act and these Regulations.

The laws of host countries supersede other countries.

26(e) its agents **Amend as below.** its agents are licensed or registered by a competent authority, or the provider maintains a current list of its agents accessible by **Amend as below.** its agents are licensed or registered by a competent authority, or the provider maintains a current list of its agents accessible by **Services provider and its agents operate;** Propose the acronym be in full for clarity. Proposal taken: Relates to Regulation 26 (d)

Money or by a competent authority, or *value transfer services* the provider maintains a current list of its agents accessible by **Services provider and its agents operate;**

competent authorities in the countries in which the MVT's provider and its agents operate;

37(5) on *Record Keeping* 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

Amend as below.

A reporting institution shall ensure that all customer due diligence information and transaction records under the Act and these regulations shall, upon a **thirty-day written request notice, as and when required** be made available **swiftly** to domestic competent authorities upon appropriate authority.

To allow for ample time to collate and share the requested information.

Proposal rejected: 30 days' notice is unreasonable and against the standard that require swift notice

competent
authorities
upon
appropriate
authority.

Regulation/Clause	Issues of concern	Justification	Recommendation	Action taken
Part III 6(B)	SRBs – No definition of what this is	Clarity	Please define what reporting institution are SRBs	Proposal rejected: Already provided in the ACT
Section 38 Independent Audit	Not all Reporting Institutions (Small an existing Act) Companies as defined in the Companies Act PART XXVII 711) shall adopt an independent audit function qualify to undertake an independent audit per Companies Act 2015	Draft regulations contradicts	Drop this requirement or change the companies Act	Proposal rejected: Requirement for independent audit applies to all reporting entities and not only those in the Companies Act.

<p>Section 10 (7)</p> <p>The appointment of removal of the Money Laundering Reporting Officer shall be communicated to the Centre and the reporting institution's supervisory body</p>	<p>Cumbersome overregulation.</p> <p>The danger of micromanagement will create a 'tick-box culture' that will rarely led to any improvement in control of Proceeds of Crime and Anti-Money Laundering. We need smart regulation, not overregulation</p>	<p>The Policy Developed by every reporting institution covers this. Practising Accountants in Kenya are required to appoint a quality Control Officer. Appointment and removal is not reported to ICPAK</p>	<p>Consider deleting this sub-section</p>	<p>Proposal rejected:</p> <p>MLROs play an important role in the money laundering regime, particularly in the relationship between the reporting institution and supervisory body.</p> <p>The appointment and removal should therefore be communicated to the supervisory body to enable harmonious communication.</p>
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B. PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON SUPPRESSION OF TERRORISM) REGULATIONS, 2023

1. Kenya Forex and Remit association

SECTION/ CLAUSE	ISSUES OF CONCERN	PROPOSED AMENDMENT (PROVIDE THE EXACT WORDING OF HOW YOUR PROPOSED AMENDMENT SHOULD READ.)	JUSTIFICATION/RECOMMENDATION	ACTION TAKEN
7 (1)	Add Clause 7 (1) (d)	7 (1) (d) In cases of money remitters, upon freezing the funds, the same shall be held in an account as may be prescribed by the Centre.	Under Regulation 23 of the Money Remittance Regulations, 2013, the money remittance operators are not authorised to maintain current accounts on behalf of customers. Accordingly, there is a challenge where they are now going to hold the frozen funds.	Proposal rejected: The provision applies to all persons and reporting institutions.
7 (1)	Add 7 (1) (e)	In case of Forex bureaus, within twenty four hours of detecting the funds, they shall	The transactions by forex bureaus are usually one off and over the counter. They are therefore not in a position to freeze the funds.	Proposal rejected: Forex bureaus are reporting institutions and are required to freeze and file suspicious transaction reports

SECTION/ CLAUSE	ISSUES OF CONCERN	PROPOSED AMENDMENT (PROVIDE THE EXACT WORDING OF HOW YOUR PROPOSED AMENDMENT SHOULD READ.)	JUSTIFICATION/RECOMMENDATION	ACTION TAKEN
		file a suspicious transaction report with the Centre.	In addition, if they decline to transact, the same may amount to Tipping Off as the customer may suspect that a report will be prepared. Accordingly, provide guidance to the forex and money remitters on the aspects of freezing and whether or not they should proceed with such transactions.	
8	Add 7 (4)	No institution shall be penalised for not freezing funds owned by a designated person, where the sanction lists containing the particulars of such persons have not been supplied to the said institution.	The institution/business entity cannot be penalised until such sanction list has been electronically supplied to them.	Proposal rejected: The Financial Reporting Centre and supervisory bodies have an obligation to circulate the sanction list to all reporting institutions including forexs and money remitters providers.

2. SAFARICOM

No.	Regulation	Current Provision	Proposed amendment	Justification	ACTION TAKEN
1	30(1) on <i>Returns</i>	A reporting institution and relevant government agency shall, within twenty-four hours of receipt of a notice of an order to freeze the funds or property of a designated entity, submit to the Cabinet Secretary and Centre in writing, a return in the format prescribed by the Centre in consultation with the Cabinet Secretary for that purpose.	Amend as below. A reporting institution and relevant government agency shall, within three working days twenty-four hours of receipt of a notice of an order to freeze the funds or property of a designated entity, submit to the Cabinet Secretary and Centre in writing, a return in the format prescribed by the Centre in consultation with the Cabinet Secretary for that purpose.	For practicability given that the freezing of accounts shall include all other related accounts which may require more time.	Proposal rejected: FATF Recommendations require reporting within 24hrs.

3. KENYA BANKERS ASSOCIATION

Section/ Clause	Copy and paste here the specific provisions in the draft you wish to comment on	Proposed Amendment (Provide the exact wording of how your proposed amendment should read)	Justification	ACTION TAKEN
Recommended new clause	N/A	Prevention of terrorism requirements for Non-Profit Organizations: 1. NPO Anti-Terrorism Financing Measures: NPOs should implement measures to prevent misuse for terrorist financing, including conducting due	This will prevent misuse of non-profit organizations for terrorist financing.	Proposal noted: FRC in conjunction with NGOCB to consider issuing ML/CFT guidance after the NPO risk assessment.

		<p>diligence on donors and monitoring financial transactions.</p> <p>2. Know Your Donor (KYD): NPOs should have procedures in place to verify the identities of donors and ensure that funds are not derived from illegal or terrorist-related activities.</p> <p>3. Record Keeping: NPOs should maintain adequate records of their financial transactions, including the source and use of funds.</p> <p>4. Reporting Requirements: have reporting requirements for certain types of NPOs, particularly those engaged in fundraising activities.</p>		
<p>Section 7 (1) b</p>	<p>7 within twenty hours of detecting the funds and freezing them, file a suspicious transaction report with the Centre in accordance with section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009 or in such form as may be specified by the Committee; and</p>	<p>within twenty-four hours of detecting the funds and freezing them, file a suspicious transaction report with the Centre in accordance with section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009 or in such form as may be specified by the Committee; and</p>	<p>To match the definition of Regulation 2 where without delay means 24 hours.</p>	<p>Proposal Taken: Amend to "twenty-four hours"</p>
<p>Section 7(2)</p>	<p>2) A person who is required to take action under sub regulation (1) shall, without delay, inform the Committee, in writing in the form</p>	<p>A person who is required to take action under sub regulation (1) shall, without delay, inform the Committee,</p>	<p>To ensure prevention of tipping off</p>	<p>Proposal taken: Add "and shall not disclose such information to an unauthorised person"</p>

<p>specified by the Committee, of the action taken.</p>	<p>in writing in the form specified by the Committee, of the action taken and shall not disclose such information to an unauthorised person but shall report it to the Committee as required by these Regulations.</p>	<p>but shall report it to the Committee as required by these Regulations.” To regulation 7(2)</p>
<p>Section 9(2) (d) passport numbers, identity card numbers or registration number;</p>	<p>Passport numbers, identity card numbers or registration numbers or any mode of national identification details as may be specified</p>	<p>To expand the scope of national identification details Proposal taken: Add “or any mode of national identification details as may be specified”</p>
<p>Section 23 23. Notwithstanding the provisions of regulation 23(1), a designated person shall not be prevented from entering or transiting through Kenya where—</p>	<p>Notwithstanding the provisions of regulation 22(1), a designated person shall not be prevented from entering or transiting through Kenya where—</p>	<p>Clerical error amended to indicate 22 (1) not 23 (1) Proposal taken: Reference is made to regulation 22(1)</p>
<p>Regulation 28 A person or entity that contravenes the provisions of these Regulations commits an offence and shall be liable, on conviction, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding seven years.</p>	<p>The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act 2023 has the following sections under POTTA in relation to fines; 4B. Financing of Proliferation act A person who by any means, within or outside Kenya, directly or indirectly, provides financial support or solicits or collects funds intending, knowing or having reasonable grounds to believe that such funds are to be used in whole or part, to carry out a</p>	<p>Alignment between the Act and the Regulations is required Proposal Rejected: The penalties in the regulation and the Act are distinguishable</p>

proliferation act regardless of whether such funds or part thereof were actually used to commit the act, commits an offence and is liable, upon conviction, to imprisonment for a term of imprisonment not exceeding twenty years or to a fine not exceeding twenty million shillings or to both such fine and such imprisonment. 30H- Penalties for legal persons

(1) A legal person who contravenes the provisions of sections 4, 10, 11, 12, 12B, 12C, 12D, 13, 14, 14A, 21, 24, 27, 28, 29 or 30D commits an offence and is liable, on conviction, to a fine not exceeding thirty million shillings. (2) A legal person who contravenes any other provisions not provided under subsection (1) is liable on conviction to a fine not exceeding twenty million shillings.

Individual comments – NOT in the Prescribed format

1.	Recommendation 24 mandates the country to ensure that basic and beneficial ownership information is accurate and up-to-date.

	<p>BRS through the amendments that have been forwarded to the Attorney General will allow FI and DNFBP to have access to the BO information in their custody.</p> <ul style="list-style-type: none"> - Proposal rejected. Reporting institution will have their own internal reporting mechanisms <p>The onus of ensuring that the information is accurate and UpToDate is both on the company and the Registrar. From the forgoing BRS has empowered directors, members and beneficial owners to report discrepancies to the Registrar.</p> <p>BRS has no powers to regulate FI and DNFBPs, we, therefore, propose that a provision mandating Reporting Institutions be anchored in the proposed amendments to the POCAMLA regulations.</p> <p>Insert sub-regulation 19 (5), 19 (6) and 19(7)</p> <p><i>(5) Where a reporting institution identifies a discrepancy in the accuracy of the information on the register of beneficial ownership when conducting customer due diligence under the Act and regulations, the reporting institution shall file a report to the Centre detailing the nature of the identified discrepancy in the manner specified by the Centre.</i></p> <p><i>(6) On receipt of a report filed under sub-regulation 5, the Centre shall notify the relevant Registrar of the nature of discrepancy reported.</i></p> <p><i>(7) For the purposes of sub-regulation (5) and (6):</i></p> <p><i>(a) register of beneficial ownership means the register maintained pursuant to the provisions of the Companies Act, the Limited Liability Partnerships Act and any other such register that may be specified by the Centre; and</i></p> <p><i>(b) registrar has the meaning provided under the Companies Act, the Limited Liability Partnerships Act and any other such registrar who may be specified by the Centre.</i></p> <p>BRS</p>
2.	<p>Good evening,</p> <p>Have had a quick glance at the draft Regulations and wish to bring to your attention the following:</p>

<p>1) Consideration on whether the Title is fit for purposes in line with Section 2A on application indicating that the Regulations will be applicable to ML, TF and PF.</p> <p>2) Cover Page: PART II correct to read Financial Reporting Centre</p> <p>3) Regulation 3(c) talks of the Minister instead of Cabinet Secretary. please confirm if its fine that way.</p> <p>4) Regulation 8 uses the amount of USD 10,000, please check if should read USD 15,000 as contained in the Amended Act.</p> <p><i>Joseph Mwanzia-Senior Economist-The National Treasury</i></p> <p><i>All homes Shabab - nakuru</i></p> <p><u>RE: COMMENTS ON THE REVIEW OF THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING REGULATIONS 2023.</u></p> <p>The above subject matter refers.</p> <p>Allhomes Shabab (MSEs) Association is a legal entity duly registered and regulated by the Micro and Small Enterprises Authority (MSEA) domiciled in the Ministry of Cooperatives and Enterprises Development.</p> <p>This MSEs Association do support this Regulations and kindly make the following comments.</p> <p><u>Part I</u></p> <p>The review of the proceeds of crime and Anti-money laundering Regulations 2023 are in order and relevant.</p> <p><u>Part II - The Finance Reporting Centre</u></p> <p>THAT there should be a multi-prolonged approach involving Government agencies, financial institutions and international cooperation to effectively combat money laundering and protect the integrity of the financial system.</p> <p>THAT a mechanism for feedback and consultation with stakeholders to improve anti-money laundering regulations should be established. There should be implementation methods to measure the effectiveness of these regulations and adjust them as needed.</p> <p>Conduct regular national risk assessments to identify vulnerabilities and adjust anti-money laundering strategies accordingly.</p> <p>THAT there should be continuous update anti-money laundering regulations to adapt to evolving financial crime techniques and technologies.</p> <p>Leverage advanced technologies e.g. data analytics to detect unusual patterns and trends</p> <p>Develop and implement regulations specific to crypto currencies and blockchain technologies which can be susceptible to money laundering.</p> <p><u>Part III – Obligations of a reporting institution</u></p>
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	<p>THAT the financial institutions should report suspicious transactions promptly and efficiently There should be good information sharing among financial institutions, Law enforcement agencies and regulatory bodies to improve detection and prevention. THAT staff in financial institutions are well trained and aware of Anti-money laundering requirements. Enhance cross-border cooperation to address money laundering across borders effectively. Enhance protections for whistleblowers to encourage reporting of wrongdoing within financial institutions.</p> <p><u>PART IV DUE DILIGENCE REQUIREMENTS</u></p> <p>THAT customer due diligence should be strengthened including more comprehensive customer identification and verification processes. Data Protection: THAT a striking balance between preventing financial crimes and respecting individuals' privacy rights is crucial. Balance anti-money laundering efforts with data protection and privacy concerns, ensuring compliance with relevant data privacy laws.</p> <p><u>PART V REPORTING REQUIREMENTS</u></p> <p>THAT strict penalties should be enforced for non-compliance in-order to deter financial institutions from engaging in money laundering or terrorist financing activities. Promote transparency in beneficial ownership to prevent the use of shell companies for illicit purposes. Financial institutions must monitor customer transactions and report any suspicious activities to relevant authorities. Therefore, these regulations should have measures put in place to prevent and detect illegal activities related to money laundering and the financing of terrorism. The aim is to ensure transparency and integrity of financial systems. Thanking you in advance. Yours faithfully,</p> <p style="text-align: center;">Paul Mwangi Ndereba Chairperson Cell: 0722 112 999 Email: ndereba@africamail.com</p> <p style="text-align: center;">Francis Kangethe Kinyanjui Secretary 0701 913 890</p> <p>Comment Noted</p>
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Name of the Regulation	Proceeds of Crime and Anti-Money Laundering (Criminal Asset Recovery Fund) Regulations, 2023
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Regulation/Clause	Issue of Concern	Justification	Recommendation
<p>Clause 5 (<i>Payments out of the Fund</i>)</p> <p>5. There shall be paid out of the Fund—</p> <p>(a) moneys derived from concluded confiscation and forfeiture orders stipulated in Parts VII to X of the Act, into the Consolidated Fund;</p> <p>(b) five percent of the total proceeds recovered or realized from any property seized or forfeited to the Government, to the Agency;</p> <p>(c) claims by a third party in respect of a forfeiture order issued in accordance with section 93 of the Act; and</p> <p>(d) moneys in respect of administrative expenses incurred in pursuance of the objects and purposes</p>	<p>The Centre should also be well resourced to enable generation of more intelligence which will lead to more recovery by the Agency.</p> <p>If a portion of the recovered proceeds is only shared with the Agency as currently proposed, the source of financial intelligence information which led to initiation of recovery proceedings is curtailed.</p>	<p>The Interpretive Note to FATF Recommendation 38 urges countries to consider establishing an asset forfeiture fund into which all, or a portion of, confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes.</p> <p>The Note also encourages countries to take such measures as may be necessary to enable them to share among (law enforcement agencies) or between other countries confiscated property, in particular, when confiscation is directly or indirectly a result of coordinated law enforcement actions.</p>	<p>5. There shall be paid out of the Fund—</p> <p>(a) moneys derived from concluded confiscation and forfeiture orders stipulated in Parts VII to X of the Act, into the Consolidated Fund;</p> <p>(b) five percent of the total proceeds recovered or realized from any property seized or forfeited to the Government, to the Agency;</p> <p>(c) claims by a third party in respect of a forfeiture order issued in accordance with section 93 of the Act; and</p> <p>(d) moneys in respect of administrative expenses incurred in pursuance of the objects and purposes for which the Fund is established; and</p> <p>(e) five percent of the total proceeds recovered or realized from any property seized or forfeited to the Government, to the Centre.</p>

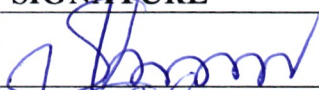

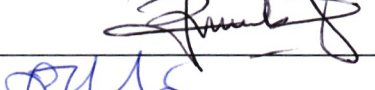
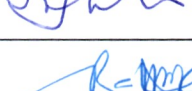

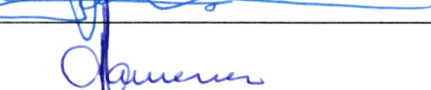
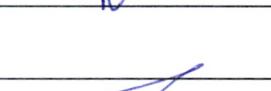
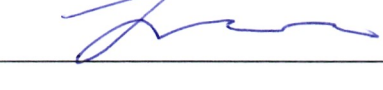
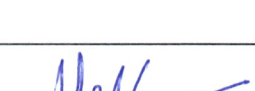
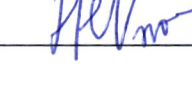
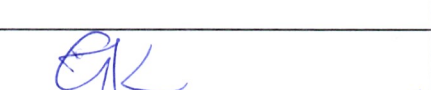
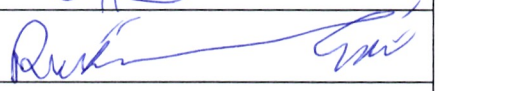
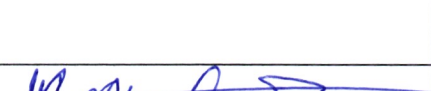
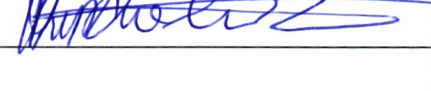
<p>for which the Fund is established.</p>		<p>The rationale of sharing a portion of recovered proceeds with other law enforcement agencies involved in the recovery process is to eliminate curtailment.</p>	
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COMMITTEE ON DELEGATED LEGISLATION ADOPTION LIST

DATE: 5/12/2023 VENUE: STARTING TIME:

ENDING TIME:

AGENDA: ADOPTION OF THE REPORT ON PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (CRIMINAL ASSETS RECOVERY FUND) REG 2023

	NAME	SIGNATURE
1.	The Hon. Chepkonga Kiprono Samuel, CBS, M.P, Chairperson	
2.	The Hon. Githinji, Robert Gichumi, M.P. Vice-Chairperson	
3.	The Hon. Mbui, Robert, CBS, M.P.	
4.	The Hon. Sunkuli Julius Lekakeny, EGH,EBS,MP	
5.	The Hon. Maj. (Rtd) Abdullahi Bashir Sheikh, M.P.	
6.	The Hon. Mwirigi, John Paul, M.P.	
7.	The Hon. Kamene, Joyce, M.P.	
8.	The Hon. Mwale, Nicholas S. Tindi, M.P.	
9.	The Hon. Odoyo, Jared Okello, M.P.	
10.	The Hon. Komingoi, Kibet Kirui, M.P.	
11.	The Hon. Maj. (Rtd.) Dekow Barrow Mohamed, M.P.	
12.	The Hon. Munyoro, Joseph Kamau, M.P.	
13.	The Hon, Kimaiyo, Gideon Kipkoech, M.P.	
14.	The Hon. Ruku, Geoffrey Kariuki Kiringa, M.P.	
15.	The Hon. Chepkorir, Linet, M.P.	
16.	The Hon. Chebor, Paul, M.P.	
17.	The Hon. Lenguris, Pauline, M.P.	
18.	The Hon. Mamwacha Onchoke Charles, M.P.	
19.	The Hon. Yakub, Adow Kuno, M.P.	
20.	The Hon. Mnyazi, Amina Laura, M.P.	

21.	The Hon. Mugabe, Innocent Maino, M.P.	
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COMMITTEE CLERK:**SIGNATURE**.....

DIRECTOR, DAA&OSC: **SIGNATURE**.....

MINUTES OF THE 74TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 30TH NOVEMBER, 2023, AT SMALL DINING ROOM, NEW WING, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson
2. The Hon. Robert Gichimu Githinji, M.P. Vice Chairperson
3. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P.
4. The Hon. Jared Okello Odoyo M.P.
5. The Hon. John Paul Mwirigi, M.P.
6. Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
7. The Hon. Joseph Kamau Munyoro, M.P
8. The Hon. Kibet Kirui Komingoi, M.P
9. The Hon. Gideon Kipkoech Kimaiyo, M.P.
10. The Hon. Pauline Lenguris, M.P.

APOLOGIES

1. The Hon. Robert Mbui, CBS, M.P
2. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P
3. The Hon. Nicholas S. Tindi Mwale, M.P.
4. The Hon. Joyce Kamene, M.P
5. The Hon. Charles Mamwacha Onchoke. M.P.
6. The Hon. Geoffrey Kariuki Kiringa Ruku, M.P
7. The Hon. Laura Amina Mnyazi, M.P.
8. The Hon. Linet Chepkorir M.P.
9. The Hon. Innocent Mugabe, M.P.
10. The Hon. Yakub Adow Kuno, M.P.
11. The Hon. Paul Chebor, M.P.

IN ATTENDANCE

SECRETARIAT

- | | | |
|---------------------------|---|---------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Dima Dima | - | Principal Legal Counsel I |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Mr. Jacknorine Buleemi | - | Clerk Assistant III |
| 5. Ms. Winny Otieno | - | Clerk Assistant III |
| 6. Ms. Fionah Wanjiru | - | Legal Counsel II |
| 7. Mr. Daniel Ominde | - | Researcher III |
| 8. Mr. Charles Ayari | - | Hansard Services |

9. Mr. Manuel Leparachau - Serjeant-At-Arms.

THE NATIONAL TREASURY & ECONOMIC PLANNING.

1. Brig. Alice Mate - Agency Director, ARA
2. Mr. James Manyonge - Director, Legal Compliance FRC
3. Mr. Robi Vincent - HOD, Legal, FRC
4. Mr. Jennifer Gitiri - Dep. Director, Legal Services, ARA
5. Ms. Esther Muchiri - Asst. Director, Legal Services, ARA

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. Briefing by the Cabinet Secretary, The National Treasury on;
 - i) The Proceeds of Crime and Anti-Money Laundering Regulations, 2023
 - ii) The Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023
7. Any Other Business; and
8. Adjournment.

MIN. DAA&OSC/CDL/495/2023

PRELIMINARIES

The Chairperson called the Meeting to order at 10.30 a.m. after which prayers were said. He then welcomed all to the meeting with a round of introductions.

MIN. DAA&OSC/CDL/496/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as was proposed by the Hon. Jared Okello Odoyo M.P. and seconded by the Hon. Kibet Kirui Komingoi, M.P

MIN. DAA&OSC/CDL/497/2023

CONFIRMATION OF MINUTES

Minutes of the 73rd sitting that was held on 28th November, 2023, were confirmed as true records of the deliberations as was proposed by the Hon. Gideon Kipkoech Kimaiyo, M.P and seconded by the Hon. Pauline Lenguris, M.P.

MIN. DAA&OSC/CDL/498/2023

BRIEFING ON THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (CRIMINAL ASSETS RECOVERY FUND) REGULATIONS, 2023

Brig. Alice Mate, Agency Director, Asset Recovery Agency, briefed the Committee on the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023, as follows ;

1. **Regulation 1** provides for citation. The Regulations may be cited as the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023
2. **Regulation 2** provides for the interpretation of terms used in the Regulations.
3. **Regulation 3** provides for the purpose of the Regulations and its scope in application.
4. **Regulation 4** provides for the sources of funds for the Agency.
5. **Regulation 5** provides for how the funds shall be paid.
6. **Regulation 6** provides that any withdrawal from the Fund shall only be for the purposes of payments envisaged under regulation 5 of these Regulations.
7. **Regulation 7** provides for the establishment of the Asset Recovery Advisory Board and its role to the Agency.
8. **Regulation 8** provides for framework for the administration of the fund by the Agency.
9. **Regulation 9** establishes the Secretariat of the Fund to support the functions of the Administration of the Fund.
10. **Regulation 10** provides that 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 of June.
11. **Regulation 11** provides for the manner in which the Administrator shall cause the establishment of a bank account in a bank regulated by the Central Bank of the Kenya.
12. **Regulation 12** provides that the Administrator shall ensure that the bank accounts of the Fund are not overdrawn.
13. **Regulation 13** provides that the Administrator may, with the approval of the Cabinet Secretary, invest any surplus funds of the Fund in Government securities.
14. **Regulation 14** stipulates that 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.
15. **Regulation 15** gives guidance on annual estimates and appropriation of funds for the Agency.
16. **Regulation 16** provides that the Administrator shall prepare annual reports for consideration by the Advisory Board.
17. **Regulation 17** states how 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.
18. **Regulation 18** provides that the Fund shall be governed by all relevant financial and procurement laws and Regulations as applicable.

19. **Regulation 19** provides that 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.
20. **Regulation 20** provides that the winding up of the Fund which shall be in accordance with the provisions of the Public Finance Management Act, 2012.
21. Upon deliberations, the Committee made observations which are as follows;
 - i) Regulation seems to be amending the parent Act by the use of the word ‘in addition’ which seems to add more sources of funds to the ones stated under the Section 110 of the Proceeds of Crime and Anti-Money Laundering Act No. 9 of 2009.
 - ii) Under Regulation 5, the Committee observed that sub-regulation (b) and (e) were providing for administrative money to the Agency. The Committee recommended that sub-regulation (e) be deleted.
 - iii) There was a concern on lack of enough evidence to support sufficient and adequate public participation since the Agency only produced evidence of a meeting in Nairobi. The Agency responded by indicating that an advert was put in dailies of nationwide coverage and thus they received memoranda from across the country. Further, the committee asked them to produce those memoranda before the Committee.
 - iv) There was need to amend the parent Act to change the Office of the Agency Director to that of the Director General.
 - v) Upon deliberation, the Committee recommended to the House to approves the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023 subject to publication of a corrigenda on Regulation 4 and 5(e), as was proposed by the Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P. and seconded by the Hon. Robert Gichimu Githinji, M.P.

MIN. DAA&OSC/CDL/499/2023

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

Mr. James Manyonge, Director, Legal and Compliance, Financial Reporting Centre, briefed the Committee on the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 as follows;

1. **Regulation 1** provides for citation of the Regulations which may be cited as the Proceeds of Crime and Anti-Money Laundering Regulations, 2023.
2. **Regulation 2** provides for interpretation of terms used in the Regulations.
3. **Regulation 3** provides for the application of these Regulations and its scope.
4. **Regulation 4** provides for the Functions of the Centre.
5. **Regulation 5** provides for the registration of every reporting institution by the Centre
6. **Regulation 6** provides for the obligations of the reporting institutions.

7. **Regulation 7** provides that 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.
8. **Regulation 8** provides that all reporting institutions shall take reasonable measures to prevent use of new technologies for money laundering, terrorism financing and proliferation financing purposes.
9. **Regulation 9** stipulates the policies and procedures to address any money laundering, terrorism financing or proliferation financing risks associated with non-face-to-face relationships or transactions.
10. **Regulation 10** provides for the framework on cross border conveyance of monetary instruments.
11. **Regulation 11** stipulates the measures and policies on internal control obligations to reporting institutions.
12. **Regulation 12** provides for how reporting institutions can appoint the money laundering reporting officers.
13. **Regulation 13** restricts reporting institutions and bars them from operating anonymous or fictitious accounts.
14. **Regulation 14** provides that every reporting institution shall undertake customer due diligence measures.
15. **Regulation 15** provides for a framework of identifying a natural person and how to get their information.
16. **Regulation 16** provides for a framework of identifying a legal person and how to get their information.
17. **Regulation 17** provides for a framework in identifying a partnership and how their information is sort.
18. **Regulation 18** provides for a framework on identifying a trust and how to acquire its information.
19. **Regulation 19** provides for guidelines on acquiring information on eligible introducers to the reporting institutions.
20. **Regulation 20** provides for enhanced due diligence measures on how higher risk persons can be identified and how their information is obtained.
21. **Regulation 21** provides for how simplified customer due diligence is applied.
22. **Regulation 22** provides for a procedure for simplified customer due diligence.
23. **Regulation 23** gives guidelines for identifying persons purporting to act on behalf of a customer.
24. **Regulation 24** provides for measures to be taken under due diligence in matters related to life insurance related businesses.
25. **Regulation 25** provides for compliance with these Regulations.
26. **Regulation 26** provides how customer due diligence is conducted on politically exposed persons.
27. **Regulation 27** provides for the guidelines on how reporting institutions that hold international branches cooperate.

28. **Regulation 28** provides for a framework on group-wide programmes against money laundering, terrorism financing and proliferation financing.
29. **Regulation 29** stipulates measures that shall be undertaken by a reporting institution that intends to establish a correspondent financial relationship either as the correspondent financial institution or the respondent financial institution.
30. **Regulation 30** prohibits dealings with shell banks.
31. **Regulation 31** provides for the measures to be considered in money or value transfer services.
32. **Regulation 32** states measures to be considered in wire transfers.
33. **Regulation 33** provides for measures on reliance on third parties to perform elements of customer due diligence measures, or introduce business, provided that the institution meets the criteria set out in these Regulations.
34. **Regulation 34** provides that all reporting institutions shall continuously monitor the activity and transactions of their customers.
35. **Regulation 35** provides for conduct of on-going due diligence on the business relationship.
36. Regulation 36 provides that the requirements set out in these Regulations shall apply to numbered accounts.
37. Regulation 37 provides for determining procedure on the legitimacy of the source of funds.
38. Regulation 38 provides for a timeline within which a reporting institution is supposed to report a suspicious transaction to the FRC.
39. Regulation 39 provides for the reporting of suspicious activities by supervisory bodies.
40. Regulation 40 provides for the reporting procedure of cash transactions equivalent or exceeding 15000 USD.
41. Regulation 41 prohibits the FRC from sharing information acquired on suspicious transactions.
42. Regulation 42 stipulates that reporting institutions should ensure a good record keeping for all transactions.
43. Regulation 43 provides for reporting institutions to adopt an independent audit function to check compliance by the institution with the Act and these Regulations.
44. Regulation 44 provides that a reporting institution shall submit to the FRC by 31st January of each calendar year, a compliance report detailing the institutions compliance with the Act.
45. Regulation 45 confers powers to the Centre to issue directives and guidelines.
46. Regulation 46 allows sharing of information with other investigative agencies.
47. Regulation 47 provides a framework on mechanisms for suitability of reporting institutions.
48. Regulation 48 provides the sanctions and penalties for any breach of the provisions of the Regulations.
49. Regulation 49 revokes the Proceeds of Crime and Anti-Money Laundering Regulations, 2013.

50. Upon deliberation on the Proceeds of Crime and Anti-Money Laundering Regulations, 2023, the Committee made the following observations;

- i. Under Regulation 4, delete the word ‘in addition’ and substitute with ‘performing the’
- ii. Under Regulation 36, the Committee inquired why the term numbered accounts wasn’t defined which was clarified that, the term numbered accounts needed not be defined because it was a common term for internal use within financial institutions
- iii. Regulation 45(1) and 45(3) were delegating more powers contrary to section 13(m) of the Statutory Instruments Act, 2013. The Committee recommended that the guidelines, rules and instructions to form part of the schedules of the Regulations.
- iv. Regulation 48 prescribes a penalty that is beyond what the Statutory Instruments Act provided. The Committee recommended that the Centre cross-reference the penalty with the parent Act, should it require a deterrent fine.
- v. Upon deliberations, the Committee APPROVED in-part the Regulations subject to publication of a corrigenda on the errors in Regulations 4, 45 and 48, as was proposed by the Hon. Robert Gichimu Githinji, M.P. and seconded by Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P.

MIN.DAA&OSC/CDL/500/2023

ANY OTHER BUSINESS

The Committee was informed of a retreat that has been organized in Machakos County as from 30th November, 2023 to 3rd December, 2023, to consider the Regulations pending before the Committee.

MIN. DAA&OSC/CDL/501/2023

ADJOURNMENT

There being no other business, the meeting was adjourned Thirty-Five minutes past One O’clock.

SIGNED:

THE HON. SAMUEL CHEPKONGA, CBS, M.P.

CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE:

MINUTES OF THE 74TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 30TH NOVEMBER, 2023, AT SMALL DINING ROOM, NEW WING, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson
2. The Hon. Robert Gichimu Githinji, M.P. Vice Chairperson
3. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P.
4. The Hon. Jared Okello Odoyo M.P.
5. The Hon. John Paul Mwirigi, M.P.
6. Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
7. The Hon. Joseph Kamau Munyoro, M.P
8. The Hon. Kibet Kirui Komingoi, M.P
9. The Hon. Gideon Kipkoech Kimaiyo, M.P.
10. The Hon. Pauline Lenguris, M.P.

APOLOGIES

1. The Hon. Robert Mbui, CBS, M.P
2. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P
3. The Hon. Nicholas S. Tindi Mwale, M.P.
4. The Hon. Joyce Kamene, M.P
5. The Hon. Charles Mamwacha Onchoke. M.P.
6. The Hon. Geoffrey Kariuki Kiringa Ruku, M.P
7. The Hon. Laura Amina Mnyazi, M.P.
8. The Hon. Linet Chepkorir M.P.
9. The Hon. Innocent Mugabe, M.P.
10. The Hon. Yakub Adow Kuno, M.P.
11. The Hon. Paul Chebor, M.P.

IN ATTENDANCE

SECRETARIAT

- | | | |
|---------------------------|---|---------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Dima Dima | - | Principal Legal Counsel I |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Mr. Jacknorine Buleemi | - | Clerk Assistant III |
| 5. Ms. Winny Otieno | - | Clerk Assistant III |
| 6. Ms. Fionah Wanjiru | - | Legal Counsel II |
| 7. Mr. Daniel Ominde | - | Researcher III |
| 8. Mr. Charles Ayari | - | Hansard Services |

9. Mr. Manuel Leparachau - Serjeant-At-Arms.

THE NATIONAL TREASURY & ECONOMIC PLANNING.

1. Brig. Alice Mate - Agency Director, ARA
2. Mr. James Manyonge - Director, Legal Compliance FRC
3. Mr. Robi Vincent - HOD, Legal, FRC
4. Mr. Jennifer Gitiri - Dep. Director, Legal Services, ARA
5. Ms. Esther Muchiri - Asst. Director, Legal Services, ARA

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. Briefing by the Cabinet Secretary, The National Treasury on;
 - i) The Proceeds of Crime and Anti-Money Laundering Regulations, 2023
 - ii) The Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023
7. Any Other Business; and
8. Adjournment.

MIN. DAA&OSC/CDL/495/2023

PRELIMINARIES

The Chairperson called the Meeting to order at 10.30 a.m. after which prayers were said. He then welcomed all to the meeting with a round of introductions.

MIN. DAA&OSC/CDL/496/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as was proposed by the Hon. Jared Okello Odoyo M.P. and seconded by the Hon. Kibet Kirui Komingoi, M.P

MIN. DAA&OSC/CDL/497/2023

CONFIRMATION OF MINUTES

Minutes of the 73rd sitting that was held on 28th November, 2023, were confirmed as true records of the deliberations as was proposed by the Hon. Gideon Kipkoech Kimaiyo, M.P and seconded by the Hon. Pauline Lenguris, M.P.

MIN. DAA&OSC/CDL/498/2023

BRIEFING ON THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (CRIMINAL ASSETS RECOVERY FUND) REGULATIONS, 2023

Brig. Alice Mate, Agency Director, Asset Recovery Agency, briefed the Committee on the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023, as follows ;

1. **Regulation 1** provides for citation. The Regulations may be cited as the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023
2. **Regulation 2** provides for the interpretation of terms used in the Regulations.
3. **Regulation 3** provides for the purpose of the Regulations and its scope in application.
4. **Regulation 4** provides for the sources of funds for the Agency.
5. **Regulation 5** provides for how the funds shall be paid.
6. **Regulation 6** provides that any withdrawal from the Fund shall only be for the purposes of payments envisaged under regulation 5 of these Regulations.
7. **Regulation 7** provides for the establishment of the Asset Recovery Advisory Board and its role to the Agency.
8. **Regulation 8** provides for framework for the administration of the fund by the Agency.
9. **Regulation 9** establishes the Secretariat of the Fund to support the functions of the Administration of the Fund.
10. **Regulation 10** provides that 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 of June.
11. **Regulation 11** provides for the manner in which the Administrator shall cause the establishment of a bank account in a bank regulated by the Central Bank of the Kenya.
12. **Regulation 12** provides that the Administrator shall ensure that the bank accounts of the Fund are not overdrawn.
13. **Regulation 13** provides that the Administrator may, with the approval of the Cabinet Secretary, invest any surplus funds of the Fund in Government securities.
14. **Regulation 14** stipulates that 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.
15. **Regulation 15** gives guidance on annual estimates and appropriation of funds for the Agency.
16. **Regulation 16** provides that the Administrator shall prepare annual reports for consideration by the Advisory Board.
17. **Regulation 17** states how 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.
18. **Regulation 18** provides that the Fund shall be governed by all relevant financial and procurement laws and Regulations as applicable.

19. **Regulation 19** provides that 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.
20. **Regulation 20** provides that the winding up of the Fund which shall be in accordance with the provisions of the Public Finance Management Act, 2012.
21. Upon deliberations, the Committee made observations which are as follows;
 - i) Regulation seems to be amending the parent Act by the use of the word ‘in addition’ which seems to add more sources of funds to the ones stated under the Section 110 of the Proceeds of Crime and Anti-Money Laundering Act No. 9 of 2009.
 - ii) Under Regulation 5, the Committee observed that sub-regulation (b) and (e) were providing for administrative money to the Agency. The Committee recommended that sub-regulation (e) be deleted.
 - iii) There was a concern on lack of enough evidence to support sufficient and adequate public participation since the Agency only produced evidence of a meeting in Nairobi. The Agency responded by indicating that an advert was put in dailies of nationwide coverage and thus they received memoranda from across the country. Further, the committee asked them to produce those memoranda before the Committee.
 - iv) There was need to amend the parent Act to change the Office of the Agency Director to that of the Director General.
 - v) Upon deliberation, the Committee recommended to the House to approves the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023 subject to publication of a corrigenda on Regulation 4 and 5(e), as was proposed by the Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P. and seconded by the Hon. Robert Gichimu Githinji, M.P.

**MIN. DAA&OSC/CDL/499/2023 BRIEFING ON PROCEEDS OF CRIME AND
ANTI-MONEY LAUNDERING REGULATIONS,
2023**

Mr. James Manyonge, Director, Legal and Compliance, Financial Reporting Centre, briefed the Committee on the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 as follows;

1. **Regulation 1** provides for citation of the Regulations which may be cited as the Proceeds of Crime and Anti-Money Laundering Regulations, 2023.
2. **Regulation 2** provides for interpretation of terms used in the Regulations.
3. **Regulation 3** provides for the application of these Regulations and its scope.
4. **Regulation 4** provides for the Functions of the Centre.
5. **Regulation 5** provides for the registration of every reporting institution by the Centre
6. **Regulation 6** provides for the obligations of the reporting institutions.

7. **Regulation 7** provides that 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.
8. **Regulation 8** provides that all reporting institutions shall take reasonable measures to prevent use of new technologies for money laundering, terrorism financing and proliferation financing purposes.
9. **Regulation 9** stipulates the policies and procedures to address any money laundering, terrorism financing or proliferation financing risks associated with non-face-to-face relationships or transactions.
10. **Regulation 10** provides for the framework on cross border conveyance of monetary instruments.
11. **Regulation 11** stipulates the measures and policies on internal control obligations to reporting institutions.
12. **Regulation 12** provides for how reporting institutions can appoint the money laundering reporting officers.
13. **Regulation 13** restricts reporting institutions and bars them from operating anonymous or fictitious accounts.
14. **Regulation 14** provides that every reporting institution shall undertake customer due diligence measures.
15. **Regulation 15** provides for a framework of identifying a natural person and how to get their information.
16. **Regulation 16** provides for a framework of identifying a legal person and how to get their information.
17. **Regulation 17** provides for a framework in identifying a partnership and how their information is sort.
18. **Regulation 18** provides for a framework on identifying a trust and how to acquire its information.
19. **Regulation 19** provides for guidelines on acquiring information on eligible introducers to the reporting institutions.
20. **Regulation 20** provides for enhanced due diligence measures on how higher risk persons can be identified and how their information is obtained.
21. **Regulation 21** provides for how simplified customer due diligence is applied.
22. **Regulation 22** provides for a procedure for simplified customer due diligence.
23. **Regulation 23** gives guidelines for identifying persons purporting to act on behalf of a customer.
24. **Regulation 24** provides for measures to be taken under due diligence in matters related to life insurance related businesses.
25. **Regulation 25** provides for compliance with these Regulations.
26. **Regulation 26** provides how customer due diligence is conducted on politically exposed persons.
27. **Regulation 27** provides for the guidelines on how reporting institutions that hold international branches cooperate.

28. **Regulation 28** provides for a framework on group-wide programmes against money laundering, terrorism financing and proliferation financing.
29. **Regulation 29** stipulates measures that shall be undertaken by a reporting institution that intends to establish a correspondent financial relationship either as the correspondent financial institution or the respondent financial institution.
30. **Regulation 30** prohibits dealings with shell banks.
31. **Regulation 31** provides for the measures to be considered in money or value transfer services.
32. **Regulation 32** states measures to be considered in wire transfers.
33. **Regulation 33** provides for measures on reliance on third parties to perform elements of customer due diligence measures, or introduce business, provided that the institution meets the criteria set out in these Regulations.
34. **Regulation 34** provides that all reporting institutions shall continuously monitor the activity and transactions of their customers.
35. **Regulation 35** provides for conduct of on-going due diligence on the business relationship.
36. Regulation 36 provides that the requirements set out in these Regulations shall apply to numbered accounts.
37. Regulation 37 provides for determining procedure on the legitimacy of the source of funds.
38. Regulation 38 provides for a timeline within which a reporting institution is supposed to report a suspicious transaction to the FRC.
39. Regulation 39 provides for the reporting of suspicious activities by supervisory bodies.
40. Regulation 40 provides for the reporting procedure of cash transactions equivalent or exceeding 15000 USD.
41. Regulation 41 prohibits the FRC from sharing information acquired on suspicious transactions.
42. Regulation 42 stipulates that reporting institutions should ensure a good record keeping for all transactions.
43. Regulation 43 provides for reporting institutions to adopt an independent audit function to check compliance by the institution with the Act and these Regulations.
44. Regulation 44 provides that a reporting institution shall submit to the FRC by 31st January of each calendar year, a compliance report detailing the institutions compliance with the Act.
45. Regulation 45 confers powers to the Centre to issue directives and guidelines.
46. Regulation 46 allows sharing of information with other investigative agencies.
47. Regulation 47 provides a framework on mechanisms for suitability of reporting institutions.
48. Regulation 48 provides the sanctions and penalties for any breach of the provisions of the Regulations.
49. Regulation 49 revokes the Proceeds of Crime and Anti-Money Laundering Regulations, 2013.

50. Upon deliberation on the Proceeds of Crime and Anti-Money Laundering Regulations, 2023, the Committee made the following observations;

- i. Under Regulation 4, delete the word 'in addition' and substitute with 'performing the'
- ii. Under Regulation 36, the Committee inquired why the term numbered accounts wasn't defined which was clarified that, the term numbered accounts needed not be defined because it was a common term for internal use within financial institutions
- iii. Regulation 45(1) and 45(3) were delegating more powers contrary to section 13(m) of the Statutory Instruments Act, 2013. The Committee recommended that the guidelines, rules and instructions to form part of the schedules of the Regulations.
- iv. Regulation 48 prescribes a penalty that is beyond what the Statutory Instruments Act provided. The Committee recommended that the Centre cross-reference the penalty with the parent Act, should it require a deterrent fine.
- v. Upon deliberations, the Committee APPROVED in-part the Regulations subject to publication of a corrigenda on the errors in Regulations 4, 45 and 48, as was proposed by the Hon. Robert Gichimu Githinji, M.P. and seconded by Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P.

MIN.DAA&OSC/CDL/500/2023

ANY OTHER BUSINESS

The Committee was informed of a retreat that has been organized in Machakos County as from 30th November, 2023 to 3rd December, 2023, to consider the Regulations pending before the Committee.

MIN. DAA&OSC/CDL/501/2023

ADJOURNMENT

There being no other business, the meeting was adjourned Thirty-Five minutes past One O'clock.

SIGNED: 

THE HON. SAMUEL CHEPKONGA, CBS, M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE: 