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REPUBLIC OF KENYA


THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

.....

**REPORT ON THE CONSIDERATION OF THE ANTI-MONEY LAUNDERING AND
COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 35 OF 2023)**

 THE NATIONAL ASSEMBLY PADOOSI ADI	
DATE: 17 AUG 2023	DAY: THURS
TABLED BY:	<i>Hon George Munigara, MP On behalf of the Chairperson</i>
CLERK AT THE TABLE:	<i>Anne Shilonko</i>

CLERK'S CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

AUGUST 2023

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ABBREVIATION

AML/CFT: ANTI-MONEY LAUNDERING AND COMBATING TERRORISM FINANCING

CPF: COUNTER FINANCING OF PROLIFERATIONS

POCALMA: PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING ACT

MER: MUTUAL VALUATION REPORT

CBK: CENTRAL BANK OF KENYA

CMA: CAPITAL MARKET AUTHORITY

POTA: PREVENTION OF TERRORISM ACT

TF: TERRORISM FINANCING

UNSCR: UNITED NATIONS SECURITY COUNCIL RESOLUTIONS

CFT: COUNTER FINANCING TERRORISM

ANNEXURES

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill (National Assembly Bill No. 35 of 2023). The Bill was published on 11th July 2023 and was read for a First Time on Wednesday, 26th July 2023. The Bill was committed to the Departmental Committee on Finance and National Planning and Departmental Committee on Justice and Legal Affairs for review and reporting to the House pursuant to Standing Order 127

The principal object of the Bill is to amend various Acts of Parliament relating to money laundering, countering the financing of terrorism and countering the financing of proliferation of weapons of mass destruction in addressing deficiencies identified during the Mutual Evaluation of Kenya and matters incidental thereto.

In conducting Public participation, the Committee placed an advert in the print media on 30th July 2023 requesting comments from the members of the public and relevant stakeholders pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3). Further, the Committee vide letter ref **NA/DDC/F&NP/2023/074** sought views of the National Treasury, Central Bank of Kenya, Capital Markets Authority, Insurance Regulatory Authority, Kenya Bankers Association, Association for Microfinance Institutions, Institute of Chartered Public Accountants, Fund Managers Association and PriceWater House Coopers.

The Committee received held stakeholder hearings on Tuesday 15th August 2023 and Wednesday 16th August 2023 in Parliament Buildings where the Committee received oral submissions from the Financial Reporting Centre (FRC), the Central Bank of Kenya (CBK), the Capital Markets Authority (CMA), Kenya Bankers Association (KBA), Association for Microfinance Institutions (AMFI), Institute of Chartered Public Accountants (ICPAK). Additionally, the Committee received and considered a written submission from Britam Group, Old Mutual Group, Kenya Law Reform Commission, Insurance Regulatory Authority and Kenya National Civil Society Centre with the majority of the stakeholders in support of the Bill.

I take this opportunity to thank and commend Committee Members for their devotion and commitment to duty, the Speaker and the Clerk of the National Assembly for providing leadership and direction and finally the Committee Secretariat for exemplary performance in the provision of technical and logistical support.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill (National Assembly Bill No. 35 Of 2023).

HON. (AMB.) CPA. LANGAT BENJAMIN KIPKIRUI, MP
VICE CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL
PLANNING

PART ONE

1.0 PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is one of the twenty (20) Departmental Committees of the House established under **Standing Order 216** which mandates Departmental Committees-
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - iii. *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. *To study and review all legislation referred to it;*
 - v. *To study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vii. ***To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);***
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 SUBJECTS UNDER THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, public audit policies, monetary policies, financial institutions (excluding those in securities exchange), economy, investment policies, competition, banking, insurance, national statistics, population, revenue policies including taxation, national planning and development, digital finance, including digital currency.
3. The Committee oversees the Ministry of National Treasury and Planning, Commission on Revenue Allocation and Office of the Controller of Budget.

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and Planning was constituted by the House on 27th October 2022 and comprises the following Members:

Chairperson

Hon. CPA. Kuria Kimani, MP
Molo Constituency

UDA Party

Vice-Chairperson

Hon. (Amb.) CPA. Langat Benjamin Kipkirui, MP
Ainamoi Constituency

UDA Party

Members

Hon. Dr. Keynan Wehliye Adan, MP
Eldas Constituency

Jubilee Party

Hon. CPA Oyula Joseph H. Maero, MP
Butula Constituency

ODM Party

Hon. Mboni David Mwalika, MP
Kitui Rural Constituency

WDM Party

Hon. Okuome Adipo Andrew, MP
Karachuonyo Constituency

ODM Party

Hon. Kipkoros Joseph Makilap, MP
Baringo North Constituency

UDA Party

Hon. CPA Rutto Julius Kipleting, MP
Kesses Constituency

UDA Party

Hon. Biego Paul Kibichiy, MP
Chesumei Constituency

UDA Party

Hon. Sunkuyia George Risa, MP
Kajiado West Constituency

UDA Party

Hon. Joseph Kamau Munyoro, MP
Kigumo Constituency

UDA Party

Hon. Sheikh Umul Ker Kassim, MP
Mandera County

UDM Party

Hon. Ithinji Shadrack Mwiti, MP
South Imenti Constituency

Jubilee Party

Hon. Dr. CPA Ariko N. John, MP
Turkana South Constituency

ODM Party

Hon. Machele Mohamed Soud, MP
Mvita Constituency

ODM Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff:

Mr. Benjamin Magut
Senior Clerk Assistant /Head of Secretariat

Ms Jeniffer Ndeto
Deputy Director, Legal Services

Mr. Salem Lorot
Legal Counsel I

Mr. Nebert Ekai
Clerk Assistant II

Mr. Benson Kamande
Clerk Assistant III

Mr. George Ndenjeshe
Fiscal Analyst III

Ms. Terry Ondiko
Fiscal Analyst III

Mr. Andrew Jumanne Shangarai
Principal Serjeant-At-Arms

Mr. Simon Odhiambo Ouko
Assistant Serjeant-At-Arms

Ms. Shamsa A. Abdi
Research Officer III

Ms. Nelly W. N Ondieki
Research Officer III

PART TWO

2.0 OVERVIEW OF THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 35 OF 2023).

2.1 ANALYSIS OF THE BILL

BACKGROUND

6. The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill (National Assembly Bill No. 35 of 2023) was read for a First Time on Wednesday, 26th July 2023 and was committed to the Departmental Committee on Finance and National Planning and Departmental Committee on Justice and Legal Affairs for review and reporting to the House pursuant to Standing Order 127
7. The Bill seeks to amend seventeen (17) Acts of Parliament relating to anti-money laundering, countering the financing of terrorism and countering the financing of proliferation of weapons of mass destruction in addressing deficiencies identified during the Mutual Evaluation of Kenya and matters incidental thereto.
8. In the Speaker's Communication from the Chair No. 51 of 2023, "Guidance on the Consideration of the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023 (National Assembly Bills No. 35 of 2023)" dated 2nd August 2023 (copy annexed), the Committee was assigned the proposed amendments to the following Acts of Parliament as contained in the Bill:
 - i. **The Capital Markets Act (Cap. 485A);**
 - ii. **The Insurance Act (Cap. 487);**
 - iii. **The Banking Act (Cap. 488);**
 - iv. **The Central Bank of Kenya Act (Cap. 491);**
 - v. **The Microfinance Act, 2006 (No. 19 of 2006);**
 - vi. **The National Payment System Act, 2011 (No. 39 of 2011); and**
 - vii. **The Limited Liability Partnership Act (No. 42 of 2011).**
9. The other proposed amendments were assigned to the Departmental Committee on Justice and Legal Affairs. In the Communication, the Speaker directed as follows:
 - i. that the Departmental Committee on Justice and Legal Affairs shall be the lead Committee for purposes of conducting public participation;
 - ii. that the Departmental Committee on Finance and National Planning is required to conduct public participation process and submit its report to the Departmental Committee on Justice and Legal Affairs for consolidation;

- iii. that the Committees bear in mind the requirements of Article 24 of the Constitution on the limitation of rights and the various court decisions that have outlined the manner of application of the Bill of Rights;
- iv. that the two Committees prioritize consideration of the Bill and report to the House soonest given that the Bill is also informed by various international obligations which require the country to have in place a robust legal framework to combat money laundering, financing of terrorism and proliferation of weapons.

SUMMARY OF LEGAL PROVISIONS

10. Below is the analysis of the various proposed amendments for the Committee's consideration.

2.2 Capital Markets Act (Cap. 485A)

11. The Bill seeks to amend the Capital Markets Act (Cap. 485A) to empower the Capital Markets Authority to supervise its licensees under the Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act apply.
12. The Proceeds of Crime and Anti-Money Laundering Act, 2009 (No. 9 of 2009) provides for the offense of money laundering and introduces measures for combating the offense, and provides for the identification, tracing, freezing, seizure and confiscation of the proceeds of crime. It came into force on 28th June, 2010. The Act establishes the Financial Reporting Centre whose principal objective is to assist in the identification of the proceeds of crime and the combating of money laundering and the financing of terrorism.
13. It is a requirement under the Act for a reporting institution to monitor on an ongoing basis all complex, unusual, suspicious, large, or such other transactions as may be specified in the regulations.
14. The Act provides for the establishment of the Anti-Money Laundering Advisory Board whose main function is to advise the Cabinet Secretary on policies, best practices and related activities to identify proceeds of crime or proceeds of unlawful activities and to combat money laundering activities; the exercise of the powers conferred to the Cabinet Secretary under the Act; advise the Financial Reporting Centre generally on its functions and the exercise of its powers under the Act; and act as a forum in which the Financial Reporting Centre, associations representing categories of reporting institutions, state organs and supervisory bodies can consult one another on anti-money laundering developments, concerns and initiatives.

15. The Bill proposes to insert a new section 12A after section 12 of the Capital Markets Act as follows—

12A. (1) Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Authority shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the Authority and whom the provision of the Proceeds of crime apply.

(2) In undertaking its mandate under subsection (1), the Authority may—

- (a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;*
- (b) conduct onsite inspection;*
- (c) conduct offsite surveillance;*
- (d) undertake consolidated supervision of a reporting institution and its group;*
- (e) compel the production of any document or information the Authority may require for the purpose of discharging its supervisory mandate under the Proceeds of Crime and Anti-Money Laundering Act, 2009;*
- (f) impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;*
- (g) issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;*
- (h) cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and*
- (i) take such action as is necessary to supervise and enforce compliance by reporting institutions in line with the provisions of the Proceeds of Crime and Anti-Money Laundering Act and any regulations, guidelines, rules, instructions, or directions made or issued thereunder.*

(3) For purposes of this section, “reporting institution” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

2.3 The Insurance Act (Cap 487)

16. The Bill seeks to amend the Insurance Act (Cap. 487) to empower the Insurance Regulatory Authority (IRA) to supervise its licensees and their agents under the Insurance Act to whom the provisions of

the Proceeds of Crime and Anti-Money Laundering Act, 2009, apply. The Bill also seeks to harmonise the licensing regime under the Act with the Financial Action Task Force (FATF) Standards.

17. The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The mandate of the FATF is to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system. In collaboration with other international stakeholders, the FATF also works to identify national-level vulnerabilities to protect the international financial system from misuse.
18. The FATF Recommendations set out a comprehensive and consistent framework of measures that countries should implement to combat money laundering and terrorist financing, as well as the financing of the proliferation of weapons of mass destruction.
19. Majorly, the proposed amendments seek to delete the word “registration” and replace it with “licensing”. The Insurance Act defines “registration” to mean registration under the Act and includes a renewal of registration. The Bill proposes to define “licensed person” to mean a person licensed under the Act as an insurer, reinsurer, broker, agent, insurance surveyor, risk manager, loss assessor, loss adjuster or claims settling agent.
20. The Bill proposes to insert a new section 196A after section 196 of the Insurance Act as follows—

196B. Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Authority shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the Authority and to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.

(2) In undertaking its mandate under subsection (1), the Authority may—

- (a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;*
- (b) conduct onsite inspection;*
- (c) conduct offsite surveillance;*
- (d) undertake consolidated supervision of a reporting institution and its group;*

- (e) *compel the production of any document or information the Authority may require for the purpose of discharging its supervisory mandate under the Proceeds of Crime and Anti-Money Laundering Act, 2009;*
- (f) *impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;*
- (g) *issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;*
- (h) *cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and*
- (i) *take such action as is necessary to supervise and enforce compliance by reporting institutions in line with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 and any regulations, guidelines, rules, instructions, or direction made or issued thereunder.*

(3) *For purposes of this section, “reporting institution” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.*

2.4 The Banking Act (Cap. 488)

21. The Bill seeks to amend the Banking Act (Cap. 488) to empower the Central Bank of Kenya to supervise institutions and agents of reporting institutions under the Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, apply.

22. The following are the amendments proposed:

- (i) Amendment of section 2 of the Banking Act by deleting the definition of “significant shareholder” and substituting it with the following new definition—

“significant shareholder” means a person including a beneficial owner, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to five percent or more of the share capital of an institution or a corporate entity seeking to become an institution;

- (ii) Amendment of section 2 of the Banking Act to insert a new definition of “beneficial owner” as follows—

“beneficial owner” means the natural person who ultimately owns or controls a legal person or arrangement or the natural person on whose behalf a transaction is conducted, and includes that person who exercises ultimate effective control over a legal person or arrangement;

- (iii) Amendment of section 31 (3) (a) of the Banking Act by deleting and replacing it as follows—

(a) the Central Bank may disclose any information referred to in subsection (2), *including information on anti-money laundering, counter-terrorism financing and countering proliferation financing to any monetary authority, fiscal or tax agency, fraud investigations agency, domestic or foreign counter parts, or the Financial Reporting Centre*, where such information is reasonably required for the proper discharge of the functions of the *Central Bank under the Proceeds of Crime and Anti-Money Laundering Act, 2009*.

- (iv) Amendment of section 31 (3) (b) of the Banking Act by deleting the proviso. In full, the provision provides as follows—

(b) the Deposit Protection Fund Board institutions licensed under this Act and institutions licensed under the Microfinance Act, 2006 (No. 19 of 2006), institutions licensed under the Sacco Societies Act, 2008 (No. 14 of 2008), institutions registered under the Co-operative Societies Act (Cap. 490), public utility companies and any other institution mandated to share credit information under any written law shall, in the ordinary course of business and in such manner and to such extent as the Cabinet Secretary may, in regulations, prescribe, exchange such information on non-performing loans as may, from time to time, be specified by the Central Bank in guidelines under section 33 (4):

Provided that the sharing of information with institutions outside Kenya shall only apply where there is a reciprocal arrangement;

- (v) Amendment of section 32 of the Banking Act by inserting the following new subsection immediately after subsection (5)—

(6) This section shall apply for anti-money laundering, counter-terrorism financing and countering proliferation financing purposes.

(vi) New section 33D provides as follows—

33D. (1) Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Central Bank shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the Central Bank and to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.

(2) In undertaking its mandate under subsection (1), the Central Bank may—

- (a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;*
- (b) conduct onsite inspection;*
- (c) conduct offsite surveillance;*
- (d) undertake consolidated supervision of an institution and its group;*
- (e) compel the production of any document or information the Central Bank may require for the purpose of discharging its supervisory mandate under the Proceeds of Crime and Anti-Money Laundering Act, 2009;*
- (f) impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism or countering proliferation financing purposes;*
- (g) issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;*
- (h) cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and*
- (i) take such action as is necessary to supervise and enforce compliance by reporting institutions in line with the provisions of the Proceeds of Crime and Anti-Money*

Laundering Act, 2009 and any regulations, guidelines, rules, instructions or direction made or issued thereunder.

(3) For purposes of this section, “reporting institution” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

(vii) New section 33E providing for penalties for violations relating to money laundering, terrorism financing. as follows—

(1) No institution, director, officer, employer, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under this section.

(2) 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.

2.5 The Central Bank of Kenya Act (Cap. 491)

23. The Bill seeks to amend the Central Bank of Kenya Act (Cap. 491) to empower the Central Bank of Kenya to supervise its licensees under the Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, apply.

24. The Bill seeks to provide for an additional object of the Central Bank of Kenya by amending section 4A (1) by inserting the following new paragraph immediately after paragraph (g)—

(h) pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, regulate and supervise, for anti-money laundering and combating the financing of terrorism and countering proliferation financing purposes, the following institutions—

(i) banks and their agents;

(ii) mortgage finance companies and their agents;

- (iii) *mortgage refinance companies and their agents;*
- (iv) *microfinance banks and their agents;*
- (v) *money remittance providers and their agents;*
- (vi) *foreign exchange bureaus and their agents;*
- (vii) *digital credit providers and their agents;*
- (viii) *payment service providers; and*
- (ix) *any other entity licensed by the Central Bank under any written law.*

2.6 Microfinance Act, 2006 (No. 19 of 2006)

25. The Bill seeks to amend the Microfinance Act, 2006, to empower the Central Bank of Kenya to supervise institutions licensed under the Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, apply.

26. The Bill seeks to insert new section 36B as follows—

36B. (1) Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Central Bank shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the Central Bank and to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.

(2) In undertaking its mandate under subsection (1), the Central Bank may—

- (a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;*
- (b) conduct onsite inspection;*
- (c) conduct offsite surveillance;*
- (d) undertake consolidated supervision of an institution and its group;*
- (e) compel the production of any document or information the Central Bank may require for the purpose of discharging its supervisory mandate under the Proceeds of Crime and Anti-Money Laundering Act, 2009;*
- (f) impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;*

- (g) *issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;*
- (h) *cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and*
- (i) *take such action as is necessary to supervise and enforce compliance by reporting institutions in line with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 and any regulations, guidelines, rules, instructions or direction made or issued thereunder.*
- (j) *Penalties for violations relating to money laundering, terrorism financing.*

27. The Bill also seeks to insert new section 36C on penalties for violations relating to money laundering, terrorism financing as follows—

36C. (1) No institution, director, officer, employer, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under this section.

(2) 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.*

2.7 The National Payment System Act, 2011 (No. 39 of 2011)

28. The Bill seeks to amend the National Payment System Act, 2011, to empower the Central Bank of Kenya to supervise institutions and agents of institutions under the National Payment Systems Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, apply.

29. The Bill seeks to insert a new section 17A on powers on anti-money laundering, combating the financing of terrorism and countering proliferation financing matters as follows—

17A. (1) Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Central Bank shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the Central Bank to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.

(2) In undertaking its mandate under subsection (1), the Central Bank may—

- (a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;
- (b) conduct onsite inspection;
- (c) conduct offsite surveillance;
- (d) undertake consolidated supervision of an institution and its group;
- (e) compel the production of any document or information the Central Bank may require for the purpose of discharging its supervisory mandate under the Proceeds of Crime and Anti-Money Laundering Act, 2009;
- (f) impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
- (g) issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism or countering proliferation financing purposes;
- (h) cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and
- (i) take such action as is necessary to supervise and enforce compliance by reporting institutions in line with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 and any regulations, guidelines, rules, instructions or direction made or issued thereunder.

(3) For purposes of this section, “reporting institution” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

30. The Bill seeks to insert new section 17B on penalties for violations relating to money laundering, terrorism financing as follows—

17B. (1) No institution, director, officer, employer, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under this section.

(2) 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.,

2.8 The Limited Liability Partnership Act (No.42 of 2011)

31. The Bill seeks to amend the Limited Liability Partnership Act, 2011, to provide the requirement to file a register of beneficial owners with the Registrar under the Act.

32. The Bill proposes the following amendments—

(i) Amendment of section 2 of the Limited Liability Partnerships Act, 2011, to provide for the following definitions: “beneficial owner” (which needs to be cross-referenced to the definition in the Companies Act), “Competent Authority”, “nominator”, and “nominee partner”.

(ii) Amendment of section 17(2) of the Act to insert the following new paragraph immediately after paragraph (f)—

(fa) a copy of the register of beneficial owners;

(iii) Amendment of section 29 of the Act (*Limited liability partnership to lodge an annual declaration of solvency or insolvency with Registrar*) by deleting the section and replacing it with the following new section—

29. (1) *A limited liability partnership shall file its annual returns with the Registrar within thirty days of the anniversary of its registration under this Act or any other period as the Registrar may upon application allow.*

(2) *The annual returns referred to under subsection (1) shall contain the following information—*

- (a) the address of the limited liability partnership's registered office and, if a post office box number is known, the physical address of that office;*
- (b) the limited liability partnership's principal business activities;*
- (c) a declaration of solvency or insolvency;*
- (d) the particulars prescribed by the regulations of—*
 - (i) the manager of a limited liability partnership;*
 - (ii) the partners; and*
 - (iii) any person appointed by the limited liability partnership as an authorized person.*

(3) *If a limited liability partnership fails to comply with the requirements of subsection (1), the limited liability partnership or any officer of the limited liability partnership in default is liable to pay to the Registrar an administrative penalty of two thousand shillings.*

(iv) The Bill seeks to insert a new section 31A on registers and documents to be kept as follows—

31A. (1) *A limited liability partnership shall keep at its registered office—*

- (a) a notice of registration issued under this Act;*
- (b) a register of the name and address of each partner, manager and legal representative where applicable;*
- (c) a copy of the most recent annual declaration of solvency or insolvency;*
- (d) a copy of any statement lodged with the Registrar under this Act;*
- (e) a copy of a certificate, if any, issued by the Registrar under this Act;*
- (f) a copy of the limited liability partnership agreement and any amendment thereto;*
- (g) a register of charges and security rights created under the Movable Property Security Rights Act, 2017; and*
- (h) any other documents that the Registrar may, from time to time, require to be kept.*

(2) A limited liability partnership shall lodge with the Registrar, a copy of the register of the name and address of each partner, manager and legal representative where applicable, within thirty days of its preparation.

(3) A limited liability partnership shall keep the documents in subsection (1) for a minimum period of seven years.

(4) The documents kept under subsection (1) shall be available for inspection or copying during ordinary business hours at the request of a partner.

(5) A partner who is deprived of the right to inspect the documents kept under subsection (1) may apply to the High Court to compel the limited liability partnership to provide the documents.

(6) A limited liability partnership that fails to comply with this section commits an offense and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings and, in the case of a continuing offense, to a further fine not exceeding fifty thousand shillings for each day that the offense continues.

(7) The provisions of this section shall apply to foreign limited liability partnerships.

- (v) The Bill seeks to insert a new section 31B on the requirement for every limited liability partnership to keep a register of its beneficial owners.
- (vi) The Bill seeks to insert a new section 31C on the requirement for every limited liability partnership (including foreign ones) to keep a register of nominee partners at its registered office.
- (vii) The Bill seeks to insert a new Part VIA to provide for the strike off of a limited liability partnership that is not carrying on business or is not in operation.
- (viii) The Bill seeks to delete section 34 of the Act (*Insolvency and winding up of limited partnership*) and substitute it with the following new section—

34. (1) If a limited liability partnership becomes insolvent, the provisions of the Insolvency Act, 2015, shall apply with respect to the conduct of the receivership or management of the affairs of the partnership.

(2) If a limited liability partnership becomes liquidated, the provisions of the Insolvency Act, 2015 shall apply.

34. Insolvency and winding up of limited partnership

(1) If a limited liability partnership becomes insolvent, the Fourth Schedule shall have effect with respect to the appointment of a receiver or manager in respect of the partnership and the conduct of the receivership or management of the affairs of the partnership.

(2) The Minister may make regulations, not inconsistent with the Fourth Schedule, providing for the insolvency and winding up of a limited liability partnership, or a foreign limited liability partnership.

- (ix) The Bill seeks to insert a new Part VIIA on foreign limited liability partnerships. It provides that a foreign limited liability partnership shall not carry on business in Kenya unless it is registered as a foreign limited liability partnership under the Act.

PART THREE

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

33. Following the call for memoranda from members of the public through the placement of adverts in the print media on **30th July 2023** requesting comments on the Bill and an invitation of stakeholders vide letter REF: **NA/DDC/F&NP/2023/082 dated 9th August 2023** stakeholders submitted as follows:

3.1 CENTRAL BANK OF KENYA

34. The Governor of the Central Bank of Kenya appeared before the Committee on 16th August 2023 and submitted as follows:

35. The Central Bank of Kenya appreciated amendments to the Banking Act as it covers a wide range of issues including beneficial ownership, AMLA/CFT/CPT powers of the Central Bank of Kenya (CBK) and penalties for AMLA/CFT/CPT violations. The Governor noted that the amendments will enable CBK to effectively supervise banks and mortgage finance companies which are licensed under the Banking Act. Some of the proposed amendments in the Banking Act are however not included in the Central Bank Act, Microfinance Act and National Payment System (NPS) Act.

36. In addition, Central Bank noted that money remittance providers, forex bureaus and digital providers are licensed under CBK Act Cap 491. Payment service providers are authorized/licensed under the National Payment System Act No. 2011. These financial institutions need to be subjected to the same AMLA/CFT/CPF legal regime as banks and mortgage finance companies. There is a need to amend the Central Bank Act, Microfinance Act to include the following:

- i. Introduction of a new definition of 'beneficial owner'
- ii. Introduction of AMLA/CFT/CPT violations
- iii. Introductions of penalties for AMLA/CFT/CPT.

37. The proposed amendments by the Central Bank of Kenya are necessary to address the deficiencies that were noted in the Mutual Evaluation Report and to provide the necessary powers to CBK to supervise microfinance banks, money remittance providers, forex bureaus, payment service providers and digital credit providers for AMLA/CFT/CPT purposes.

Proposed Amendments

(a) Central Bank Act Cap 491

38. Amend section 2 of the CBK Act by inserting the following new definitions:

'Significant shareholder' means a person including a beneficial owner, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting

to ten percent or more of the share capital of a money remittance provider or digital credit provider or digital credit provider;

'Beneficial owner' means the natural person who ultimately owns or controls a legal person or arrangement or the natural person on whose behalf a transaction is conducted, and includes that person who exercises ultimate effective control over a legal person or arrangement

Justification

The proposed amendment will enable the vetting of beneficial owners who are significant shareholders in money remittance providers and digital credit providers. This will further require CBK, money remittance providers and digital credit providers to identify persons who are exercising ultimate control in a money remittance provider or digital credit provider.

Committee Observation

The Committee agreed to the proposed amendment

39. Amend by insert the a new sections 51A, 51B, 51C immediately after section 51-

51A. The Central Bank may disclose any information permitted under this Act, including information on anti-money laundering, counter-terrorism financing and countering proliferation financing to any monetary authority, fiscal or tax agency, fraud investigations agency, domestic or foreign counterparts, or the Financial Reporting Center, where such information is reasonably required for the proper discharge of the functions of the Central Bank under the Proceeds of crime and Ant-Money Laddering Act, 2009 or this Act, or the requesting monetary authority, fiscal or tax agency, fraud investigations agency, domestic or foreign counterpart, or the Financial Reporting Centre.

Justification

The Central Bank lead by the CKB governor noted that the proposed amendment will enable CBK to share AMLA/CFT/CPT supervisory information with its counterparts and other competent bodies.

Committee Observations

The Committee noted that Section 31 (3)(a) in the Banking Act already provides for this and that further the Bill provides for its amendment in the same text as proposed by the Central Bank

51B. (1) Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Central Bank shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the Central Bank and to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act apply.

(2) In undertaking its mandate under subsection (1), the Central Bank may—

- (a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;
- (b) conduct onsite inspection;
- (c) conduct offsite surveillance;
- (d) undertake consolidated supervision of a money remittance provider, foreign exchange bureau, digital credit provider and its group;
- (e) Compel the production of any document or information the Central Bank may require for the purpose of discharging its supervisory mandate under the Proceeds of Crime and Anti Money Laundering Act, 2009 or this Act;
- (f) Impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism or countering proliferation financing purposes;
- (g) Issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
- (h) Cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and
- (i) Take such action as is necessary to supervise and enforce compliance by reporting institutions with the provisions of the Proceeds of Crime and Anti-Money Laundering Act and any regulations, guidelines, rules, instructions or direction made or issued thereunder or under this Act.

(3) For purposes of this section, “reporting institution” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

Justification

This will give CBK express powers over a wide range of AML/CFT/CPF supervisory issues which were identified in the mutual evaluation report as lacking.

Committee Observations

The Committee agreed with the proposed amendment

51C. (1) No money remittance provider, foreign exchange bureau, digital credit provider, director, officer, employer, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under this section.

(2) A person who violates or fails to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under this section-

- (a) in case of a legal person, to a penalty not exceeding five 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.*

Justification

This will provide an enforcement regime. The clause will clothe CBK with powers to penalize financial institutions for POCAMLA violations and violations of regulations, guidelines and instructions issued under the CBK Act. In addition, it will enhance the effectiveness of the AML/CFT/CPF laws.

Committee Observations

The Committee agreed with the proposed amendment

(b) The Microfinance Act

40. The Central Bank proposed the following new amendments to the Microfinance Act to strengthen the AML/CFT/CPF regime in the supervision of microfinance banks:

41. Amend section 2 of the Microfinance Act by introducing the following new definitions in alphabetical order:

“significant shareholder” means a person including a beneficial owner, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to ten percent or more of the share capital of a microfinance bank; or a corporate entity seeking to become a microfinance bank;

“beneficial owner” means the natural person who ultimately owns or controls a legal person or arrangement or the natural person on whose behalf a transaction is conducted, and includes that person who exercises ultimate effective control over a legal person or arrangement;

42. Amend Clause 36C (2) of the AML/CFT (Amendment) Bill, 2023 by deleting the opening paragraph and substituting therefor with the following new paragraph:

A person who violates or fails to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under section 36B of this Act-

Justification

The current paragraph gives the impression that the violation which is punishable under Clause 36C (2) of the Bill is the violation of Clause 36C (1) of the Bill. What the law should penalise is the direct violation of provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction, or instruction issued under the said Act or Microfinance Act and not the violation of or non-compliance with Clause 36C (1). Clause 36(C)(1) of the Bill is a command requiring every institution, director, officer, employer, agent or any person to comply with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under the Microfinance Act. As the Clause 36C (2) sits, if an institution violates for example section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the institution will be penalized for violating Clause 36(C)(1) of the Bill, and not Section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009. This will be problematic.

Committee Observations

The Committee agreed with the proposed amendment

43. Amend Clause 36C (2) of the AML/CFT (Amendment) Bill, 2023 (page 1092 of the published Bill) by deleting the opening paragraph and substituting therefor with the following new paragraph:

A person who violates or fails to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under section 36B of this Act-

Committee observations

The Committee agreed to the proposed amendment

In addition, the “*regulation, guideline, rule, direction and instruction*” referred to in Clause 36C (1) will not be issued under the said Clause but under Clause 36B(2)(g) of the current Bill (page 1091 of the published Bill). This error needs to be corrected.

Committee Observations

The Committee agreed to the proposed amendment

(c) The National Payment System Act

44. Amend Section 2 of the National Payment System Act by introducing the following new definitions in alphabetical order:

“significant shareholder” means a person including a beneficial owner, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to ten per cent or more of the share capital of a payment service provider or a corporate entity seeking to become a payment service provider;

“Beneficial owner” means the natural person who ultimately owns or controls a legal person or arrangement or the natural person on whose behalf a transaction is conducted, and includes that person who exercises ultimate effective control over a legal person or arrangement;

Justification

This will empower the CBK to vet and assess the fitness and propriety of persons who are beneficial owners but hold a significant shareholding (10 percent) in a payment service provider. It is an international AML/CFT/CPF requirement that beneficial owners who are significant shareholders in financial institutions should be vetted for fitness and propriety. This was a deficiency noted in the AML/CFT/CPF Mutual Evaluation of Kenya which should be addressed.

Committee Observations

The Committee agreed to the proposed amendments

45. Amend Clause 17B (2) of the AML/CFT (Amendment) Bill, 2023 by deleting the opening paragraph and substituting therefor with the following new paragraph:

A person who violates or fails to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under section 17A of this Act-

Justification

The current paragraph gives the impression that the violation which is punishable under Clause 17B (2) of the Bill is the violation of Clause 17B (1) of the Bill. What the law should penalise is the direct violation of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction, or instruction issued under the said Act or the National Payment System Act and not the violation of or non-compliance with Clause 17B (1). Clause 17B (1) of the Bill is a command requiring every institution, director, officer, employer, agent or any person to comply with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under the National Payment System Act. As the Clause 17B (2) sits, if a payment service provider violates for example, section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the payment service provider will be penalized for violating Clause 17B(1) of the Bill, and not Section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009. This will be problematic.

Committee Observation.

The Committee agreed to the proposed amendment

46. Amend Clause 17B (1) of the Bill as follows:

No payment service provider, director, officer, employer, cash merchant, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under section 17A of this Act.

Justification

There are no *regulations, guidelines, rules, directions or instructions* to be issued under Clause 17B (1) to justify the use of the phrase “***under this section***”. The *regulations, guidelines, rules, directions or instructions* will be issued under Clause 17A(2)(g). There is a need to make specific reference to the Clause under which the *regulations, guidelines, rules, directions or instructions* will be issued.

Committee observations

Committee agreed with the proposed amendments

In addition, Clause 17B (1) makes reference to “*institution*”. This term does not exist under the National Payment System Act. The term used in that statute is “payment service provider”. There is, therefore, a need to use the correct term as currently used in the National Payment System Act.

Committee Observations

Committee agreed with the proposed amendments

(d) The Banking Act

47. Amend Clause 33E (2) of the AML/CFT (Amendment) Bill, 2023 by deleting the opening paragraph and substituting therefor with the following new paragraph:

A person who violates or fails to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under section 36D of this Act-

Justification

The current paragraph gives the impression that the violation which is punishable under Clause 36E (2) of the Bill is the violation of Clause 33E(1) of the Bill. What the law should penalise is the direct violation of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or the Banking Act and not the violation of or non-compliance with Clause 33E (1). Clause 33E (1) of the Bill is a command requiring every institution, director, officer, employer, agent or any person to comply with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under the Banking Act. As the Clause 33E (2) suggests, if an institution violates for example section 44 of the

Proceeds of Crime and Anti-Money Laundering Act, 2009, the institution will be penalized for violating Clause 33E (1) of the Bill, and not Section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009. This will be problematic.

Committee observations

The Committee was of a different view that as currently worded the provision was not erroneous.

48. Amend Clause 33E (1) of the Bill as follows:

No institution, director, officer, employer, cash merchant, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under section 33D of this Act.

Justification

There are no regulations, guidelines, rules, directions or instructions to be issued under Clause 33E (1) to justify the use of the phrase “**under this section**”. The regulations, guidelines, rules, directions or instructions will be issued under Clause 33D (2) (g). There is a need to make specific reference to the Clause under which the regulations, guidelines, rules, directions or instructions” will be issued.

Committee Observations

The Committee agreed with the proposed amendment

3.2 CAPITAL MARKET AUTHORITY

49. The Chairperson of the Board and Chief Executive Officer of Capital Market Authority appeared before the Committee on 16th August 2023 and submitted as follows:

50. The Authority supports the Bill as it addresses the technical compliance deficiencies identified in Kenya's Mutual Evaluation Report (MER) touching on Capital Markets Authority as highlighted below:

- i. CMA does not have the legal basis to issue AML/CFT guidelines for the capital markets sector.

- ii. The financial sector supervisors (CMA included) do not have powers to compel production of documents from Financial Institutions (FIS) and this limits their access to information for AML/CFT purposes.
- iii. Sectoral laws (in our case the CMA Act) do not have provisions on AML/CFT requirements and therefore the powers to access information is for prudential purposes and not for AML/CFT purposes.
- iv. There are no legal or regulatory measures to facilitate cooperation or coordination between supervisors with their domestic and foreign counterparts for AML/CFT purposes.
- v. There is no requirement for supervisors to review the assessment of the ML/TF risk profile of a financial institution or group periodically, and when there are major events or developments in the management and operations of the FIs group.
- vi. The scope of laws is limited to prudential supervision and does not include AML/CTF supervision.
- vii. Sectoral laws do not provide for AML/CFT and do not cross-reference the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA).
- viii. Supervisors do not have explicit powers in their respective Acts to conduct AML/CFT inspections.
- ix. Sectoral laws do not cover Combating Financing of Terrorism (CFT) inspections.
- x. There are no specific legal or regulatory powers that authorize supervisors to impose sanctions for failure to comply with the AML/CFT requirements asset out in the POCAMLA and the POCAML Regulations.
- xi. The scope of powers to issue sanctions relates to non-compliance with prudential requirements contained in the respective sectoral Acts and not AML/CFT requirements.
- xii. Supervisors do not have a legal basis to exchange regulatory AML/CFT information with their domestic and foreign counterparts including Law Enforcement Agencies (LEAs).
- xiii. Supervisors have not established and implemented robust Combating Proliferation Financing (CPF) legal and institutional frameworks.

3.3 FINANCIAL REPORTING CENTRE

51. The Chief Executive Officer of the Financial Reporting Centre appeared before the Committee on 15th August 2023 and submitted as follows:
52. The FRC agreed with the proposal of the Bill for it to address the technical compliance deficiencies identified in Kenya's Mutual Evaluation Report (MER) that need to be addressed through legal reforms. This includes:
- i. Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) only contains AML requirements and does not cover CFT.
 - ii. POCAMLA and POTA do not have adequate provisions covering preventive measures in relation to CFT. Most of the requirements relating to TF preventive measures are not provided for in law.
 - iii. Since there are no CFT requirements in POCAMLA, supervisory bodies are not mandated to supervise and ensure compliance with CFT/CPF requirements. In addition, supervisory bodies have no power to impose sanctions for failure to comply with CFT/CPF requirements.
 - iv. POCAMLA does not prescribe that supervisory bodies should use the powers in their respective sectoral laws for AML/CFT supervision purposes. Sectoral laws do not provide for AML/CFT and do not cross-reference the POCAMLA.
 - v. Kenya does not have a range of proportionate and dissuasive civil and administrative sanctions for dealing with natural or legal persons that fail to comply with the AML/CFT requirements or non-compliance with AML/CFT obligations.
 - vi. Kenya does not have a legal basis for the implementation of requirements of targeted financial sanctions related to proliferation. Implementation of United Nations Security Council Resolutions (UNSCRs) on Proliferation Financing (PF) is not supported by the primary Act (POTA) as POTA does not cover PF and therefore the POTA Regulations, 2013 cannot provide for proliferation financing.
 - vii. There are no provisions that make money laundering and Terrorism Financing as extraditable offenses.
 - viii. There is a legal gap in the country in relation to Terrorism Financing (TF) and this is impeding the country's efforts to fight TF. This legal gap in relation to TF is also impacting the TF preventative measures.

- ix. The country does not have mechanisms for simplified Mutual Legal Assistance or simplified extradition.
- x. Virtual Assets (VAs) and Virtual Assets Service Providers (VASPs) are not prohibited and the country has not put in place regulatory frameworks to cover VASPs.
- xi. The POTA does not have provisions for sanctioning legal persons.
- xii. Supervisory authorities are not implementing risk-based supervision across the board.

3.4 OLD MUTUAL GROUP

53. The Old Mutual Group through written submission proposed the following amendments to the Bill:

54. Amend Section 12A to review the comprehensiveness of AML guidelines for all key industry players on:

- i. KYC and;
- ii. Third-party reliance management

55. Introduce clauses that enable availability, accessibility and reliability of Beneficial Ownership (BO) information to further address practical challenges for businesses in meeting their Ultimate Beneficial Ownership (UBO) obligations -for legal persons or legal arrangements.

56. Provide regulated entities with access to UBO information for verification purposes. e.g., similar to IPRS or KRA PIN checker

57. Amend the proposed Section 196B to provide that Insurance Regulatory Authority shall review the comprehensiveness of Anti-Money Laundering guidelines for all key industry players on KYC and third-party reliance management.

Committee Observations

The Committee noted the proposals by the stakeholder but observed that the amendments were expanding the scope of the Bill

3.5 BRITAM

58. The Britam Group through written submission proposed the following amendments to the Bill:

59. Amend the word “section 18” to read “section 19” as the heading “section 18” in the Insurance Act as it refers to Secrecy and not registration.

Justification

To correct the typo error.

Committee Observations

The Committee noted that the amendment as drafted was proper and there was no error in the Insurance Act

60. In addition, amend Section 196B to provide for penalties for violations relations relating to money laundering, terrorism financing under the Insurance Act.

Justification

- i. There are no penalties for violations relations relating to money laundering, terrorism financing under the Insurance Act. Prescribe the penalties specifically under the Insurance Act.
- ii. This Bill has also sought to introduce penalties for violations under the Banking Act. Refer to the amendments being proposed under the Banking Act i.e. section 33E and section 36C of the Microfinance Act where penalties for violations under the Microfinance Act.
- iii. The Civil penalties under the Proceed of Crime and Anti-Money Laundering Act, 2009, Section 24B are enforced by the Financial Reporting Centre and have to be paid to the Centre under section 24B (3).

Committee Observations

The Committee agreed with stakeholders on the need to provide penalties for violations relations relating to money laundering, terrorism financing under the Insurance Act.

3.6 KENYA BANKERS ASSOCIATION

61. The officials of the Kenya Bankers Association appeared before the Committee on 16th August 2023 and submitted as follows:

(a) Capital Market Act (Cap 485a)

62. Amend the Bill to clarify the scope and limitations of CMA with regards to the expanded supervisory role on AML/CFT and countering proliferation financing, particularly with regards to access to STR information and interpretation of regulations.

Justification

This will provide clarity on the scope/obligations and limitations of CMA in view of the pre-existing obligations bestowed on other regulatory bodies i.e., CBK and FRC with regards to supervision of reporting institutions. Consideration of collaboration between the regulatory bodies

and joint AML/CFT reviews/inspections to leverage expertise, capacity building and value addition.

Committee Observation

The Committee noted the proposal by the stakeholder. However, as provided for in the Bill, each regulatory Authority has a clear mandate

(b) Banking Act

63. Delete Clause 31(3)(b) the proviso which makes sharing of credit information for non-performing loans (by Banks, Saccos, Microfinance Institutions, KDIC, et al) outside the country conditional upon the receiving country having a reciprocal information sharing requirement with Kenya.

Justification

Removing this proviso means that if enacted, financial institutions shall share credit information with any country notwithstanding that the receiving country may not have a similar obligation to share information with Kenya hence exposing such customer's data. The proviso should be retained.

Committee Observation

The Committee was of a different view that the deletion of the proviso would achieve the intention of the Bill.

64. Delete Clause 33E, the proposal for violation of any provisions of the POCAMLA to a penalty not exceeding twenty million shillings is punitive for institutions.

Justification

This should be maintained to not exceed one million shillings per violation. No clear justification for the increase.

Committee Observation

The Committee rejected the proposed amendments noting that the penalty provided would be a deterrent to-would be offenders.

(c) Microfinance Act

65. Delete clause 36(C) that seeks to increase the penalties under the Microfinance act from Kenya shillings from 1 million to Kenya shillings 20 million.

Justification

No justification for the increase in penalties. The proposed increase is too punitive and excessive.

Committee Observation

The Committee rejected the proposed amendments noting that the penalty provided would be a deterrent to-would be offenders.

(d) Limited Liability Partnerships Act Limited Liability Partnership Act (No. 42 Of 2011)

66. Delete the proposal because it does not speak purely to combating Money laundering and terrorism financing and thus can be incorporated vide a different legislation such as a Miscellaneous Amendments Act.

Justification

This will create focus and harmony in addressing AML/CFT/CPF issues.

Committee Observation

The Committee was of a different view that the amendment proposed seeks to achieve the objective of the Bill to combat money laundering, terrorism financing and proliferation financing

3.7 ASSOCIATION OF MICROFINANCE INSTITUTIONS

67. The Association of Microfinance Institutions appeared before the Committee on 16th August 2023 and submitted as follows:

(a) Capital Markets Act

68. They noted that the Bill should clarify the empowerment of the Capital Markets Authority (CMA) to supervise licensees on matters relating to the Proceeds of Crime and Anti – Money Laundering (POCAMLA) Act 2009 and the penalties set out.

Justification

Important to clarify how CMA will co – work with other supervising institutions. Important for maximum penalty amounts to be set out. This will be essential to avoid double compliance.

Committee Observations

The Committee noted the proposal by the stakeholder. However, as provided for in the Bill, each regulatory Authority has a clear mandate

(b) Insurance Act

69. Amend the word “registered” with “licensed” since the IRA is tasked with the retention of records on beneficial ownership. The Empowerment of Insurance Regulatory Authority (IRA) and Commissioner to supervise licensees on matters relating to Proceeds of Crime and Anti – Money Laundering (POCAML) Act 2009.

Justification

It's important to clarify how IRA & Commissioners will co – work with other supervising institutions. Also, the retention of records should be a licensee matter and not primarily that of the IRA. Its therefore important to update the Act so that the roles of the IRA & Commissioner are unified.

Committee Observations

The Committee noted the proposal by the stakeholder. However, as provided for in the Bill, each regulatory Authority has a clear mandate.

(c) Banking Act

70. Amend to capture beneficial ownership in determining significant shareholders, the right of CBK to share information with other authorities and the Empowerment of CBK to supervise licensees on matters relating to Proceeds of Crime and Anti – Money Laundering (POCAML) Act 2009.

Justification

It's important to clarify how CBK will co – work with other supervising institutions thereby ensuring there is clarity on the identity of significant shareholders and will allow for information sharing on POCAML matters.

Committee Observations

The Committee noted that the proposed amendment has already been provided for in the Bill.

(d) Microfinance Act

71. Amend the Bill to clarify the non-licensee who operate the Microfinance institutions.

Justification

There is a need to clarify the position for non – licensees of CBK who operate microfinance businesses.

Committee Observation

The Committee noted the proposal by the stakeholder. However, as provided for in the Bill, each regulatory Authority has a clear mandate

(e) Limited Liability Partnership Act

72. Amend the Bill to capture “nominee partners” and “beneficial owners”, the amendments to require the maintaining of certain records by LLPs.

Justification

It is important to ensure that LLP provisions are harmonized with those in the Companies Act (relating to beneficial ownership) and those in the Insolvency Act on matters to do with winding up/liquidation.

Committee Observations

The Committee noted the proposed amendment by the stakeholder but was of the view that it was beyond the scope of the Bill.

3.3 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

73. The officials of ICPAK appeared before the Committee on 16th August 2023 and submitted as follows:

(a) Capital Markets Act

74. Amend to read subsection 12 (A)(2)(e) by deleting *compel* and replacing it with *request*. Access to information by the Authority is already provided for under the Access to Information Act 2016. Since Section 6 of the Access to Information Act provides a limitation on the right of access to information, the use of compulsion violates this provision.

Justification

To be in conformity with Section 6 on limitation and 8 on application of the Access to Information Act 2016.

Committee Observation

The Committee rejected the proposal by the stakeholder and noted that the provision was proper to achieve the objective of the Bill

75. Delete Clause 12 (A) 2(f) as this will create a duplication of functions that FRC has been mandated to perform.

Justification

Giving the Authority powers to impose sanctions may lead to duplicity of functions with FRC. Section 24B (1) of the Proceeds of Crime and Anti-Money Laundering Act, 2009 provides for the powers of the Financial Reporting Centre to impose civil penalties for non-compliance with provisions on anti-money laundering, combating the financing of terrorism and countering the proliferation financing purposes.

Committee Observation

The Committee rejected the proposed amendment noting that the proposed new section 12 A empowers the Capital markets Authority to regulate, supervise and enforce compliance for Anti-Money Laundering. Combating the Financing of Terrorism and Countering Proliferation Financing. This mandate does not overlap with those of the FRC.

(b) Insurance Act

76. Amend clause 128 of the Bill to read

“The Liquidator shall maintain information and records on beneficial ownership of the Insurer for at least ~~five~~ seven years after the date from which the company is dissolved.”

Justification

Five years is not aligned with the framework of record keeping of seven years as provided for in Kenya. Amending will align it with the Companies Act which requires records to be kept for at least seven years.

Committee Observation

The Committee agreed with the proposed amendments

77. Amend clause 194 of the Bill to read

*“ A person who makes a false or misleading statement in an application for license or renewal of license or alteration of a license, or in any document furnished under this Act to the Commissioner with or in support of or in connection with an application for license or renewal of license, commits an offense and is liable on conviction to a fine not exceeding **five hundred thousand shillings** or to imprisonment for a period not exceeding three years or to both.”*

Justification

The fine of five thousand shillings is too lenient and there is a need to make it more punitive as a deterrence to the would-be offenders.

Committee Observation

The Committee considered the proposal. However, it noted that the proposal in the Bill was in relation to licensing and registration.

78. Amend Clause 196 (A) (2)(2) to read

“The Liquidator shall maintain information and records on beneficial ownership of the Insurer for at least ~~five~~ seven years after the date from which the company is dissolved.”

Justification

Five years is not aligned with the framework of record keeping of seven years as provided for in Kenya. Amending will align it with the Companies Act which requires records to be kept for at least seven years.

Committee Observation

The Committee agreed with the proposed amendments

79. Amend subsection 196 (b) (2) (f) by deleting *compel* and replace with *request*.

Justification

Access to information by the Authority is already provided for under the Access to Information Act 2016. Since Section 6 of the Access to Information Act provides a limitation on the right of access to information, the use of compulsion violates this provision.

Committee Observation/Resolution

The Committee rejected the proposal by the stakeholder and noted that the provision was proper to achieve the objective of the Bill.

80. Amend Clause 196B 2(d) since the term group has not been defined and it may entail affiliates that are already supervised by another Supervisory Authority.

Justification

The term group requires to be defined to provide clarity on the regulatory reach of a Supervisory Authority circumstances in which entities operate within a Group.

Committee Observation

The Committee rejected the proposal and noted that the paragraph was clear.

(c) Banking Act

81. Retain clause 31 (3) (b) of the Act. The bill seeks to delete the sharing of information with institutions outside Kenya and shall only apply where there is a reciprocal arrangement.

Justification

Sharing of information should be based on reciprocity, for instance, Kenya is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes. Consider the merits and demerits of deleting such especially with jurisdictions that are unwilling to share information on a reciprocal basis like Panama.

Committee Observation

The Committee was of a different view that the deletion of the proviso would achieve the intention of the Bill.

3.9 INSURANCE REGULATORY AUTHORITY

82. Through written submission Ref CFN/IRA/00/028/01 dated 14th August 2023 Insurance Regulatory Authority is in support of the proposal to amend laws relating to Anti-Money Laundering and Combating fo financing Terrorism and financing proliferation of weapons of mass destruction.

3.10 KENYA LAW REFORM COMMISSION

83. Through written submission the Kenya Law Reform Commission Submitted as follows:
84. Amend Section 195 of the Insurance Act by deleting the word “Minister” and substituting it with “Cabinet Secretary”. Further, the word “Minister” be deleted wherever it appears in the body of the Act and substituted with the words “Cabinet Secretary”.

Justification:

Although the Constitution provides under clause 7 of the Sixth Schedule that “all law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the Constitution”, the Insurance Act interchangeably uses the terms “Minister” and “Cabinet Secretary”, hence the need to harmonize them.

Committee Obersations

The Committee agreed with the proposed amendment

85. Amend Section 205 of the Insurance Act to renumber the existing section as subsection (1) before making the new addition.

Justification:

The current section does not have a subsection, hence the need to renumber the existing section as subsection (1) before inserting the new subsection (2).

Committee Observation

Committee agreed with the proposed amendment

86. Amend Section 2 of the Banking Act to Cross-reference the proposed new definition of “beneficial owner” with the definition under the Companies Act, instead of providing for the same definition. The term is already defined under the Companies Act. The cross reference should read as follows—

“beneficial owner” has the meaning assigned to it under the Companies Act.

Justification:

The proposed definition under the Banking Act is unnecessary repetition. By doing the cross-referencing, the Companies Act remains as the substantive legislation on the definition, for purposes of citation.

Committee Observation

The Committee agreed with stakeholder proposed amendment

87. Amend the proposed new section 34E (2) of the Bill by inserting the phrase “on conviction” between the word “shall” and “be”.

Justification:

The proposed new section as drafted takes away a person’s right to presumption of innocence as contemplated under Article 50(2) (a) of the Constitution.

Committee Observation

88. Amend the proposed new section 36C (2) of the Bill by inserting the phrase “on conviction” between the word “shall” and “be”.

Committee Observations

Committee agreed with the proposed amendment

PART FOUR

4.0 COMMITTEE OBSERVATIONS

89. In 2021-2022, Kenya underwent its second Anti-Money Laundering and Counter-Terrorism Financing Mutual Evaluation (ME), a peer review assessment by the ESAAMLG to assess Kenya's compliance with global Anti-Money Laundering, Counter-Financing of Terrorism and Counter-Financing of Proliferation of Weapons of Mass Destruction (AML/CFT/CPF) standards. Kenya's Mutual Evaluation Report (MER) was adopted by the ESAAMLG Council of Ministers in September 2022.
90. The MER summarises the AML/CFT/CPF regime in the country, analyses the extent to which Kenya's AML/CFT/CPF laws comply with the FATF Recommendations and their level of effectiveness. It also identifies deficiencies in Kenya's AML/CFT/CPF framework and provides recommendations to strengthen the country's AML/CFT/CPF regime.
91. The FATF Assessment Methodology examined two broad areas, namely:
- i. Technical Compliance (TC) Assessment – Examines the country's legal and regulatory framework and assesses whether the country has the legal requirements in place. Technical compliance ratings can be either a C – Compliant, LC – Largely Compliant, PC – Partially Compliant or NC – Non Compliant;
 - ii. Effectiveness Assessment – Examines implementation of the legal and regulatory framework and assesses the practical implementation of the country's AML/CFT/CPF regime in line with the FATF Standards. Effectiveness ratings can be either a High – (HE) High Level of Effectiveness; Substantial - (SE) Substantial Level of Effectiveness; Moderate – (ME) Moderate Level of Effectiveness, or Low – (LE) Low Level of Effectiveness level of effectiveness.
92. In terms of Technical Compliance, Kenya was rated as follows
- i. Compliant (C) with 2 Recommendations;
 - ii. Largely Compliant (LC) with 1 Recommendation;
 - iii. Partially Compliant (PC) with 26 Recommendations and,
 - iv. Non-Compliant (NC) with 11 Recommendations.
93. In terms of the Effectiveness Assessment, the MER for Kenya concluded that the country had;
- i. Low Level of Effectiveness in nine (9) out of the eleven (11) Immediate Outcomes (IOs) and,
 - ii. Moderate Level of Effectiveness in two (2) out of the eleven (11) Immediate Outcomes.
94. Some of the major deficiencies picked from the MER that need to be addressed through legal reforms include:

- iii. Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) only contains AML requirements and does not cover CFT.
- iv. POCAMLA and POTA do not have adequate provisions covering preventive measures in relation to CFT. Most of the requirements relating to TF preventive measures are not provided for in law.
- v. Since there are no CFT requirements in POCAMLA, supervisory bodies are not mandated to supervise and ensure compliance with CFT/CPF requirements. In addition, supervisory bodies have no power to impose sanctions for failure to comply with CFT/CPF requirements.
- vi. POCAMLA does not prescribe that supervisory bodies should use the powers in their respective sectoral laws for AML/CFT supervision purposes. Sectoral laws do not provide for AML/CFT and do not cross-reference the POCAMLA.
- vii. Kenya does not have a range of proportionate and dissuasive civil and administrative sanctions for dealing with natural or legal persons that fail to comply with the AML/CFT requirements or non-compliance with AML/CFT obligations.
- viii. Kenya does not have a legal basis for the implementation of requirements of targeted financial sanctions related to proliferation. Implementation of United Nations Security Council Resolutions (UNSCRs) on Proliferation Financing (PF) is not supported by the primary Act (POTA) as POTA does not cover PF and therefore the POTA Regulations, 2013 cannot provide for proliferation financing.
- ix. There are no provisions that make money laundering and Terrorism Financing as extraditable offenses.
- x. There is a legal gap in the country in relation to Terrorism Financing (TF) and this is impeding the country's efforts to fight TF. This legal gap in relation to TF is also impacting the TF preventative measures.

PART FIVE

5.0 COMMITTEE RECOMMENDATION

95. The Committee, having considered the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill (National Assembly Bill No. 35 of 2023) and the submissions from members of the Public and stakeholders **recommends that the House approves the Bill** subject to the proposed amendments in the Schedule of amendments.

PART SIX

6.0 SCHEDULE OF PROPOSED AMENDMENTS

96. The Committee proposes the following amendments to be considered by the House in the Committee stage:

SCHEDULE

THAT the Schedule to the Bill be amended—

(a) in the proposed amendments to the Capital Markets Act—

- (i) in the proposed new section 12A by deleting the expression “12” and substituting therefor the expression “12A” appearing in the opening statement;
- (ii) by renumbering the proposed new section 12A as 12B.

Justification:

The Act already contains section 12A. The amendments therefore seek to place the amendments after section 12A and not section 12.

(iii) by inserting the following new item immediately after the proposed new section 12A—

New Rights and freedoms
Insert the following new section immediately after section 35
35A. All persons subject to this Act shall enjoy all rights and fundamental freedoms enshrined in the Constitution unless limited to the extent specified in Article 24 of the Constitution, this Act or any other Act.

New Limitation of right to privacy
35B. (1) The right to privacy guaranteed under Article 31 of the Constitution is hereby limited under Article 24 of the Constitution only to the nature and extent contemplated under subsection (2).

(2) Where a person is suspected or accused of an offence under this Act—

(a) the person’s home or property may be searched;

- (b) the person's possessions may be seized;
- (c) information relating to that person's financial, family or private affairs where required may be revealed; or
- (d) the privacy of a person's communications may be investigated or otherwise interfered with.

(3) A limitation of a right under subsection (1) shall apply only for the purpose of the prevention, detection, investigation and prosecution of proceeds of crime, money laundering and financing of terrorism.

Justification:

The proposed amendment seeks to align the amendments proposed to the Act to the requirements of Article 24 of the Constitution.

(b) in the proposed amendments to the Insurance Act—

- (i) in the proposed amendment to section 128 by deleting the word “five” and substituting therefor the word “seven”;

Justification:

The proposed amendment seeks to align the provision to the Companies Act which provides for the keeping of records for seven years.

- (ii) by inserting the following rows immediately after the proposed new section 196B—
Penalties for violations
196C. (1) No institution, director, officer, employer, relating to moneyagent or any other person shall violate or fail to comply laundering, terrorism with any provision of the Proceeds of Crime and Anti-financing. Money Laundering Act, 2009, or any regulation,

guideline, rule, direction or instruction issued under the said Act or under this section.

(2) 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.

New Rights and fundamental freedoms **196D.** All persons subject to this Act shall enjoy all rights and fundamental freedoms enshrined in the Constitution unless limited to the extent specified in Article 24 of the Constitution, this Act or any other Act.

New Limitation of right to privacy **196E.** (1) The right to privacy guaranteed under Article 31 of the Constitution is hereby limited under Article 24 of the Constitution only to the nature and extent contemplated under subsection (2).

(2) Where a person is suspected or accused of an offence under this Act—

- (e) the person's home or property may be searched;
- (f) the person's possessions may be seized;
- (g) information relating to that person's financial, family or private affairs where required may be revealed; or

(h) the privacy of a person's communications may be investigated or otherwise interfered with.

(3) A limitation of a right under subsection (1) shall apply only for the purpose of the prevention, detection, investigation and prosecution of proceeds of crime, money laundering and financing of terrorism.

Justification:

The proposed amendments seek to provide for penalties for violations relating to money laundering, terrorism financing and to align the Act to the requirements of Article 24 of the Constitution.

(iii) by deleting the proposed amendment to section 205 and substituting therefor the following—

s. 205

Number the existing provision as “1”

Insert the following new subsection—

(2) Where a person was registered under section 19 prior to the commencement of the Anti-Money Laws and Combating of Terrorism Financing Laws (Amendment) Act, 2023, that person shall be deemed to have been licensed under this Act.

Justification:

The amendment seeks to ensure that the provision is well-numbered.

(c) in the proposed amendments to the Banking Act—

(i) by deleting the proposed new definition “beneficial owner” and substituting therefor the following new definition—

“beneficial owner” has the meaning assigned to it under the No. 17 of Companies Act. 2015.

Justification:

The proposed definition under the Banking Act is unnecessary repetition. By doing the cross-referencing, the Companies Act remains as the substantive legislation on the definition, for purposes of citation.

(ii) in the proposed new section 33E (1) by deleting the words “this section” and substituting therefor the words “section 33D of this Act”.

Justification:

The proposed amendment seeks to align the provision to the proposed new section 33D which makes reference to regulations, guidelines, rules, directions or instructions.

(iii) in the proposed new section 33E (2) by inserting the words “on conviction” immediately after the word “shall”.

Justification:

The proposed new section as drafted takes away a person’s right to presumption of innocence as contemplated under Article 50(2) (a) of the Constitution. The proposed amendment seeks to align this.

(iv) by inserting the following new item immediately after the proposed new section 33E—

	Insert the following new section immediately after section 54
New	Rights and 54A. All persons subject to this Act shall enjoy all rights and fundamental freedoms enshrined in the Constitution unless limited to the extent specified in Article 24 of the Constitution, this Act or any other Act.
New	Limitation 54B. (1) The right to privacy guaranteed under Article 31 of the Constitution is hereby limited under Article 24 of the Constitution

only to the nature and extent contemplated under subsection (2).

(2) Where a person is suspected or accused of an offence under this Act—

(i) the person's home or property may be searched;

(j) the person's possessions may be seized;

(k) information relating to that person's financial, family or private affairs where required may be revealed; or

(l) the privacy of a person's communications may be investigated or otherwise interfered with.

(3) A limitation of a right under subsection (1) shall apply only for the purpose of the prevention, detection, investigation and prosecution of proceeds of crime, money laundering and financing of terrorism.

Justification:

The proposed amendment seeks to align the amendments proposed to the Act to the requirements of Article 24 of the Constitution.

(d) in the proposed amendments to the Microfinance Act—

(i) by inserting the following new row immediately before the proposed new section 36B—

s. 2

Insert the following definitions in their proper alphabetical sequence—

“beneficial owner” has the meaning assigned to it under the Companies Act.

No. 17 of
2015.

“significant shareholder” means a person including a beneficial owner, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to ten per cent or more of the share capital of a money remittance provider or digital credit provider; or a corporate entity seeking to become a money remittance provider or digital credit provider;

Justification:

The proposed definitions seek to define the terms as contained in the Bill.

(ii) in the proposed new section 36C (2) by inserting the words “on conviction” immediately after the word “shall”.

Justification:

The proposed new section as drafted takes away a person’s right to presumption of innocence as contemplated under Article 50(2) (a) of the Constitution. The proposed amendment seeks to rectify this.

(iii) by inserting the following new item immediately after the proposed new section 36C—

	Insert the following new section immediately after section 47
New	Rights and freedoms 47A. All persons subject to this Act shall enjoy all rights and fundamental freedoms enshrined in the Constitution unless limited to the extent specified in Article 24 of the Constitution, this Act or any other Act.
New	Limitation of right to privacy 47B. (1) The right to privacy guaranteed under Article 31 of the Constitution is hereby limited under Article 24 of the Constitution

only to the nature and extent contemplated under subsection (2).

(2) Where a person is suspected or accused of an offence under this Act—

(m) the person's home or property may be searched;

(n) the person's possessions may be seized;

(o) information relating to that person's financial, family or private affairs where required may be revealed; or

(p) the privacy of a person's communications may be investigated or otherwise interfered with.

(3) A limitation of a right under subsection (1) shall apply only for the purpose of the prevention, detection, investigation and prosecution of proceeds of crime, money laundering and financing of terrorism.

Justification:

The proposed amendment seeks to align the amendments proposed to the Act to the requirements of Article 24 of the Constitution.

(e) in the proposed amendments to the Central Bank of Kenya Act—

(i) by inserting the following new row immediately before the proposed amendments to section 4A (1)—

s. 2 Insert the following definitions in their proper alphabetical sequence—

“beneficial owner” has the meaning assigned to it under the

No. 17 of Companies Act.

2015.

“significant shareholder” means a person including a beneficial owner, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to ten per cent or more of the share capital of a money remittance provider or digital credit provider; or a corporate entity seeking to become a money remittance provider or digital credit provider;

Justification:

The proposed definitions seek to define the terms as contained in the Bill. This will enable the vetting of beneficial owners who are significant shareholders in money remittance providers. This will further require CBK, money remittance providers and digital credit providers to identify persons who are exercising ultimate control in a money remittance provider or digital credit provider.

(ii) by inserting the following new row immediately after the proposed amendments to section 4A (1)—

Insert the following new sections immediately after section 51—

New Powers on anti-money laundering, combating the financing of terrorism and countering proliferation financing matters.	51A. (1) Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Central Bank shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the Central Bank and whom the provision of the Proceeds of crime apply. (2) In undertaking its mandate under subsection (1), the Central Bank may— (a) vet proposed significant shareholders, proposed beneficial owners, proposed
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- directors and senior officers of a reporting institution;
- (b) conduct onsite inspection;
- (c) conduct offsite surveillance;
- (d) undertake consolidated supervision of a reporting institution and its group;
- (e) compel the production of any document or information the Central Bank may require for the purpose of discharging its supervisory mandate under the Proceeds of Crime and Anti-Money Laundering Act, 2009;
- (f) impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
- (g) issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
- (h) cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and
- (i) take such action as is necessary to supervise and enforce compliance by reporting institutions in line with the provisions of the Proceeds of Crime and Anti-Money Laundering Act and any regulations, guidelines, rules,

instructions or direction made or issued thereunder.

(3) For purposes of this section, “reporting institution” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

New Penalties for violations relating to money laundering, terrorism financing

51B. (1) No money remittance, foreign exchange bureau, digital credit provider, director, officer, employer, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under this section.

(2) A person who violates or fails to comply with the provisions of subsection (1) shall, upon conviction, be liable—

- (a) in case of a legal person, to a penalty not exceeding five 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.

New Rights and fundamental freedoms

51C. All persons subject to this Act shall enjoy all rights and fundamental freedoms enshrined in the Constitution unless limited to

		the extent specified in Article 24 of the Constitution, this Act or any other Act.
New	Limitation of right to privacy	<p>51D. (1) The right to privacy guaranteed under Article 31 of the Constitution is hereby limited under Article 24 of the Constitution only to the nature and extent contemplated under subsection (2).</p> <p>(2) Where a person is suspected or accused of an offence under this Act—</p> <ul style="list-style-type: none"> (a) the person’s home or property may be searched; (b) the person’s possessions may be seized; (c) information relating to that person’s financial, family or private affairs where required may be revealed; or (d) the privacy of a person’s communications may be investigated or otherwise interfered with. <p>(3) A limitation of a right under subsection (1) shall apply only for the purpose of the prevention, detection, investigation and prosecution of proceeds of crime, money laundering and financing of terrorism.</p>

Justification:

The proposed new section 51A seeks to give the Central Bank express powers over a wide range of AML/CFT/CPF supervisory issues which were identified in the mutual evaluation report as lacking.

The proposed new section 51B seeks to provide an enforcement regime. The section will clothe the Central Bank with powers to penalise financial institutions for POCAMLA violations and violations

of regulations, guidelines and instructions issued under the Central Bank Act. This will enhance the effectiveness of the AML/CFT/CPF laws.

The proposed new sections 51C and 51D seek to align the amendments proposed to the Act to the requirements of Article 24 of the Constitution.

- (f) in the proposed amendments to the National Payment Systems Act—
- (i) by inserting the following new item immediately before the proposed new section 17A—

s. 2 Insert the following definitions in their proper alphabetical sequence—

“beneficial owner” has the meaning assigned to it under the No. 17 of Companies Act. 2015.

“significant shareholder” means a person including a beneficial owner, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to ten per cent or more of the share capital of a money remittance provider or digital credit provider; or a corporate entity seeking to become a money remittance provider or digital credit provider;

Justification:

The proposed definitions seek to define the terms as contained in the Bill.

- (ii) in the proposed new section 17B (2) by inserting the words “, on conviction,” immediately after the word “shall”.

Justification:

The proposed new section as drafted takes away a person’s right to presumption of innocence as contemplated under Article 50(2) (a) of the Constitution. The proposed amendment seeks to rectify this.

(iii)in the proposed new section 17B (1) by deleting the word “institution” and substituting therefor the words “payment service provider” and deleting the words “this section” and substituting therefor the words “section 17A of this Act”.

Justification:

The proposed new section 17B (1) makes reference to “institution” but the right term used in the National Payment System Act is “payment service provider”. The amendment seeks to correct this. Further, the amendment seeks to align the provision to the proposed new section 17A which makes reference to regulations, guidelines, rules, directions or instructions.

(iv)by inserting the following new item immediately after the proposed new section 17B—

New Rights and freedoms **17C.** All persons subject to this Act shall enjoy all rights and fundamental freedoms enshrined in the Constitution unless limited to the extent specified in Article 24 of the Constitution, this Act or any other Act.

New Limitation of right to privacy **17D.** (1) The right to privacy guaranteed under Article 31 of the Constitution is hereby limited under Article 24 of the Constitution only to the nature and extent contemplated under subsection (2).

(2) Where a person is suspected or accused of an offence under this Act—

(q) the person’s home or property may be searched;

(r) the person’s possessions may be seized;

(s) information relating to that person’s financial, family or private affairs where required may be revealed; or

(t) the privacy of a person's communications may be investigated or otherwise interfered with.

(3) A limitation of a right under subsection (1) shall apply only for the purpose of the prevention, detection, investigation and prosecution of proceeds of crime, money laundering and financing of terrorism.

Justification:

The proposed amendment seeks to align the amendments proposed to the Act to the requirements of Article 24 of the Constitution.

(g) in section 2 of proposed amendments to the Limited Liability Partnerships Act by deleting the proposed new definition "beneficial owner" and substituting therefor the following new definition—

"beneficial owner" has the meaning assigned to it under the No. 17 of Companies Act, 2015.

THE NATIONAL ASSEMBLY PARLIAMENTARY DEPARTMENT	
DATE: 17 AUG 2023	DAY: Day
TABLED BY:	Ben George Mung'ara MP
CLERK AT THE TABLE:	On behalf of the chairperson Anne Shumba

Justification:

The proposed definition under the Limited Liability Partnerships Act is unnecessary repetition. By doing the cross-referencing, the Companies Act remains as the substantive legislation on the definition, for purposes of citation.

SIGNED. Ben George Mung'ara DATE. 17/08/2023

HON. (AMB.) CPA. LANGAT BENJAMIN KIPKIRUI, MP
VICE CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING



THE NATIONAL ASSEMBLY
13TH PARLIAMENT - SECOND SESSION (2023)
COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION LIST

Date: 17/08/2023.

Venue: Committee room 9.

AGENDA: I undersigned adopts the report on the consideration of the Anti-Money Laundry and Combating of Terrorism Financing Laws (Amendment) Bill (National Assembly Bill No. 35 of 2023)

No.	NAME	SIGNATURE
1.	Hon. (CPA). Kuria Kimani, MP - Chairperson	
2.	Hon. (Amb). Benjamin Kipkirui Langat, MP - Vice Chairperson	
3.	Hon. Dr. Adan Keynan Wehliye, MP	
4.	Hon. George Sunkuyia Risa, MP	
5.	Hon. (CPA) Joseph Maero Oyula, MP	
6.	Hon. Andrew Adipo Okuome, MP	
7.	Hon. David Mwalika Mboni, MP	
8.	Hon. Joseph Makilap Kipkoros, MP	
9.	Hon. Joseph Kamau Munyoro, MP	
10.	Hon. (CPA) Julius Kipletting Rutto, MP	
11.	Hon. Paul Kibichiy Biego, MP	
12.	Hon. Umul Ker Sheikh Kassim, MP	
13.	Hon. Dr. Shadrack Mwiti Ithinji, MP	
14.	Hon. Dr. John Ariko Namoit, MP	
15.	Hon. Mohamed Soud Machele, MP	

MINUTES OF THE 70TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 17TH AUGUST 2023 AT 2.30 PM IN THE COMMITTEE ROOM 9 MAIN PARLIAMENT BUILDING.

PRESENT

1. Hon. Benjamin Kipkirui Langat, MP - Vice- Chairperson
2. Hon. Andrew Adipo Okuome, MP
3. Hon. David Mwalika Mboni, MP
4. Hon. George Sunkuiya Risa, MP
5. Hon. Umul Ker Sheikh Kassim, MP
6. Hon. Joseph Kamau Munyoro, MP
7. Hon. Joseph Maero Oyula, MP
8. Hon. (Dr.) John Ariko Namoit, MP
9. Hon. Joseph Makilap Kipkoros, MP

ABSENT WITH APOLOGY

1. Hon. Francis Kuria Kimani, MP - Chairperson
2. Hon. Paul Kibichiy Biego, MP
3. Hon. Dr. Shadrack Mwiti Ithinji, MP
4. Hon. Julius Kipletting Ruto, MP
5. Hon. Adan Keynan Wehliye, MP
6. Hon. Mohamed Soud Machele, MP

IN ATTENDANCE

SECRETARIAT

1. Mr. Benjamin Magut - Senior Clerk Assistant
2. Mr. Nebert Ikai - Clerk Assistant I
3. Mr. Salem Lorot - Legal Counsel I
4. Mr. George Ndenjeshe - Fiscal Analyst
5. Ms. Nelly Ondieki - Researcher Officer
6. Ms. Shamsa Abdi - Research Officer
7. Mr. Simon Ouko - Serjeant-At-Arms
8. Mr. Mwangi Muchiri - Audio Officer
9. Mr. Alfas Mulunda - Intern

MIN. NO.254/2023: PRELIMINARIES

The Chairperson called the meeting to order at Thirty Minutes past TWO O'clock followed by introductions and a word of prayer.

MIN. NO. 255/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

Minutes the 65th sitting held on 15th August 2023 at 10.30 am were confirmed as a true record of the proceeding of that meeting having been proposed by Hon. Umul Ker Sheikh Kassim, MP and seconded by Hon. Joseph Makilap Kipkoros, MP

Minutes the 66th sitting held on 15th August 2023 at 2.30 pm were confirmed as a true record of the proceeding of that meeting having been proposed by Hon. Joseph Maero Oyula, MP and seconded by Hon. George Sunkuiya Risa, MP

Minutes the 67th sitting held on 16th August 2023 at 10.00am were confirmed as a true record of the proceeding of that meeting having been proposed by Hon. (Dr.) John Ariko Namoi, MP and seconded by Hon. David Mwalika Mboni, MP

Minutes the 68th sitting held on 16th August 2023 at 2.30pm were confirmed as a true record of the proceeding of that meeting having been proposed by Hon. Umul Ker Sheikh Kassim, MP and seconded by Hon. Joseph Maero Oyula, MP

Minutes the 69th sitting held on 17th August 2023 at 10.00am were confirmed as a true record of the proceeding of that meeting having been proposed by Hon. Joseph Makilap Kipkoros, MP and seconded by Hon. George Sunkuiya Risa, MP

MIN NO. 256/2023: ADOPTION OF THE REPORT ON THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL 2023 (NATIONAL ASSEMBLY BILL NO. 32 OF 2023)

The Committee unanimously adopted the report on the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill 2023 (National Assembly Bill No. 32 Of 2023) having been adopted by Hon. David Mwalika Mboni, MP and seconded by Hon. Joseph Kamau Muniyoro, MP

MIN. NO. 257/2023: ANY OTHER BUSINESS / ADJOURNMENT

There being no other business, the meeting was adjourned at Three O'clock. The next meeting will be communicated by the way of notice.

Signed.....
Chairperson

Date.....
17/08/2023

MINUTES OF THE 70TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 17TH AUGUST 2023 AT 2.30 PM IN THE COMMITTEE ROOM 9 MAIN PARLIAMENT BUILDING.

PRESENT

1. Hon. Benjamin Kipkirui Langat, MP - Vice- Chairperson
2. Hon. Andrew Adipo Okuome, MP
3. Hon. David Mwalika Mboni, MP
4. Hon. George Sunkuiya Risa, MP
5. Hon. Umul Ker Sheikh Kassim, MP
6. Hon. Joseph Kamau Munyoro, MP
7. Hon. Joseph Maero Oyula, MP
8. Hon. (Dr.) John Ariko Namoit, MP
9. Hon. Joseph Makilap Kipkoros, MP

ABSENT WITH APOLOGY

1. Hon. Francis Kuria Kimani, MP - Chairperson
2. Hon. Paul Kibichiy Biego, MP
3. Hon. Dr. Shadrack Mwiti Ithinji, MP
4. Hon. Julius Kipletting Ruto, MP
5. Hon. Adan Keynan Wehliye, MP
6. Hon. Mohamed Soud Machele, MP

IN ATTENDANCE

SECRETARIAT

1. Mr. Benjamin Magut - Senior Clerk Assistant
2. Mr. Nebert Ikai - Clerk Assistant I
3. Mr. Salem Lorot - Legal Counsel I
4. Mr. George Ndenjeshe - Fiscal Analyst
5. Ms. Nelly Ondieki - Researcher Officer
6. Ms. Shamsa Abdi - Research Officer
7. Mr. Simon Ouko - Serjeant-At-Arms
8. Mr. Mwangi Muchiri - Audio Officer
9. Mr. Alfas Mulunda - Intern

MIN. NO.254/2023: PRELIMINARIES

The Chairperson called the meeting to order at Thirty Minutes past TWO O'clock followed by introductions and a word of prayer.

MIN. NO. 255/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

Minutes the 65th sitting held on 15th August 2023 at 10.30 am were confirmed as a true record of the proceeding of that meeting having been proposed by Hon. Umul Ker Sheikh Kassim, MP and seconded by Hon. Joseph Makilap Kipkoros, MP

Minutes the 66th sitting held on 15th August 2023 at 2.30 pm were confirmed as a true record of the proceeding of that meeting having been proposed by Hon. Joseph Maero Oyula, MP and seconded by Hon. George Sunkuiya Risa, MP

Minutes the 67th sitting held on 16th August 2023 at 10.00am were confirmed as a true record of the proceeding of that meeting having been proposed by Hon. (Dr.) John Ariko Namoit, MP and seconded by Hon. David Mwalika Mboni, MP

Minutes the 68th sitting held on 16th August 2023 at 2.30pm were confirmed as a true record of the proceeding of that meeting having been proposed by Hon. Umul Ker Sheikh Kassim, MP and seconded by Hon. Joseph Maero Oyula, MP

Minutes the 69th sitting held on 17th August 2023 at 10.00am were confirmed as a true record of the proceeding of that meeting having been proposed by Hon. Joseph Makilap Kipkoros, MP and seconded by Hon. George Sunkuiya Risa, MP

MIN NO. 256/2023: ADOPTION OF THE REPORT ON THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL 2023 (NATIONAL ASSEMBLY BILL NO. 32 OF 2023)

The Committee unanimously adopted the report on the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill 2023 (National Assembly Bill No. 32 Of 2023) having been adopted by Hon. David Mwalika Mboni, MP and seconded by Hon. Joseph Kamau Munyoro, MP

MIN. NO. 257/2023: ANY OTHER BUSINESS / ADJOURNMENT

There being no other business, the meeting was adjourned at Three O'clock. The next meeting will be communicated by the way of notice.

Signed.....
Chairperson

Date.....

MINUTES OF THE 67TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 16TH AUGUST 2023 AT 10.00 AM IN THE COMMITTEE ROOM 9 MAIN PARLIAMENT BUILDING.

PRESENT

1. Hon. Benjamin Kipkirui Langat, MP - Vice- Chairperson
2. Hon. Adan Keynan Wehliye, MP
3. Hon. George Sunkuiya Risa, MP
4. Hon. Joseph Maero Oyula, MP
5. Hon. Andrew Adipo Okuome, MP
6. Hon. David Mwalika Mboni, MP
7. Hon. Joseph Makilap Kipkoros, MP
8. Hon. (Dr.) John Ariko Namoit, MP
9. Hon. Joseph Kamau Munyoro, MP

ABSENT WITH APOLOGY

1. Hon. Francis Kuria Kimani, MP - Chairperson
2. Hon. Julius Kipletting Ruto, MP
3. Hon. Umul Ker Sheikh Kassim, MP
4. Hon. Mohamed Soud Machele, MP
5. Hon. Paul Kibichiy Biego, MP
6. Hon. Dr. Shadrack Mwiti Ithinji, MP

SECRETARIAT

1. Mr. Benjamin Magut - Senior Clerk Assistant
 2. Mr. Nebert Ikai - Clerk Assistant I
 3. Mr. Salem Lorot - Legal Counsel I
 4. Mr. James Macharia - Media Relations
 5. Mr. George Ndenjeshe - Fiscal Analyst
 6. Ms. Nelly Ondieki - Researcher Officer
 7. Ms. Shamsa Abdi - Research Officer
 8. Mr. Simon Ouko - Serjeant-At-Arms
 9. Mr. Mwangi Muchiri - Audio Officer
 10. Ms. Joyce Wachera - Hansard Reporter
- Mr. Alfas Mulunda - Intern

CENTRAL BANK OF KENYA

1. Dr. Kamau Thugge – Governor CBK
2. Mr. Kennedy K. Abuga – General Counsel CBK
3. Reuben Chepugar – Senior Manager
4. Gerald A. Nyaoma – Director, Bank Supervision

CAPITAL MARKETS AUTHORITY

1. Ugas Mohammed – Chairman, CMA
2. Josephine Kangonga – Manager, Legal Framework
3. Daisy Ivey – Officer, Licensing
4. Evelyn Mbithi – Senior Manager
5. Luke Ombara – Director, CMA
6. Wycliffe Shamiah – CEO, CMA

MIN. NO. 243/2023: PRELIMINARIES

The Chairperson called the meeting to order at Thirty Minutes past Ten O'clock followed by introductions and a word of prayer.

MIN. NO. 244/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

Confirmation of minutes of the previous sittings were deferred to the next meeting.

MIN NO. 245/2023: STAKEHOLDER ENGAGEMENT ON THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL 2023 (NATIONAL ASSEMBLY BILL NO. 32 OF 2023)

The following stakeholders appeared before the Committee and made their submissions on the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill 2023 (National Assembly Bill No. 32 of 2023):

1. The Central Bank of Kenya
2. Capital Markets Authority

THE CENTRAL BANK OF KENYA

The Governor central bank of Kenya submitted that they are in support of the amendments because of the following existing gaps in the sectoral Laws:

1. CBK did not have legal mandate to supervise institutions and enforce compliance of financial institutions (FIs) for AML/CFT purposes.
2. Supervisors of financial institutions have no powers to issues guidelines on AML/CFT.
3. CBK does not have power to share AML/CFT supervisory information with other supervisors.
4. Weaknesses in requirements for beneficial ownerships during licensing and vetting of significant shareholders in financial institutions.
5. CBK does not have power to compel financial institutions to produce documents for purposes of AML/CFT/CPF supervision.

Further the governor presented the following new amendment to be considered by the committee and subsequently incorporated in the AML/CTFL

Proposed Amendments to the Central Bank of Kenya Act through the AML/CFT Bill, 2023

To address the omissions highlighted above, the CBK makes the following proposals.

1. Amend section 2 of the CBK Act by introducing the following new definitions in alphabetical order:

“significant shareholder” means a person including a beneficial owner, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to ten per cent or more of the share capital of a money remittance provider or digital credit provider; or a corporate entity seeking to become a money remittance provider or digital credit provider;

“beneficial owner” means the natural person who ultimately owns or controls a legal person or arrangement or the natural person on whose behalf a transaction is conducted, and include that person who exercises ultimate effective control over a legal person or arrangement;

Rationale: This will enable the vetting of beneficial owners who are significant shareholders in money remittance providers and digital credit providers. This will further require CBK, money remittance providers and digital credit providers to identify persons who are exercising ultimate control in a money remittance provider or digital credit provider.

2. Insert the following new sections immediately after section 51 of the CBK Act as follows:

a) *Sharing of information on anti-money laundering, combating the financing of terrorism and countering proliferation financing*

51A. The Central Bank may disclose any information permitted under this Act, including information on anti-money laundering, counter-terrorism financing and countering proliferation financing to any monetary authority, fiscal or tax agency, fraud investigations agency, domestic or foreign counterparts, or the Financial Reporting Centre, where such information is reasonably required for the proper discharge of the functions of the Central Bank under the Proceeds of Crime and Anti-Money Laundering Act, 2009 or this Act, or the requesting monetary authority, fiscal or tax agency, fraud investigations agency, domestic or foreign counterpart, or the Financial Reporting Centre

Rationale: This will enable CBK to share AML/CFT/CPF supervisory information with its counterparts and other competent bodies.

b) *Powers on anti-money laundering, combating the financing of terrorism and countering proliferation financing matters*

51B. (1) Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Central Bank shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the

Central Bank and to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act apply.

- (2) In undertaking its mandate under subsection (1), the Central Bank may—
- (a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;
 - (b) conduct onsite inspection;
 - (c) conduct offsite surveillance;
 - (d) undertake consolidated supervision of a money remittance provider, foreign exchange bureau, digital credit provider and its group;
 - (e) compel the production of any document or information the Central Bank may require for the purpose of discharging its supervisory mandate under the Proceeds of Crime and Anti Money Laundering Act, 2009 or this Act;
 - (f) impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism or countering proliferation financing purposes;
 - (g) issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
 - (h) cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and
 - (i) take such action as is necessary to supervise and enforce compliance by reporting institutions with the provisions of the Proceeds of Crime and Anti-Money Laundering Act and any regulations, guidelines, rules, instruction or direction made or issued thereunder or under this Act.
- (3) For purposes of this section, “reporting institution” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

Rationale: To give CBK express powers over a wide range of AML/CFT/CPF supervisory issues which were identified in the mutual evaluation report as lacking.

c) Penalties for violations relating to money laundering, terrorism financing and proliferation financing.

51C. (1) No money remittance provider, foreign exchange bureau, digital credit provider, director, officer, employer, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under this section.

(2) A person who violates or fails to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under this section—

- (a) *in case of a legal person, to a penalty not exceeding five 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.*

Rationale: To provide an enforcement regime. The clause will clothe CBK with powers to penalize financial institutions for POCAMLA violations and violation of regulations, guidelines and instructions issued under the CBK Act. This will enhance effectiveness of the AML/CFT/CPF laws.

Proposed Amendments to the Microfinance Act through the AML/CFT Bill, 2023

To further strengthen the AML/CFT/CPF regime for the supervision of microfinance banks, CBK proposes the following amendments:

1. Amend section 2 of the Microfinance Act by introducing the following new definitions in alphabetical order:

“significant shareholder” means a person including a beneficial owner, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to ten per cent or more of the share capital of a microfinance bank; or a corporate entity seeking to become a microfinance bank;

“beneficial owner” means the natural person who ultimately owns or controls a legal person or arrangement or the natural person on whose behalf a transaction is conducted, and include that person who exercises ultimate effective control over a legal person or arrangement;

2. Amend Clause 36C (2) of the AML/CFT (Amendment) Bill, 2023 (**page 1092 of the published Bill**) by deleting the opening paragraph and substituting therefor with the following new paragraph:

A person who violates or fails to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under section 36B of this Act-

Rationale: The current paragraph gives the impression that the violation which is punishable under Clause 36C (2) of the Bill is the violation of Clause 36C (1) of the Bill. What the law should penalize is the direct violation of provisions of Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction, or instruction issued under the said Act or Microfinance Act and not the violation of or non-compliance with Clause 36C (1). Clause 36(C)(1) of the Bill is a command requiring every institution, director, officer, employer, agent or any person to comply with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under the Microfinance Act. As the Clause 36C (2) sits, if an institution violates for example section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the institution will be penalized for violating Clause 36(C)(1) of the Bill,

and not Section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009. This will be problematic.

In addition, the “*regulation, guideline, rule, direction and instruction*” referred to in Clause 36C (1) will not be issued under the said Clause but under Clause 36B(2)(g) of the current Bill (**page 1091 of the published Bill**). This error needs to be corrected.

Proposed Amendments to the National Payment System Act through THE AML/CFT Bill, 2023

To further strengthen the AML/CFT/CPF regime for the supervision of payment service providers, CBK proposes the following amendments.

1. Amend section 2 of the National Payment System Act by introducing the following new definitions in alphabetical order:

“significant shareholder” means a person including a beneficial owner, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to ten per cent or more of the share capital of a payment service provider or a corporate entity seeking to become a payment service provider;

“Beneficial owner” means the natural person who ultimately owns or controls a legal person or arrangement or the natural person on whose behalf a transaction is conducted, and include that person who exercises ultimate effective control over a legal person or arrangement;

Rationale: This will empower the CBK to vet and assess the fitness and propriety of persons who are beneficial owners but hold significant shareholding (10 percent) in a payment service provider. It is an international AML/CFT/CPF requirement that beneficial owners who are significant shareholders in financial institutions should be vetted for fitness and propriety. This was a deficiency noted in the AML/CFT/CPF Mutual Evaluation of Kenya which should be addressed.

2. Amend Clause 17B (2) of the AML/CFT (Amendment) Bill, 2023 (**page 1110 of the published Bill**) by deleting the opening paragraph and substituting therefor with the following new paragraph:

A person who violates or fails to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under section 17A of this Act-

Rationale: The current paragraph gives the impression that the violation which is punishable under Clause 17B (2) of the Bill is the violation of Clause 17B (1) of the Bill. What the law should penalize is the direct violation of Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction, or instruction issued under the said Act or the National Payment System Act and not the violation of or non-compliance with Clause 17B (1). Clause 17B (1) of the Bill is a command requiring every institution, director, officer, employer, agent or any person to comply with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under the National Payment System Act. As the Clause 17B (2) sits, if a payment service provider violates for example section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the payment service provider will be penalized for violating

Clause 17B(1) of the Bill, and not Section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009. This will be problematic.

3. Amend Clause 17B (1) of the Bill (**page 1110 of the published Bill**) as follows:

No payment service provider, director, officer, employer, cash merchant, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under section 17A of this Act.

Rationale: There are no *regulations, guidelines, rules, directions or instructions* to be issued under Clause 17B (1) to justify the use of the phrase “**under this section**”. The *regulations, guidelines, rules, directions or instructions* will be issued under Clause 17A(2)(g). There is need to make specific reference to the Clause under which the *regulations, guidelines, rules, directions or instructions* will be issued.

In addition Clause 17B (1) makes reference to “*institution*”. This term does not exist under the National Payment System Act. The term used in that statute is “payment service provider”. There is therefore need to use the correct term as currently used in the National Payment System Act.

Proposed Amendments to the Banking Act through the AML/CFT Bill, 2023

To further strengthen the AML/CFT/CPF regime for the supervision of banks and mortgage finance companies, CBK proposes the following amendments to the Banking Act.

1. Amend Clause 33E (2) of the AML/CFT (Amendment) Bill, 2023 (**page 1088 of the published Bill**) by deleting the opening paragraph and substituting therefor with the following new paragraph:

A person who violates or fails to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under section 36D of this Act-

Rationale: The current paragraph gives the impression that the violation which is punishable under Clause 36E (2) of the Bill is the violation of Clause 33E(1) of the Bill. What the law should penalize is the direct violation of Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or the Banking Act and not the violation of or non-compliance with Clause 33E (1). Clause 33E (1) of the Bill is a command requiring every institution, director, officer, employer, agent or any person to comply with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under the Banking Act. As the Clause 33E (2) suggests, if an institution violates for example section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the institution will be penalized for violating Clause 33E (1) of the Bill, and not Section 44 of the Proceeds of Crime and Anti-Money Laundering Act, 2009. This will be problematic.

2. Amend Clause 33E (1) of the Bill (page 1088 of the published Bill) as follows:

No institution, director, officer, employer, cash merchant, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under section 33D of this Act.

Rationale: There are no *regulations, guidelines, rules, directions or instructions* to be issued under Clause 33E (1) to justify the use of the phrase "**under this section**". The *regulations, guidelines, rules, directions or instructions* will be issued under Clause 33D(2)(g). There is need to make specific reference to the Clause under which the *regulations, guidelines, rules, directions or instructions* will be issued.

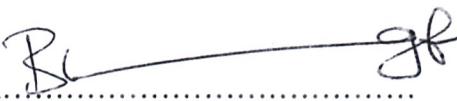
CAPITAL MARKETS AUTHORITY

The CEO Capital Market Authority submitted that they are in support of the bill in entirety based on the following gaps identified in the sectorial law:

1. CMA does not have the legal basis to issue AML/CFT guidelines for the capital markets sector.
2. The financial sector supervisors (CMA included) do not have powers to compel production of documents from Financial Institutions (FIs) and this limits their access to information for AML/CFT purposes.
3. Sectoral laws (in our case the CMA Act) do not have provisions on AML/CFT requirements and therefore the powers to access information is for prudential purposes and not for AML/CFT purposes.
4. There are no legal or regulatory measures to facilitate cooperation or coordination between supervisors with their domestic and foreign counterparts for AML/CFT purposes.
5. There is no requirement for supervisors to review the assessment of ML/TF risk profile of a financial institution or group periodically, and when there are major events or developments in the management and operations of the FIs group.
6. The scope of laws is limited to prudential supervision and do not include AML/CTF supervision.
7. Sectoral laws do not provide for AML/CFT and do not cross-reference the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA).
8. Supervisors do not have explicit powers in their respective Acts to conduct AML/CFT inspections.
9. Sectoral laws do not cover Combating Financing of Terrorism (CFT) inspections.
10. There are no specific legal or regulatory powers which authorize supervisors to impose sanctions for failure to comply with the AML/CFT requirements asset out in the POCAMLA and the POCAML Regulations.
11. The scope of powers to issue sanctions relates to non-compliance with prudential requirements contained in the respective sectoral Acts and not AML/CFT requirements.
12. Supervisors do not have a legal basis to exchange regulatory AML/CFT information with their domestic and foreign counterparts including Law Enforcement Agencies (LEAs).
13. Supervisors have not established and implemented robust Combating Proliferation Financing (CPF) legal and institutional framework

MIN. NO. 246/2023: ANY OTHER BUSINESS / ADJOURNMENT

There being no other business, the meeting was adjourned at One O'clock. The next meeting will be held on 16th, August 2023 at Thirty Minutes past Two O'clock at committee room 9, Main Parliament Buildings.

Signed.....
Chairperson

Date.....17th August 2023



MINUTES OF THE 68TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 16TH AUGUST 2023 AT 2.30 PM IN THE COMMITTEE ROOM 9 MAIN PARLIAMENT BUILDING.

PRESENT

1. Hon. Benjamin Kipkirui Langat, MP - Vice- Chairperson
2. Hon. Adan Keynan Wehliye, MP
3. Hon. George Sunkuiya Risa, MP
4. Hon. Joseph Maero Oyula, MP
5. Hon. Andrew Adipo Okuome, MP
6. Hon. David Mwalika Mboni, MP
7. Hon. Joseph Makilap Kipkoros, MP
8. Hon. (Dr.) John Ariko Namoit, MP
9. Hon. Umul Ker Sheikh Kassim, MP
10. Hon. Mohamed Soud Machele, MP
11. Hon. Joseph Kamau Munyoro, MP

ABSENT WITH APOLOGY

1. Hon. Francis Kuria Kimani, MP - Chairperson
2. Hon. Paul Kibichiy Biego, MP
3. Hon. Dr. Shadrack Mwiti Ithinji, MP
4. Hon. Julius Kipletting Ruto, MP

IN ATTENDANCE

SECRETARIAT

1. Mr. Benjamin Magut - Senior Clerk Assistant
2. Mr. Nebert Ikai - Clerk Assistant I
3. Mr. Salem Lorot - Legal Counsel I
4. Mr. James Macharia - Media Relations
5. Mr. George Ndenjeshe - Fiscal Analyst
6. Ms. Nelly Ondieki - Researcher Officer
7. Ms. Shamsa Abdi - Research Officer
8. Mr. Simon Ouko - Serjeant-At-Arms
9. Mr. Mwangi Muchiri - Audio Officer
10. Ms. Joyce Wachera - Hansard Reporter
11. Mr. Alfas Mulunda - Intern

KENYA BANKERS ASSOCIATION

1. Emily Gitau – Manager Compliance, Stanbic Bank
2. Roberts Ogindu – Head Compliance And Ethics NBK
3. David Nyamato – Head Of Governance And Regulation Affairs NCBA
4. Wanjiru Mwaura – Chief Sanctions Compliance Officer
5. Kennedy Mutisya

ICPAK

1. Hillary Onami – Director Policy and Research, ICPAK
2. ELIAS Wakhisi – Senior Manager Public Policy
3. Robert Kamwasa – ICPAK Legislative Committee

AMFI

1. Kimathi Kamencu – Legal Counsel AMFI
2. Mercy Mumbi – Legal Counsel AMFI

MIN. NO. 247/2023: PRELIMINARIES

The Chairperson called the meeting to order at Thirty Minutes past TWO O'clock followed by introductions and a word of prayer.

MIN. NO. 248/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

Confirmation of minutes of the previous sittings were deferred to the next meeting.

MIN NO. 249/2023: STAKEHOLDER ENGAGEMENT ON THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL 2023 (NATIONAL ASSEMBLY BILL NO. 32 OF 2023)

The following stakeholders appeared before the Committee and made their submissions on the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill 2023 (National Assembly Bill No. 32 of 2023):

1. The Kenya Bankers Association
2. ICPACK
3. AMFI

THE KENYA BANKERS ASSOCIATION

The Chief Executive Officer Kenya Bankers Association appeared before the Committee and submitted as follows:

capital markets act (cap 485a)

Section 12A

Proposal to clarify in the Bill the scope, limitations of CMA with regards to the expanded supervisory role on AML, CFT and countering proliferation financing particularly with regards to access to STR information and interpretation of regulations

Justification

This will provide clarity on the scope/obligations and limitations of CMA in view of the pre-existing obligations bestowed on other regulatory bodies i.e., CBK and FRC with regards to supervision of reporting institutions.

Consideration of collaboration between the regulatory bodies and joint AML/CFT reviews/inspections to leverage on expertise, capacity building and value addition

Section 31(3)(b)

The bill seeks to remove the proviso which makes sharing of credit information for non-performing loans (by Banks, Saccos, Microfinance Institutions, KDIC et al) outside the country conditional upon the receiving country having a reciprocal information sharing requirement with Kenya.

Justification

Removing this provision means that if enacted, financial institutions shall share credit information with any country notwithstanding that the receiving country may not have a similar obligation to share information with Kenya hence exposing such customer's data. The proviso should be deleted

Section 33E

Proposal for violation of any provisions of the POCAMLA to a penalty not exceeding twenty million shillings is punitive for institutions

Justification

This should be maintained to not exceeding one million shillings per violation. No clear justification for the increase

Companies Act

Section 2, 93 (2) (a), (b), (d) and 138A

The Bill proposes to add the position of a Nominee Director who is intended to exercise the functions on behalf of the Director subject to the direct or indirect instructions of the nominator in the Companies' Act 2015, however, the Bill fails to clarify who exactly "the nominator" is. Further the Bill fails to clarify who is to meant to appoint the nominee director, would it be the Board or Shareholders or the director who they are meant to act on behalf of.

Justification

There is a need to clarify who the nominator is and who is to appoint the nominee director for avoidance of any confusion and in order to ensure that it is easy to interpret the statute and its amendments.

Insurance Act

Deletion of the word registered and substitute with licensed in sections where the same is appearing throughout the Act.

Justification

The bill also seeks to task the Insurance Regulatory Authority (IRA) to ensure that insurers vet proposed shareholders, beneficial owners, directors and senior officers of entities they insure. To this end, IRA shall conduct onsite inspections, offsite surveillance, compel production of documents and impose monetary, civil and administrative sanctions for violations of POCAMLA. For ease of compliance, IRA will issue guidelines to regulated companies on compliance with POCAMLA.

Microfinance Act

Section 36(C)

The bill seeks to increase the penalties under the Microfinance act from Kenya shillings 1 million to Kenya shillings 20 million.

No justification for the increase in penalties. The proposed increase is too punitive and excessive

Limited Liability Partnerships Act Limited Liability Partnership Act (No. 42 Of 2011)

The proposals do not speak purely to combating Money laundering and terrorism financing thus can be incorporated vide a different legislation such as a Miscellaneous Amendments Act

Justification

To create focus and harmony in addressing AML/CFT/CPF issues.

ICPAK

The director of public policy and research Mr. Hillary Onami appeared before the Committee and submitted as follows:

Capital Markets Authority Act

Clause 12 (A) 2(b): Powers on Anti-money Laundering

Amend to read subsection 12 (A)(2)(e) by deleting compel and replace with request.

Justification

To be in conformity with Section 6 on limitation and 8 on application of the Access to Information Act 2016.

Clause 12 (A) 2(f)

Delete this proposal

Justification

To avoid duplication of functions that FRC has been mandated to perform

Insurance Act

Section 128

Amend to read:

The Liquidator shall maintain information and records on beneficial ownership of the Insurer for at least five seven years after the date from which the company is dissolved.

Justification

This is to align with the Companies Act which requires records to be kept for at least seven years

Insurance Act

Section 194

Amend to read:

A person who makes a false or misleading statement in an application for license or renewal of license or alteration of license, or in any document furnished under this Act to the Commissioner with or in support of or in connection with an application for license or renewal of license, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding three years or to both.

Justification

The fine of five thousand shillings is too lenient and there is need to make it more punitive as a deterrence to the would-be offenders.

Section 196 (A) (2)(2)

Amend to read:

The Liquidator shall maintain information and records on beneficial ownership of the Insurer for at least seven years after the date from which the company is dissolved.

Justification

This is to align with the Companies Act which requires records to be kept for at least seven years

Clause 196 (2) (e): Powers on Anti-money Laundering

Amend subsection 196 (b) (2) (f) by deleting compel and replace with request.

Justification

To be in conformity with Section 6 on limitation and 8 on application of the Access to Information Act 2016.

section 196B 2(d)

The term group requires to be defined to provide clarity on the regulatory reach of a Supervisory Authority circumstances in which entities operate within a Group.

Justification

Clarity on definition of a group for a Supervisory Authority to exercise its mandate in regard to anti-money laundering and prevention of terrorism financing.

Banking Act

section 31 (3) (b)

Consider the merits and demerits of deleting such especially with jurisdictions that are unwilling to share information on a reciprocal basis eg Panama

Justification

Sharing of information should be based on reciprocity, for instance, Kenya is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

33 (2) (e) and (f) Powers on anti-money laundering for the Central Bank

Consider ICPAK submissions on powers on anti-money laundering

Justification

To be in conformity with Section 6 on limitation and 8 on application of the Access to Information Act 2016.

Proceeds of Crime and Anti-Money Laundering Act, 2009

The Bill fails to define proliferation financing though it is used in various sections.

Proposal

Proliferation financing means raising, moving, or making available funds or other economic resources/assets to assist for, in whole or in part, with the proliferation of nuclear, chemical, or biological weapons, that is, weapons of mass destruction (WMDs).

Justification

For ease of interpretation

Proceeds of Crime and Anti-Money Laundering Act, 2009

36 (c) powers of supervisory bodies

Refer to ICPAK comments on Access to information and sanctions

Justification

To be in conformity with Section 6 on limitation and 8 on application of the Access to Information Act 2016.

Proceeds of Crime and Anti-Money Laundering Act, 2009

Section 45 A (2)

Retain the current provision of section 45(2)

Justification

The direct link between a reporting institution and the Financial Action Task Force as envisaged in 45(2)(a)(b) may undermine the mandate of FRC

We anticipate the FRC to be the link between Kenya and the Financial Action Task Force. FRC shall thereafter provide guidelines to reporting institutions on the application of appropriate counter measures.

AMFI

Mr. Kimathi Kamencu, Legal Counsel of the Association of Microfinance Institutions of Kenya appeared before the Committee and submitted as follows:

Capital Markets Act

Summary

Empowerment of Capital Markets Authority (CMA) to supervise licensees on matters relating to Proceeds of Crime and Anti – Money Laundering (POCAMLA) Act 2009.

Comments

Cloaks CMA with power over matters under POCAMLA Act. Also it is important to clarify how CMA will co – work with other supervising institutions and as well set the maximum penalty amounts.

Insurance Act

Summary

General amendments to replace “registered” with “licensed”

- i. Empowerment of Insurance Regulatory Authority (IRA) and Commissioner to supervise licensees on matters relating to Proceeds of Crime and Anti – Money Laundering (POCAMLA) Act 2009.
- ii. IRA tasked with retention of records on beneficial ownership.

Comments

- i. Cloaks IRA & Commissioner with power over matters under POCAMLA Act.
- ii. Important to clarify how IRA & Commissioners will co – work with other supervising institutions.
- iii. Retention of records should be a licensee matter and not primarily that of the IRA.
- iv. Will be important to update the Act so that the roles of IRA & Commissioner are unified.
- v. Important for maximum penalty amounts to be set out.

Banking Act

Summary

- i. Amendments to capture beneficial ownership in determining significant shareholders.
- ii. Right of CBK to share information with other authorities.
- iii. Empowerment of CBK to supervise licensees on matters relating to Proceeds of Crime and Anti – Money Laundering (POCAMLA) Act 2009.
- iv. Ensures there is clarity on identity of significant shareholder.

Comments

- i. Allows for information sharing on POCAMLA matters.
- ii. Important to clarify how CBK will co – work with other supervising institutions.
- iii. Important for maximum penalty amounts to be set out

Central Bank of Kenya Act

Summary

Recognition of CBK power to supervise licensees on matters relating to Proceeds of Crime and Anti – Money Laundering (POCAMLA) Act 2009.

Comments

Clarifies the CBK power on POCAMLA matters.

Microfinance Act

Summary

Empowerment of CBK to supervise licensees on matters relating to Proceeds of Crime and Anti – Money Laundering (POCAMLA) Act 2009.

Comments

- i. Important to clarify how CBK will co – work with other supervising institutions.
- ii. Important for maximum penalty amounts to be set out.
- iii. There is need to clarify the position for non – licensees of CBK who operate microfinance business.
- iv. The Departmental Committee should give direction on the licensing of these.

National Payments Systems Act

Summary

Empowerment of CBK to supervise licensees on matters relating to Proceeds of Crime and Anti – Money Laundering (POCAMLA) Act 2009.

Comments

- i. Important to clarify how CBK will co – work with other supervising institutions.
- ii. Important for maximum penalty amounts to be set out.

Limited Liability Partnership Act

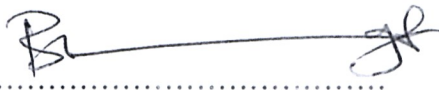
- i. Amendments to capture “nominee partners” and “beneficial owners”.
- ii. Amendments to require the maintaining of certain records by LLPs.
- iii. Amendments relating to strike off of LLPs.
- iv. Amendments relating to insolvency of LLPs.
- v. Amendments relating to registration of foreign LLPs.

Comments

Important to ensure that LLP provisions are harmonized with those in Companies Act (relating to beneficial ownership) and those in the Insolvency Act on matters to do with winding up/liquidation.

MIN. NO. 250/2023: ANY OTHER BUSINESS / ADJOURNMENT

There being no other business, the meeting was adjourned at Five O'clock. The next meeting will be held on 17th, August 2023 at Ten O'clock at committee room 9, Main Parliament Buildings.

Signed.....
Chairperson

Date.....17th August 2023

MINUTES OF THE 69TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 17TH AUGUST 2023 AT 10.00 AM IN THE COMMITTEE ROOM 9 MAIN PARLIAMENT BUILDING.

PRESENT

1. Hon. Benjamin Kipkirui Langat, MP - Vice- Chairperson
2. Hon. Andrew Adipo Okuome, MP
3. Hon. David Mwalika Mboni, MP
4. Hon. George Sunkuiya Risa, MP
5. Hon. Umul Ker Sheikh Kassim, MP
6. Hon. Joseph Kamau Munyoro, MP
7. Hon. Joseph Maero Oyula, MP
8. Hon. (Dr.) John Ariko Namoit, MP
9. Hon. Joseph Makilap Kipkoros, MP

ABSENT WITH APOLOGY

1. Hon. Francis Kuria Kimani, MP - Chairperson
2. Hon. Paul Kibichiy Biego, MP
3. Hon. Dr. Shadrack Mwiti Ithinji, MP
4. Hon. Julius Kipletting Ruto, MP
5. Hon. Adan Keynan Wehliye, MP
6. Hon. Mohamed Soud Machele, MP

IN ATTENDANCE

SECRETARIAT

1. Mr. Benjamin Magut - Senior Clerk Assistant
2. Mr. Nebert Ikai - Clerk Assistant I
3. Mr. Salem Lorot - Legal Counsel I
4. Mr. George Ndenjeshe - Fiscal Analyst
5. Ms. Nelly Ondieki - Researcher Officer
6. Ms. Shamsa Abdi - Research Officer
7. Mr. Simon Ouko - Serjeant-At-Arms
8. Mr. Mwangi Muchiri - Audio Officer
9. Mr. Alfas Mulunda - Intern

MIN. NO. 251/2023: PRELIMINARIES

The Chairperson called the meeting to order at Thirty Minutes past TWO O'clock followed by introductions and a word of prayer.

MIN. NO. 248/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

Confirmation of minutes of the previous sittings were deferred to the next meeting.

MIN NO. 252/2023: CONSIDERATION OF THE REPORT ON THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL 2023 (NATIONAL ASSEMBLY BILL NO. 32 OF 2023)

Members considered and agreed with all proposed amendments save for the following changes:

Clause 33

Penalty for individual to be capped at 500,000 while that of the institution 5million

Clause 36 (c)

Retain the proviso as in the bill

Part VI Schedule of Committee Amendments

19 E under justification

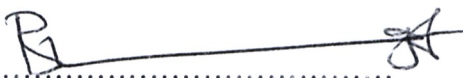
indicated the name of the insurance Act

Under penalty

Amend to allow each institution to apply for financial penalty

MIN. NO. 253/2023: ANY OTHER BUSINESS / ADJOURNMENT

There being no other business, the meeting was adjourned at Twelve O'clock. The next meeting will be held on 17th, August 2023 at Thirty Minutes past Two O'clock at committee room 9, Main Parliament Buildings.

Signed.....
Chairperson

Date...17th August 2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:
THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 35 OF 2023)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1)(b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the **Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill (National Assembly Bill No. 35 of 2023)** was read a First Time on **Wednesday 26th July, 2023**;

IT IS NOTIFIED that the **Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill (National Assembly Bill No. 35 of 2023)** seeks to amend laws relating to anti-money laundering and combating of terrorism financing and financing of proliferation of weapons. In particular, the Bill seeks to amend the following laws—

STATUTE	PROPOSED AMENDMENT
1. The Extradition (Contiguous and Foreign Countries) Act (Cap 76)	The Bill seeks to amend the Extradition (Contiguous and Foreign Countries) Act (Cap. 76) by providing for simplified extradition measures and expressly providing for the offence of terrorism financing as an extraditable offence.
2. The Extradition (Commonwealth Countries) Act (Cap. 77)	The Bill seeks to amend the Extradition (Commonwealth Countries) Act (Cap. 77) by providing for simplified extradition measures and expressly providing for the offence of terrorism financing as an extraditable offence.
3. The State Corporations Act (Cap. 446)	The Bill seeks to amend the State Corporations Act (Cap. 446) to exclude the application of the Act to the Financial Reporting Centre thereby facilitating the operational independence of the Financial Reporting Centre in conformity with the Financial Action Task Force (FATF) Standards.
4. Capital Markets Act (Cap. 485A)	The Bill seeks to amend the Capital Markets Act (Cap. 485A) to empower the Capital Markets Authority to supervise its licensees under the Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.
5. The Insurance Act (Cap 487)	The Bill seeks to amend the Insurance Act (Cap. 487) to empower the Insurance Regulatory Authority to supervise its licensees and their agents under the Insurance Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, apply. The Bill also seeks to harmonize the licensing regime under the Act with the Financial Action Task Force (FATF) Standards.
6. The Banking Act (Cap. 488)	The Bill seeks to amend the Banking Act (Cap. 488) to empower the Central Bank of Kenya to supervise institutions and agents of reporting institutions under the Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply
7. The Central Bank of Kenya Act (Cap. 491)	The Bill seeks to amend the Central Bank of Kenya Act (Cap. 491) to empower the Central Bank of Kenya to supervise its licensees under the Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.
8. Anti-Corruption and Economic Crimes Act (No. 3 of 2003)	The Bill seeks to amend the Anti-Corruption and Economic Crimes Act, 2003 to include the offence of Money Laundering under the Proceeds of Crime and Anti-Money Laundering Act, 2009 as an economic crime under the Act.
9. Microfinance Act, 2006 (No. 19 of 2006)	The Bill seeks to amend the Microfinance Act, 2006, to empower the Central Bank of Kenya to supervise institutions licensed under the Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.

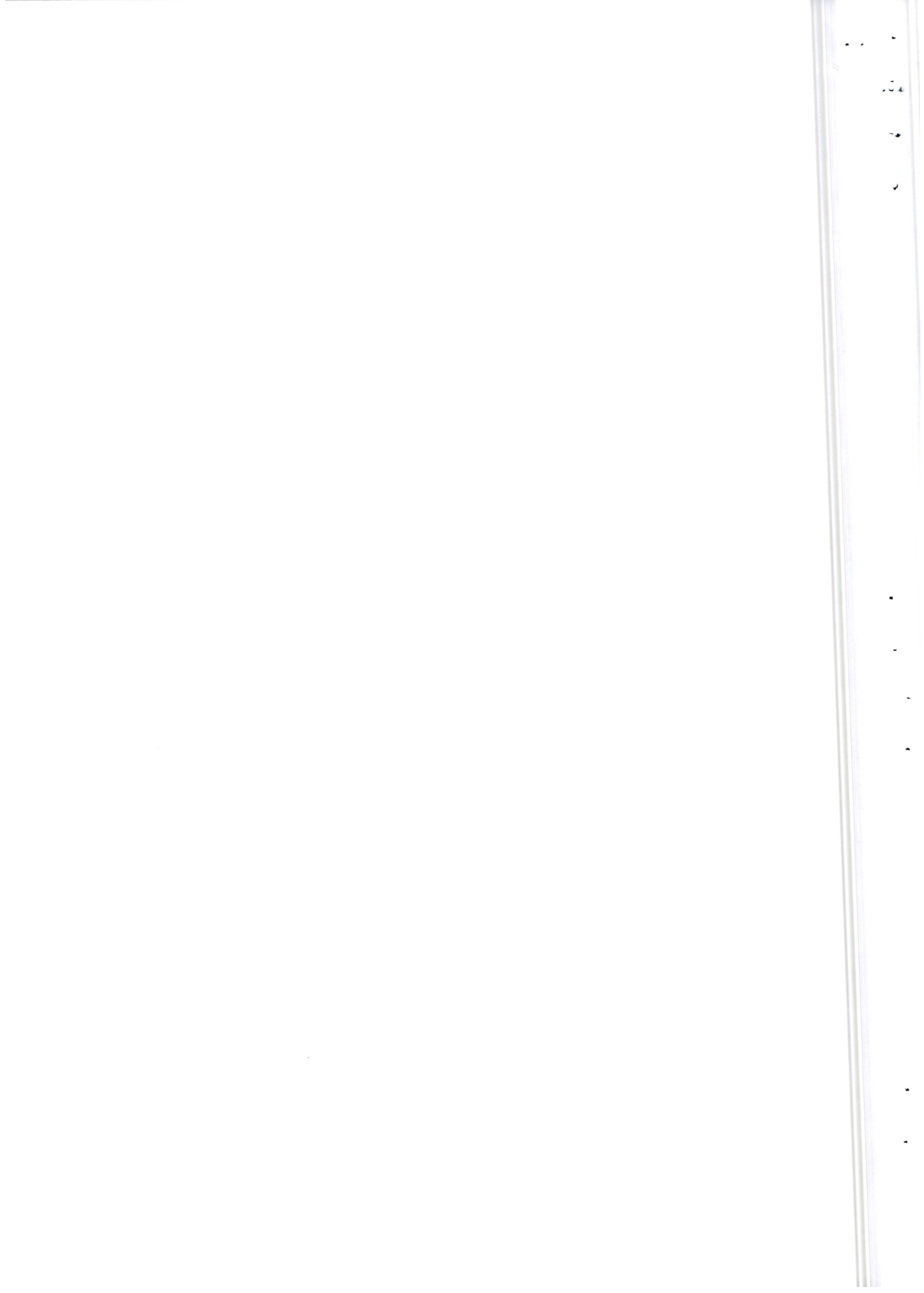
10. The Proceeds of Crime and Anti-Money Laundering Act, 2009 (No. 9 of 2009)	The Bill seeks to amend the Proceeds of Crime and Anti-Money Laundering Act, 2009 to extend the application of preventative measures and enforcement measures applicable to anti-money laundering under the Act to combating terrorism financing and combating the financing of proliferation of weapons of mass destruction. Further, the Bill seeks to grant supervisory bodies powers to supervise, monitor and ensure compliance with anti-money laundering, combating terrorism financing and countering the financing of proliferation of weapons of mass destruction measures, and to align various provisions under the Act to the Financial Action Task Force (FATF) Standards.
11. The National Police Service Act, 2011 (No.11A of 2011)	The Bill seeks to amend the National Police Service Act, 2011, to provide for the use of controlled delivery as an investigative technique available for use by authorized officers.
12. The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)	The Bill seeks to amend the Ethics and Anti-Corruption Commission Act, 2011 to provide that State agencies and organs may grant the Commission access to relevant information in the prevention and investigation of economic crimes.
13. The Mutual Legal Assistance Act, 2011 (No. 36 of 2011)	The Bill seeks to amend the Mutual Legal Assistance Act, 2011 to expand the grounds for non-refusal of Mutual Legal Assistance.
14. The National Payment System Act, 2011 (No. 39 of 2011)	The Bill seeks to amend the National Payment System Act, 2011, to empower the Central Bank of Kenya to supervise institutions and agents of institutions under the National Payment System Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.
15. The Limited Liability Partnership Act (No.42 of 2011)	The Bill seeks to amend the Limited Liability Partnership Act, 2011 to, among others, provide for the requirement to file a register of beneficial owners with the Registrar under the Act.
16. The Prevention of Terrorism Act, 2012 (No. 30 of 2012)	The Bill seeks to amend the Prevention of Terrorism Act, 2012 to align it with the Financial Action Task Force (FATF) Standards.
17. The Companies Act, 2015 (No. 17 of 2015)	The Bill seeks to amend the Companies Act, 2015 to provide for the requirement to deliver a statement of particulars of beneficial owners to the Registrar under the Act; provide for the requirement for companies to keep a register of beneficial owners; and to align various provisions under the Act to the Financial Action Task Force (FATF) Standards.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and Standing Order 127(3) the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the **Departmental Committee on Finance and National Planning and the Departmental Committee on Justice and Legal Affairs** to whom the Bill has been committed for joint consideration and tabling of a Report.

A copy of the Bill is available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to cna@parliament.go.ke to be received on or before **Friday, 11th August, 2023 at 5.00 p.m.**

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
31st July 2023





REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - (SECOND SESSION)
THE NATIONAL ASSEMBLY
COMMUNICATION FROM THE CHAIR

_____ *(No. 51 of 2023)* _____

**GUIDANCE ON THE CONSIDERATION OF THE ANTI-MONEY
LAUNDERING AND COMBATING OF TERRORISM FINANCING
LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 35
OF 2023)**

Honourable Members,

1. As you are aware, the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill (National Assembly Bill No. 35 of 2023) was read a First Time on 26th July 2023. The Bill was thereafter committed to the relevant Committees for publication participation in accordance with the requirements of Article 118 of the Constitution and Standing Order 127. Subsequently, the Clerk of the National Assembly placed an advertisement in print media inviting the public and stakeholders to submit memoranda on the Bill in accordance with the requirements for public participation.
2. **Honourable Members,** the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023 seeks to amend various Acts of Parliament relating to anti-money laundering and combating of terrorism financing and financing of proliferation of weapons.

3. **Honourable Members**, in particular, the Bill seeks to amend **seventeen (17) Acts of Parliament**. In this regard, I wish to notify the House that the proposed amendments to the following Acts of Parliament as contained in the Bill have since been referred to the **Departmental Committee on Justice and Legal Affairs** for consideration—

- (1) **The Extradition (Contiguous and Foreign Countries) Act (Cap 76);**
- (2) **The Extradition (Commonwealth Countries) Act (Cap. 77);**
- (3) **The State Corporations Act (Cap. 446);**
- (4) **The Anti-Corruption and Economic Crimes Act (No. 3 of 2003);**
- (5) **The Proceeds of Crime and Anti-Money Laundering Act, 2009 (No. 9 of 2009);**
- (6) **The National Police Service Act, 2011 (No.11A of 2011);**
- (7) **The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011);**
- (8) **The Mutual Legal Assistance Act, 2011 (No. 36 of 2011);**
- (9) **The Prevention of Terrorism Act, 2012 (No. 30 of 2012); and**
- (10) **The Companies Act, 2015 (No. 17 of 2015).**

4. Further, the proposed amendments to the following Acts of Parliament as contained in the Bill have also since been referred to the **Departmental Committee on Finance and National Planning** for consideration—

- (1) **The Capital Markets Act (Cap. 485A);**
- (2) **The Insurance Act (Cap 487);**
- (3) **The Banking Act (Cap. 488);**

- (4) **The Central Bank of Kenya Act (Cap. 491);**
- (5) **The Microfinance Act, 2006 (No. 19 of 2006);**
- (6) **The National Payment System Act, 2011 (No. 39 of 2011); and**
- (7) **The Limited Liability Partnership Act (No.42 of 2011).**

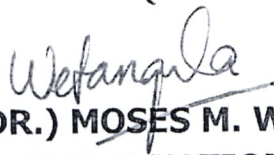
5. Honourable Members, from the foregoing, the Departmental Committee on Justice and Legal Affairs shall be the lead Committee for purposes of conducting public participation. In this regard, the Departmental Committee on Finance and National Planning is required to conduct public participation process and submit its Report to the Departmental Committee on Justice and Legal Affairs, for consolidation.

6. Honourable Members, as you are aware, the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023 contains proposed amendments seeking to provide for disclosure of information to help in combating money laundering, terrorism financing and financing of proliferation of weapons activities. In considering the Bill, the Committees bear in mind the requirements of Article 24 of the Constitution on the limitation of rights and the various court decisions that have outlined the manner of application of the Bill of Rights.

7. Honourable Members, may I implore the two Committees to prioritize consideration of the Bill and report to the House, soonest. Given that the Bill is also informed by various international obligations, which require the country to have in place a robust legal framework to combat money laundering, financing of terrorism and proliferation of weapons.

The House is accordingly guided.

I thank you!



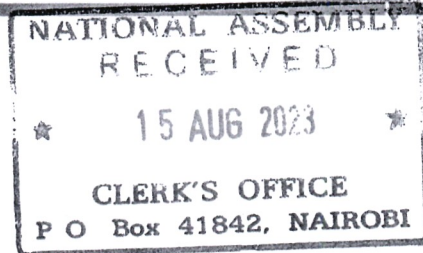
THE RT. HON. (DR.) MOSES M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Wednesday, 2nd August, 2023



DD Oct 15/8

The Clerk
National Assembly
Thirteenth Parliament
P.O. Box 41842 – 00100, Nairobi
E-mail address: cna@parliament.go.ke



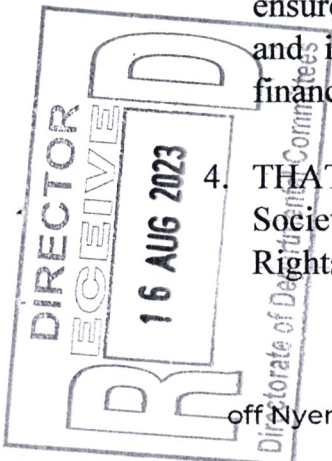
Benjamin Nagit
Douglas Katio
to facilitate
ca 2/19
16/8/23

RE: MEMORANDUM ON THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAW (AMENDMENT) BILL, 2023

I. INTRODUCTION AND GENERAL OBSERVATIONS

Following the invitation to submit memoranda on the Anti-Money laundering and Combating of Terrorism Financing Law (Amendment) Bill, 2023, the Kenya National Civil Society Centre (KNCSC) wishes to present to the National Assembly on the subject matter as follows:

1. THAT the Kenya National Civil Society Centre is a civil society organization established and operating in the Republic of Kenya working to harness the solidarity, synergy and agency of citizens and their civil society formations for the transformation of the Kenyan society;
2. THAT in so doing, the Kenya National Civil Society Centre has in the last couple of years partnered with other national and international Non-Governmental Organizations to promote a Risk-Based Approach to regulating the Not-for-Profit (NPO) sector in Kenya so that their legitimate charitable activity is not negatively impacted in so far anti-money laundering and terrorism financing measures are concerned;
3. THAT the Kenya National Civil Society Centre is a member of the Global NPO Coalition on FATF, a voluntary membership-based organization set up to ensure that the civil society is effectively engaged in the debate, formulation and implementation of anti-money-laundering and combating of terrorism financing policies across the globe;
4. THAT arising from these engagements and activities, the Kenya National Civil Society Centre, in partnership and collaboration with Muslims for Human Rights (MUHURI) and other Kenyan and international NPOs has:

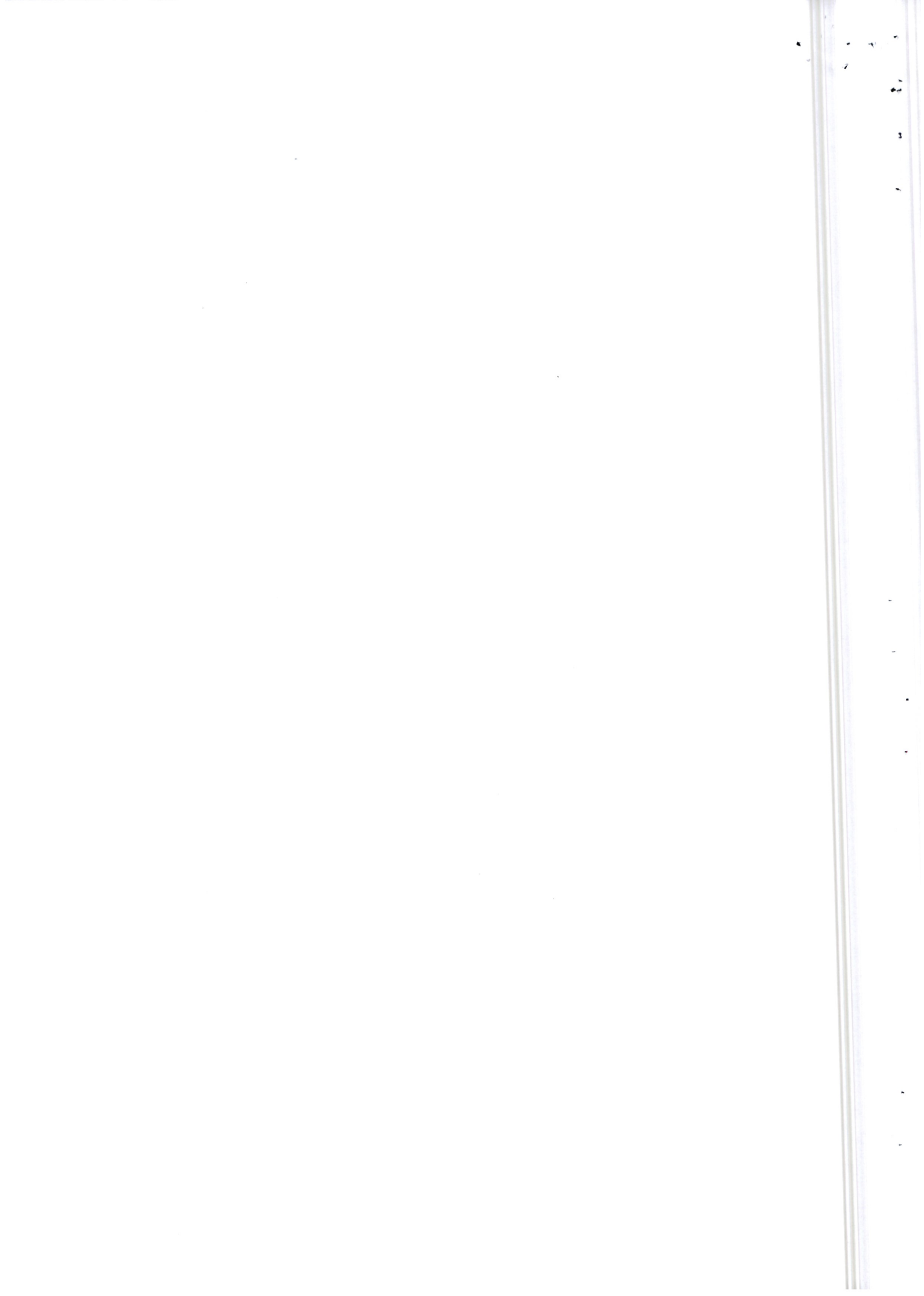


YWCA Complex, Mamlaka Road,
off Nyerere Road, Beecher Block, Office No. 1
P.O. Box 17342 - 00100 Nairobi

Tel: +254 20 259 4938
Email: info.kncsc@gmail.com

FORM NO. 11

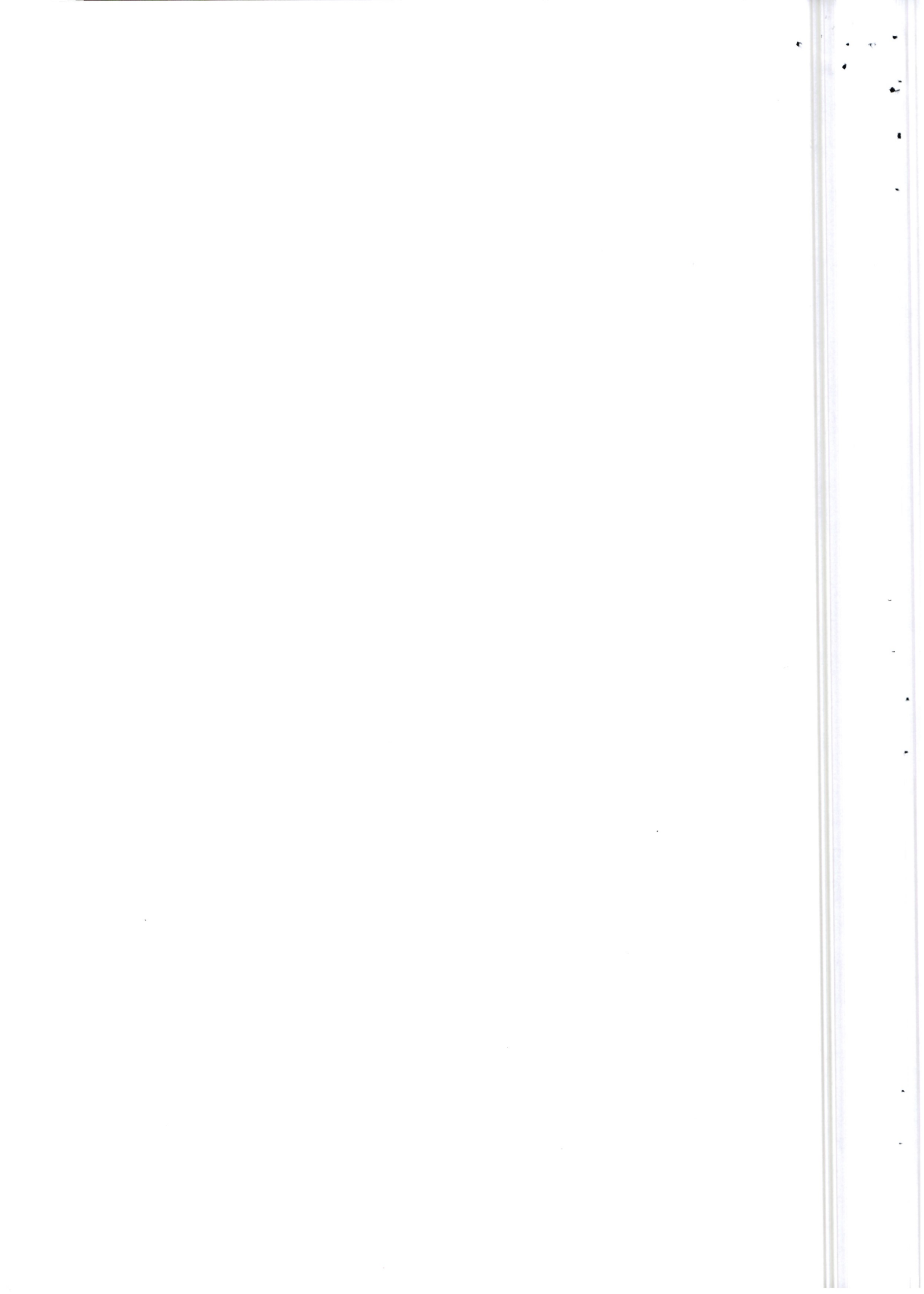
- Established an in-country coalition of NPOs for the purpose of protecting Civic Space through the engagement of Non-Profit Organization (NPOs) with the FATF Processes on AML/CFT in Kenya;
 - Engaged on advocacy, capacity building, research and evidence-gathering on money-laundering and terrorism financing in the sector;
 - Raised awareness on AML/CFT rules and regulations, and their obligations thereof;
 - Kept abreast of existing laws regulating the sector, including self-regulatory measures;
 - Convened a number of multi-stakeholder dialogue processes to better understand security/regulatory mandates and, in turn, inform about their unintended consequences on the sector;
5. THAT the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill 2023 seeks to amend several laws, including provisions to counter money laundering (ML), terrorism financing (TF), and financing of proliferation of weapons of mass destruction (PF);
 6. THAT specifically, the Bill aims to address deficiencies identified by the Eastern and Southern Africa Anti-Money Laundering Group¹ (ESAAMLG)'s Mutual Evaluation of Kenya in September 2022 and bring Kenya into compliance with the Financial Action Task Force (FATF) Recommendations, particularly with respect to the country's understanding of terrorist financing risks, risk-based supervision of regulated entities such as banks and non-financial businesses and professions, and the need to further enhance financial investigations;
 7. THAT the Bill aims to bring Kenya into greater compliance with the FATF Recommendations, including FATF's Recommendation 8 on NPOs requiring countries to among other measures, review the adequacy of laws and regulations that relate to such organizations that the country has identified as being vulnerable to TF abuse and apply focused and proportionate measures, in line with a risk-based approach to those NPOs;
 8. THAT a "risk-based approach" requires an objective process of identification of organizations most at risk for Terrorism Financing, and adoption of targeted measures to address these specific risks, rather than broadly monitoring and restricting all NPOs as has been the case in Kenya;
 9. THAT in 2016, FATF explicitly revised Recommendation 8 to counter the trend of overbroad restrictions on the non-profit sector due to anti-money laundering and anti-terrorism policies. Kenya in particular, has in the past applied such wholesale condemnation of NPOs, limiting the ability of affected organizations to associate freely, and branding some of them as "sympathetic to terrorists";



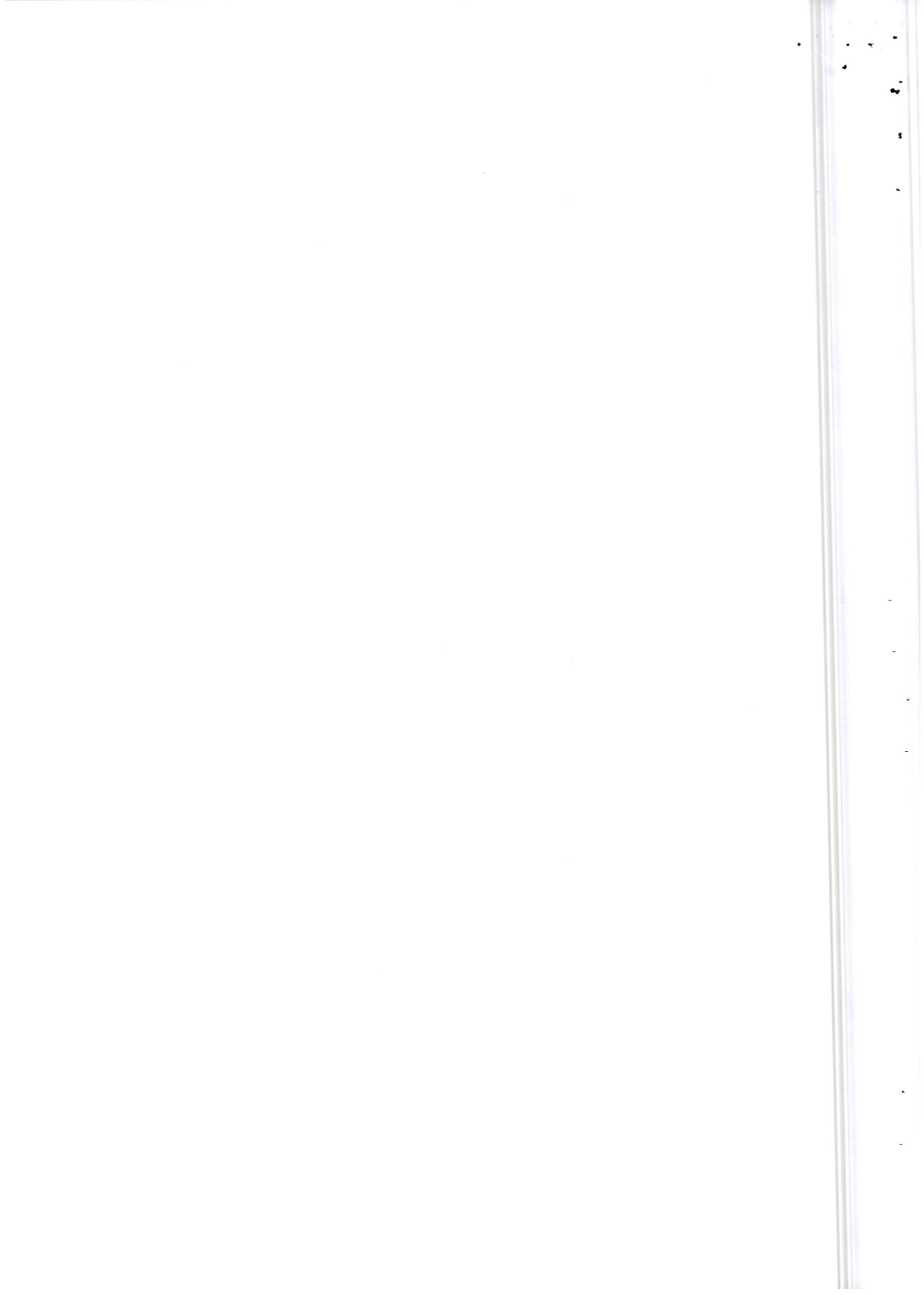
10. THAT as a result of Kenya's failure to apply a risk-based approach in its anti-money laundering and combating of terrorism financing measures, the Non-Governmental Organizations (NGOs) Coordination Board deregistered 510 organizations under the regulation of the Board in December 2014. Fifteen (15) of the affected organizations were accused (without any evidence) of links to terrorism;
11. THAT in 2013, the government sought to introduce legal barriers impeding the ability of NPOs to access foreign funding in the form of grants and donations through a proposed amendment of the Public Benefit Organizations Act, a law that assented to by former President Mwai Kibaki on February 2013 but that succeeding governments, including the Kenya Kwanza administration has refused to operationalize;
12. THAT on April 7, 2015, the government published in the official government gazette a list comprising 86 individuals and entities, including two human rights organizations namely, Muslims for Human Rights (MUHURI) and HAKI AFRICA, claiming (without any evidence) that the affected individuals and organizations supported terrorism;
13. THAT the affected individuals and organizations, including Muslims for Human Rights and Haki Africa were acquitted in court after the government failed to produce evidence backing its claims, further bolstering the inadequacy and ineffectiveness of its blanket condemnation and persecution of not-for-profit organizations without any reasonable cause;
14. THAT the consequences of these intermittent interruptions on the operations of affected organizations and in the wider not-for-profit sector in Kenya have been devastating and ruinous to the reputation of affected organizations, limiting their ability to raise funds for NPO services nationally and across borders, subsequently leading to cancelled projects and humanitarian interventions, disrupted delivery of food, medicine and education to the needy;

II. **OBERVATIONS & RECOMMENDATIONS SPECIFIC TO THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL, 2023**

15. THAT the Kenya National Civil Society Centre has noted with satisfaction that the proposed amendment of the Proceeds of Crime and Anti-Money Laundering Act within the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill 2023 explicitly codifies the **“risk-based approach”**;
16. THAT through insertion of Section 36D into Proceeds of Crime and Anti-Money laundering Act, 2019 as recommended by the FATF, requiring the relevant state authority to apply countermeasures in response to specific risks of Money Laundering, Terrorism Financing, and financing of proliferation of weapons of mass destruction (PF). This is progressive and should be upheld;



17. THAT the progressive nature of the risk-based approach aside, several of the other amendments in the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023 appear to grant unlimited supervision powers to relevant authorities under the respective laws for anti-money laundering (AML), combating terrorism financing (CTF), and countering proliferation financing (CPF) purposes.
18. THAT specifically, and of grave concern to the Kenya National Civil Society Centre are the following list of powers granted to authorities such as the Central Bank and authorities overseeing insurance and matters related to capital markets pursuant to Sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009:
 - i. Powers to vet proposed shareholders, beneficial owners, directors, and senior officers of an institution that reports to the authority;
 - ii. Powers to conduct onsite inspections;
 - iii. Power to conduct offsite surveillance;
 - iv. Powers to undertake consolidated supervision of a reporting institution and “its group”;
 - v. Powers to compel the production of any document or information;
 - vi. Power to impose monetary, civil or administration sanctions for violations related to AML/CTF/CPF;
 - vii. Powers to issue regulations, guidelines, directions, rules or instructions for AML/CTF/CPF purposes;
 - viii. Powers to enforce cooperation in sharing of information for AML/CTF/CPF purposes; and
 - ix. Powers to take necessary actions to supervise and enforce compliance by reporting institutions in line with the Proceeds of Crime and Anti-Money Laundering Act.
19. THAT the Kenya National Civil Society Centre observes that these monitoring powers being granted to the respective authorities are so broadly worded that they grant state authorities excessive and undue discretion to monitor an NGO and other entities;
20. THAT the list of powers granted throughout the Bill appears to allow a State authority to conduct inspections and surveillance and request any information without a well-founded, evidence-based allegation of Money Laundering, Terrorism Financing, or financing of proliferation of weapons of mass destruction (PF) violation. These monitoring powers have the potential for abuse and would restrict the right to the freedom of association;
21. THAT the monitoring and investigation activities could be intrusive and burdensome on NGOs, which would need to expend staff time and resources allocated for its activities to produce information requested by the State;

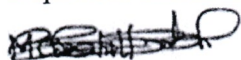


22. THAT State investigations may also force NGOs to reveal information about their donors and beneficiaries, which could place those individuals at risk of reprisals if the organization works on sensitive issues;
23. THAT in order to ensure that the amendments being proposed under the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023 meets the threshold of Recommendation 8 as amended in 2016, the Kenya National Civil Society Centre recommends that these oversight powers of authorities be carefully delimited. This will ensure that any planned inspection of non-governmental organizations (NGOs) or any entity is only permitted following a judicial order that justifies the legal and factual grounds for the inspection and should only take place where there is a well-founded, evidence-based allegation of a serious legal violation. The State should only pursue surveillance of NGOs where there is a reasonable suspicion of a violation of law and where there is a court-issued warrant authorizing the surveillance;
24. THAT pursuant to the aforementioned, the Kenya National Civil Society Centre *strongly recommends that all the relevant sections in the Bill should be revised to limit the circumstances in which the respective authorities may supervise, inspect, or conduct surveillance on a reporting organization to only those situations where there is a judicial order that clearly articulates the grounds for monitoring or inspection.*
25. THAT a proposed insertion of Section 30G into the Prevention of Terrorism Act, 2012 makes reference to “**designated persons and entities.**” While the principal Act uses the term “**specified entities**”. The Kenya National Civil Society Centre *recommends that the proposed amendment be revised to use the same term in the principal act in order to avoid confusion that may arise in the interpretation of the law;*

III. CONCLUSION AND FINAL SUBMISSIONS

26. THE Kenya National Civil Society Centre is grateful for the opportunity to make representations on the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023. The submissions are in line with Financial Action Task Force standards, especially Recommendation 8 as amended in 2016 to mitigate unintended consequences of overregulation, de-risking and limitations thereof to financial access by NGOs. The submissions are also in accordance with the Guidelines on Freedom of Association and Assembly of the African Charter on Human and Peoples’ Rights, Article 22 of the International Covenant on Civil and Political Rights (ICCPR) requiring that restrictions on the right to freedom of association must be prescribed by law.

Representations made and submitted by:



Suba Churchill
Executive Director

For and on Behalf of the Kenya National Civil Society Centre (KNCSC)



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Chief Executive's Office

Our ref: CMA/ADM/CONF/5

August 15th, 2023

Clerk of the National Assembly
P.O. Box 41842-00100
Main Parliament Buildings
NAIROBI

Benjamin Magut
to facilitate
LA
16/8/23

Dear Sir

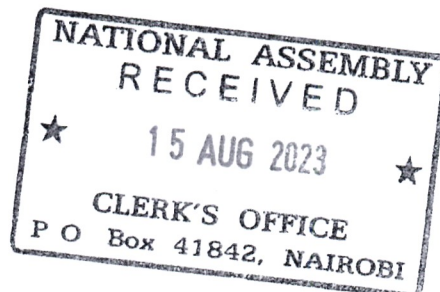
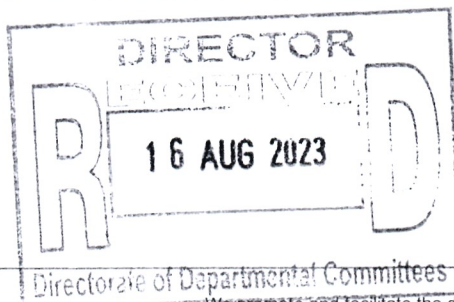
RE: STAKEHOLDER ENGAGEMENT ON THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL 2023 (NATIONAL ASSEMBLY BILL NO. 35 OF 2023) BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

Reference is made to your letter dated August 9, 2023, Ref: NA/DDC/F&NP/2023/080 on the above subject matter following your request for submissions to the Departmental Committee on Finance and National Planning on the proposed amendments to the Capital Markets Act, Cap. 485A Laws of Kenya.

Please find attached our submissions for the Committee's consideration and confirm our attendance to the meeting to discuss the same on Wednesday 16th August, 2023.

Yours sincerely,

FCPA, Wyckliffe Shamiah
CHIEF EXECUTIVE OFFICER





**CMA SUBMISSIONS ON THE ANTI-MONEY LAUNDERING AND COMBATING OF
TERRORISM FINANCING LAWS (AMENDMENT) BILL 2023 (NATIONAL ASSEMBLY BILL
NO. 35 OF 2023) BY THE DEPARTMENTAL COMMITTEE ON FINANCE
AND NATIONAL PLANNING**

The Capital Markets Authority (CMA) is charged with the prime responsibility of regulating and facilitating the development of orderly, fair, and efficient capital markets in Kenya. The CMA approves capital markets products, licenses and supervises market intermediaries, conducts on-site and off-site market surveillance to enforce compliance, and conducts investigations and enforcement activities to promote market integrity and investor confidence.

1.0 Money Laundering/Terrorism Financing Threats in the Capital Markets Sector

The capital markets are vulnerable to money laundering and terrorism financing risks primarily due to their global nature, diverse range of products & services and increasing developments in technology, payment systems, depository & settlement systems, and other direct gateways into the markets. The speed and the relative anonymity of these avenues make the capital markets sector an option for criminals engaged in money laundering. In addition, the capital market has an additional distinguishing money laundering risk factor in that not only can it be used to launder illicit funds that result from illegal activity outside of the financial markets, but it can also be used to generate illicit funds from the market itself, for example, in cases of insider trading, market manipulation, front running and securities fraud.

The capital markets sector in Kenya has experienced an upsurge of new diverse products & services as well as a drastic increase in the number of new market players (reporting institutions) over the last 5 years. The sector has witnessed rapid innovation and development of new & complex products and services, for example online forex trading, online crowd funding, REITs, blockchain/fintech products/services, NSE day trading among others. In addition, the central depository and settlement system (CDSC) has been enhanced

and is moving towards real time execution, settlement, and depository of transactions at the Nairobi Securities Exchange (NSE) from the normal T+3.

The money laundering vulnerability of the sector was assessed as **Medium (0.59)**. The input variable Effectiveness of Supervision Procedures and Practices has a priority ranking of one, implying that mitigating the deficiency related to this variable is the first item at the top of the priority list. Therefore, the immediate key action points are enhancing the effectiveness of supervision in the securities sector, improving the AML knowledge of staff, promoting the effectiveness of suspicious activity monitoring and reporting, creating more awareness on suspicious activity reporting as well as enforcing administrative actions in the sector.

Capital markets products/services vulnerabilities:

	Products	Product's vulnerability
1.	Fixed Income Securities	Medium
2.	Equities	Medium
3.	Registered and Unregistered Collective Investments Schemes (CIS)	Medium
4.	Alternative Asset Classes (Online Foreign Exchange Trading and CFDs)	Medium high
5.	Private Wealth	Medium high
6.	Regulatory Sandbox	Medium low
7.	Hedge Funds, Private Equity Funds, Venture Capital Funds and Commodity Pools	Medium high

The **ML threat in the securities sector is rated Low but there is a likelihood of the level of threat to increase in the following years**. The rating for the sector is supported by the fact that there was no recorded case out of the 20 sampled cases that were reviewed involving abuse of the securities sector.

ML component related to terrorism is **Very Low** in the country as terrorist attacks in Kenya are largely ideological in nature and not an enterprise that aims to benefit the attackers financially. Therefore, the ML threat from terrorism related offences in Kenya was rated **Low**. This assessment is not likely to change in the future.

The findings of the NRA exercise as well as the Mutual Evaluation exercise has provided new insights to CMA on how to approach the fight against ML/TF in the capital markets sector and help take preventive and mitigating actions/measures against ML/TF in line with the National Policy.

2.0 Steps Taken by CMA Towards AML/CFT Compliance

Pursuant to its supervision mandate, the CMA has taken steps towards Anti-Money Laundering, Counter-Financing of Terrorism and Counter-Financing of Proliferation of Weapons of Mass Destruction (AML/CFT/CPF) compliance with Kenya's Mutual Evaluation Report (MER) requirements, local laws and international standards and best practices on AML/CFT by conducting the following activities;

1. Development of the Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets, 2015.
2. Development of an AML/CFT risk-based supervision framework which consists of AML/CFT risk-based supervision manual, risk assessment methodology, risk assessment tools i.e. (Questionnaires, data collection, risk profiling tool).
3. Conducting standalone AML/CFT onsite inspections in collaboration with the FRC
4. Stakeholder engagements on AML/CFT awareness.

3.0 Proposed Amendments to the Capital Markets Act.

In 2021-2022, Kenya underwent an Anti-Money Laundering and Counter Terrorist Financing Mutual Evaluation (ME), a peer review assessment by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) aimed at assessing Kenya's compliance with global Anti-Money Laundering, Counter-Financing of Terrorism and Counter-Financing of Proliferation of Weapons of Mass Destruction (AML/CFT/CPF) standards set by the Financial Action Task Force (FATF), an intergovernmental agency established in 1989 to develop and

promote international cooperation for combating money laundering and terrorism financing.

Following the adoption and publication of Kenya's Mutual Evaluation Report (MER) by ESAAMLG in September 2022, Kenya embarked on the process of addressing the deficiencies identified in the MER. One of the processes involved legal and policy reforms. Towards this end, the Legal Subgroup of the National Taskforce on Money Laundering and Combating the Financing of Terrorism (NTF) identified and proposed suitable amendments to legislations to address the identified technical compliance deficiencies (legal gaps), and proposed amendments to various legislations including the Capital Markets Act.

The ¹technical compliance deficiencies identified in the MER touching on CMA include the following:

1. CMA does not have the legal basis to issue AML/CFT guidelines for the capital markets sector.
2. The financial sector supervisors (CMA included) do not have powers to compel production of documents from Financial Institutions (Fis) and this limits their access to information for AML/CFT purposes.
3. Sectoral laws (in our case the CMA Act) do not have provisions on AML/CFT requirements and therefore the powers to access information is for prudential purposes and not for AML/CFT purposes.
4. There are no legal or regulatory measures to facilitate cooperation or coordination between supervisors with their domestic and foreign counterparts for AML/CFT purposes.
5. There is no requirement for supervisors to review the assessment of ML/TF risk profile of a financial institution or group periodically, and when there are major events or developments in the management and operations of the FIs group.

¹ Technical compliance assessment seeks to address the specific requirements of each of the FATF Recommendations, principally as they relate to the relevant legal and institutional framework of the country, and the powers and procedures of competent authorities. These represent the fundamental building blocks of an AML/CFT system.

6. The scope of laws is limited to prudential supervision and do not include AML/CTF supervision.
7. Sectoral laws do not provide for AML/CFT and do not cross-reference the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA).
8. Supervisors do not have explicit powers in their respective Acts to conduct AML/CFT inspections.
9. Sectoral laws do not cover Combating Financing of Terrorism (CFT) inspections.
10. There are no specific legal or regulatory powers which authorize supervisors to impose sanctions for failure to comply with the AML/CFT requirements asset out in the POCAMLA and the POCAML Regulations.
11. The scope of powers to issue sanctions relates to non-compliance with prudential requirements contained in the respective sectoral Acts and not AML/CFT requirements.
12. Supervisors do not have a legal basis to exchange regulatory AML/CFT information with their domestic and foreign counterparts including Law Enforcement Agencies (LEAs).
13. Supervisors have not established and implemented robust Combating Proliferation Financing (CPF) legal and institutional frameworks.

Following the MER identified technical compliance deficiencies touching on CMA, the Authority submitted to the Financial Reporting Center (FRC), the National Coordinator of AML/CFT Mutual Evaluation of the Republic of Kenya, the proposed draft amendments to the Capital Markets Act to address the legal gaps.

The table below details the proposed draft amendments made to the Capital Markets Act which is contained in the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill 2023:

Capital Markets Act Cap 485A	New	Insert the following new section immediately after section 11 A
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		<p>Anti-money laundering, countering the financing of terrorism and countering proliferation financing</p>	<p>11 B. (1) The Authority shall supervise and enforce compliance by market intermediaries with all legal requirements relating to anti-money laundering, countering the financing of terrorism and countering proliferation financing including compliance with the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Prevention of Terrorism Act, 2012 and any regulations, guidelines, rules, instruction, or direction made or issued pursuant to.</p>
			<p>(2) Without prejudice to the generality of sub-section (1), the Authority may—</p> <ul style="list-style-type: none"> (a) vet proposed shareholders, directors and key personnel of a market intermediary; (b) conduct onsite inspection or offsite monitoring of a market intermediary; (c) undertake consolidated supervision of a market intermediary and its group; (d) compel production of any document or information the Authority may require; (e) issue guidelines, directions, rules or instructions on AML/CFT and Countering Proliferation Financing; (f) cooperate and share information relating to AML/CFT and countering proliferation financing with any domestic or foreign

			financial intelligence unit, a financial sector regulator, fiscal or tax agency, law enforcement agency or any other competent authority.
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4.0 Stakeholder Engagements

CMA was requested by FRC (the National Coordinator of AML/CFT Mutual Evaluation of the Republic of Kenya) to submit its proposed amendments to the Capital Markets Act to address technical deficiencies (legal gaps) identified in Kenya’s MER. In this regard, the CMA proposed amendments were submitted to the FRC on 25th May 2023.

5.0 Kenya’s AML/CFT Rating Status

1. Kenya’s Mutual Evaluation Report revealed that there are significant deficiencies in the country’s AML/CFT/CPF systems and requires a more intensive process of follow-up.
2. Following the assessment, Kenya has been referred to the FATF’s International Co-operation Review Group (ICRG) for a preliminary review.
 - Under the one-year observation period to work with FATF to address the deficiencies which expires at the end of **September 2023**.
 - Submit a Post Observation Period Report (POPR) to FATF on the progress made in **November 2023**.
3. Failure to comprehensively address the identified technical compliance and effectiveness deficiencies might risk the country being placed in the FATF Grey List (increased monitoring).
4. Kenya has been placed under enhanced follow up and has been given three years to address the identified deficiencies.
5. Kenya is expected to present its first enhanced follow-up report at the first Task Force meeting 12 months after adoption of the MER – September 2023.

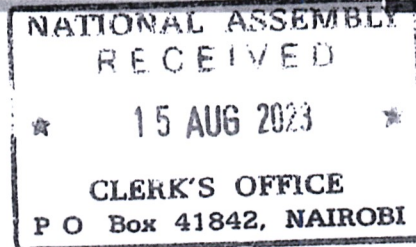
The CMA has and will continually enhance its regulation, licensing, supervision & enforcement aimed at protecting the capital markets industry from ML/TF risks and encourage greater compliance with the AML/CFT standards set by the Financial Action Task

Force (FATF). The CMA is indeed looking forward to strengthening the capital markets intermediaries' technical compliance and effectiveness on their AML/CFT obligations.



DD Oct 15/18

The Clerk
National Assembly
Thirteenth Parliament
P.O. Box 41842 – 00100, Nairobi
E-mail address: cna@parliament.go.ke



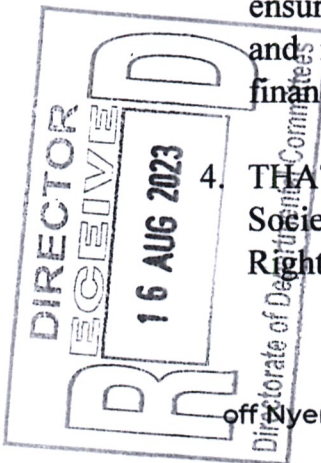
Benjamin Naku
Douglas Katio
to facilitate
ca. 16/8/23

RE: MEMORANDUM ON THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAW (AMENDMENT) BILL, 2023

I. INTRODUCTION AND GENERAL OBSERVATIONS

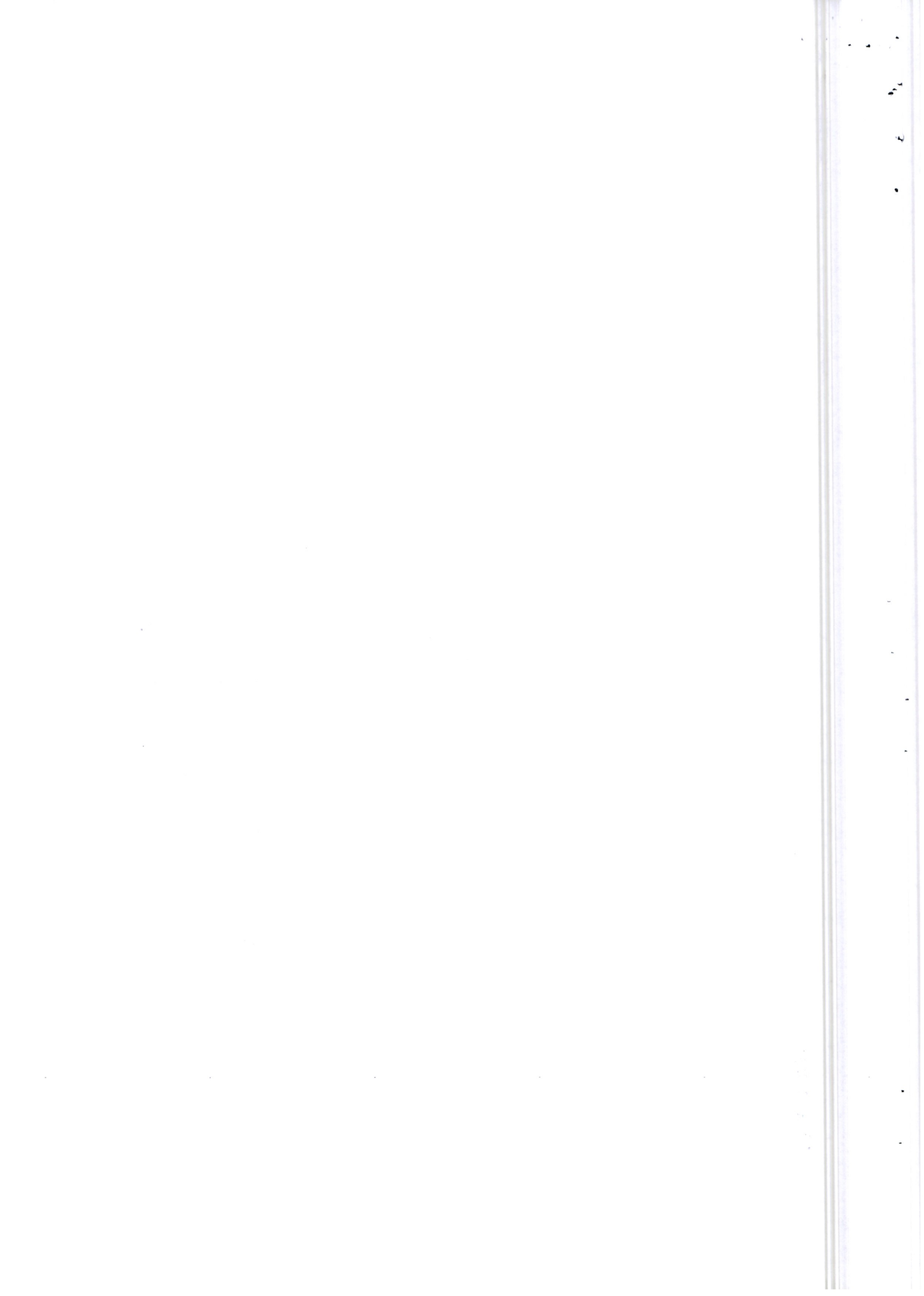
Following the invitation to submit memoranda on the Anti-Money laundering and Combating of Terrorism Financing Law (Amendment) Bill, 2023, the Kenya National Civil Society Centre (KNCSC) wishes to present to the National Assembly on the subject matter as follows:

1. THAT the Kenya National Civil Society Centre is a civil society organization established and operating in the Republic of Kenya working to harness the solidarity, synergy and agency of citizens and their civil society formations for the transformation of the Kenyan society;
2. THAT in so doing, the Kenya National Civil Society Centre has in the last couple of years partnered with other national and international Non-Governmental Organizations to promote a Risk-Based Approach to regulating the Not-for-Profit (NPO) sector in Kenya so that their legitimate charitable activity is not negatively impacted in so far anti-money laundering and terrorism financing measures are concerned;
3. THAT the Kenya National Civil Society Centre is a member of the Global NPO Coalition on FATF, a voluntary membership-based organization set up to ensure that the civil society is effectively engaged in the debate, formulation and implementation of anti-money-laundering and combating of terrorism financing policies across the globe;
4. THAT arising from these engagements and activities, the Kenya National Civil Society Centre, in partnership and collaboration with Muslims for Human Rights (MUHURI) and other Kenyan and international NPOs has:



YWCA Complex, Mamlaka Road,
off Nyerere Road, Beecher Block, Office No. 1
P.O. Box 17342 - 00100 Nairobi

Tel: +254 20 259 4938
Email: info.kncsc@gmail.com



- Established an in-country coalition of NPOs for the purpose of protecting Civic Space through the engagement of Non-Profit Organization (NPOs) with the FATF Processes on AML/CFT in Kenya;
 - Engaged on advocacy, capacity building, research and evidence-gathering on money-laundering and terrorism financing in the sector;
 - Raised awareness on AML/CFT rules and regulations, and their obligations thereof;
 - Kept abreast of existing laws regulating the sector, including self-regulatory measures;
 - Convened a number of multi-stakeholder dialogue processes to better understand security/regulatory mandates and, in turn, inform about their unintended consequences on the sector;
5. THAT the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill 2023 seeks to amend several laws, including provisions to counter money laundering (ML), terrorism financing (TF), and financing of proliferation of weapons of mass destruction (PF);
 6. THAT specifically, the Bill aims to address deficiencies identified by the Eastern and Southern Africa Anti-Money Laundering Group1 (ESAAMLG)'s Mutual Evaluation of Kenya in September 2022 and bring Kenya into compliance with the Financial Action Task Force (FATF) Recommendations, particularly with respect to the country's understanding of terrorist financing risks, risk-based supervision of regulated entities such as banks and non-financial businesses and professions, and the need to further enhance financial investigations;
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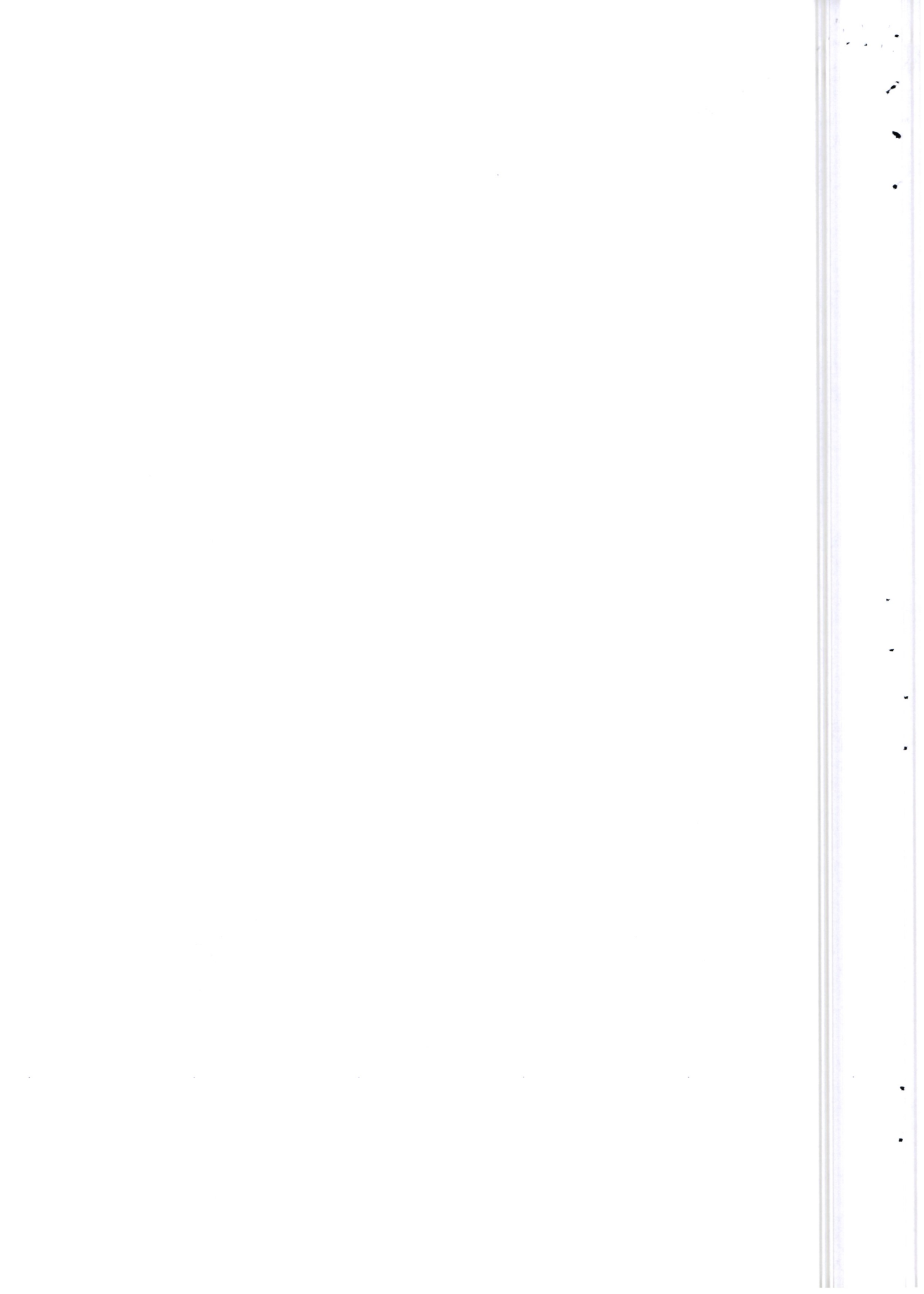
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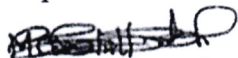


22. THAT State investigations may also force NGOs to reveal information about their donors and beneficiaries, which could place those individuals at risk of reprisals if the organization works on sensitive issues;
23. THAT in order to ensure that the amendments being proposed under the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023 meets the threshold of Recommendation 8 as amended in 2016, the Kenya National Civil Society Centre recommends that these oversight powers of authorities be carefully delimited. This will ensure that any planned inspection of non-governmental organizations (NGOs) or any entity is only permitted following a judicial order that justifies the legal and factual grounds for the inspection and should only take place where there is a well-founded, evidence-based allegation of a serious legal violation. The State should only pursue surveillance of NGOs where there is a reasonable suspicion of a violation of law and where there is a court-issued warrant authorizing the surveillance;
24. THAT pursuant to the aforementioned, the Kenya National Civil Society Centre *strongly recommends* that *all the relevant sections in the Bill should be revised to limit the circumstances in which the respective authorities may supervise, inspect, or conduct surveillance on a reporting organization to only those situations where there is a judicial order that clearly articulates the grounds for monitoring or inspection.*
25. THAT a proposed insertion of Section 30G into the Prevention of Terrorism Act, 2012 makes reference to “**designated persons and entities.**” While the principal Act uses the term “**specified entities**”. The Kenya National Civil Society Centre *recommends that the proposed amendment be revised to use the same term in the principal act in order to avoid confusion that may arise in the interpretation of the law;*

III. CONCLUSION AND FINAL SUBMISSIONS

26. THE Kenya National Civil Society Centre is grateful for the opportunity to make representations on the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023. The submissions are in line with Financial Action Task Force standards, especially Recommendation 8 as amended in 2016 to mitigate unintended consequences of overregulation, de-risking and limitations thereof to financial access by NGOs. The submissions are also in accordance with the Guidelines on Freedom of Association and Assembly of the African Charter on Human and Peoples’ Rights, Article 22 of the International Covenant on Civil and Political Rights (ICCPR) requiring that restrictions on the right to freedom of association must be prescribed by law.

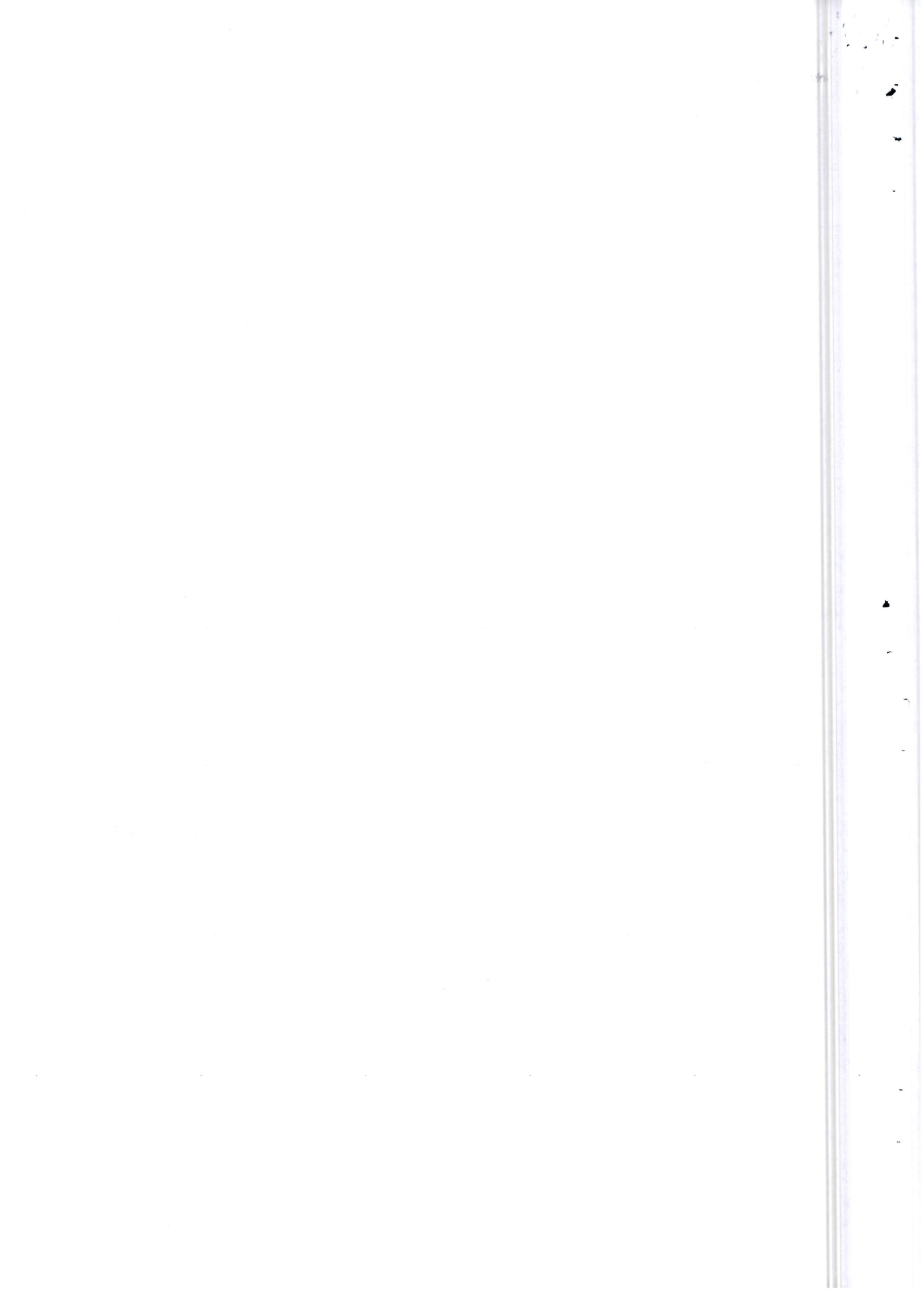
Representations made and submitted by:



Suba Churchill

Executive Director

For and on Behalf of the Kenya National Civil Society Centre (KNCSC)



Embankment Plaza, 3rd Floor
Longonot Road, Upper Hill
P.O. Box 74800 - 00200, Nairobi, Kenya
Tel: +254 (0)20 2264900
Email: ceoffice@cma.or.ke
Web: www.cma.or.ke

DD Gantton
8
15/8



Chief Executive's Office

Our ref: CMA/ADM/CONF/5

August 15th, 2023

Clerk of the National Assembly
P.O. Box 41842-00100
Main Parliament Buildings
NAIROBI

Benjamin Magut
to facilitate
LA
16/8/23

Dear Sir

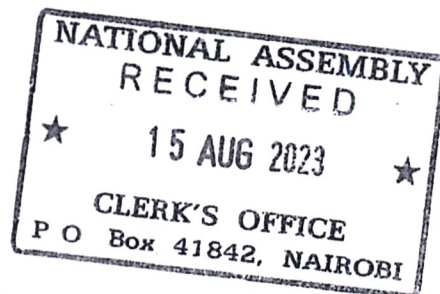
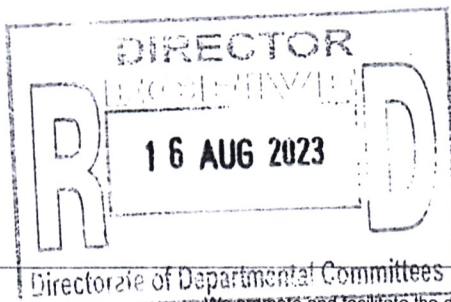
RE: STAKEHOLDER ENGAGEMENT ON THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL 2023 (NATIONAL ASSEMBLY BILL NO. 35 OF 2023) BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

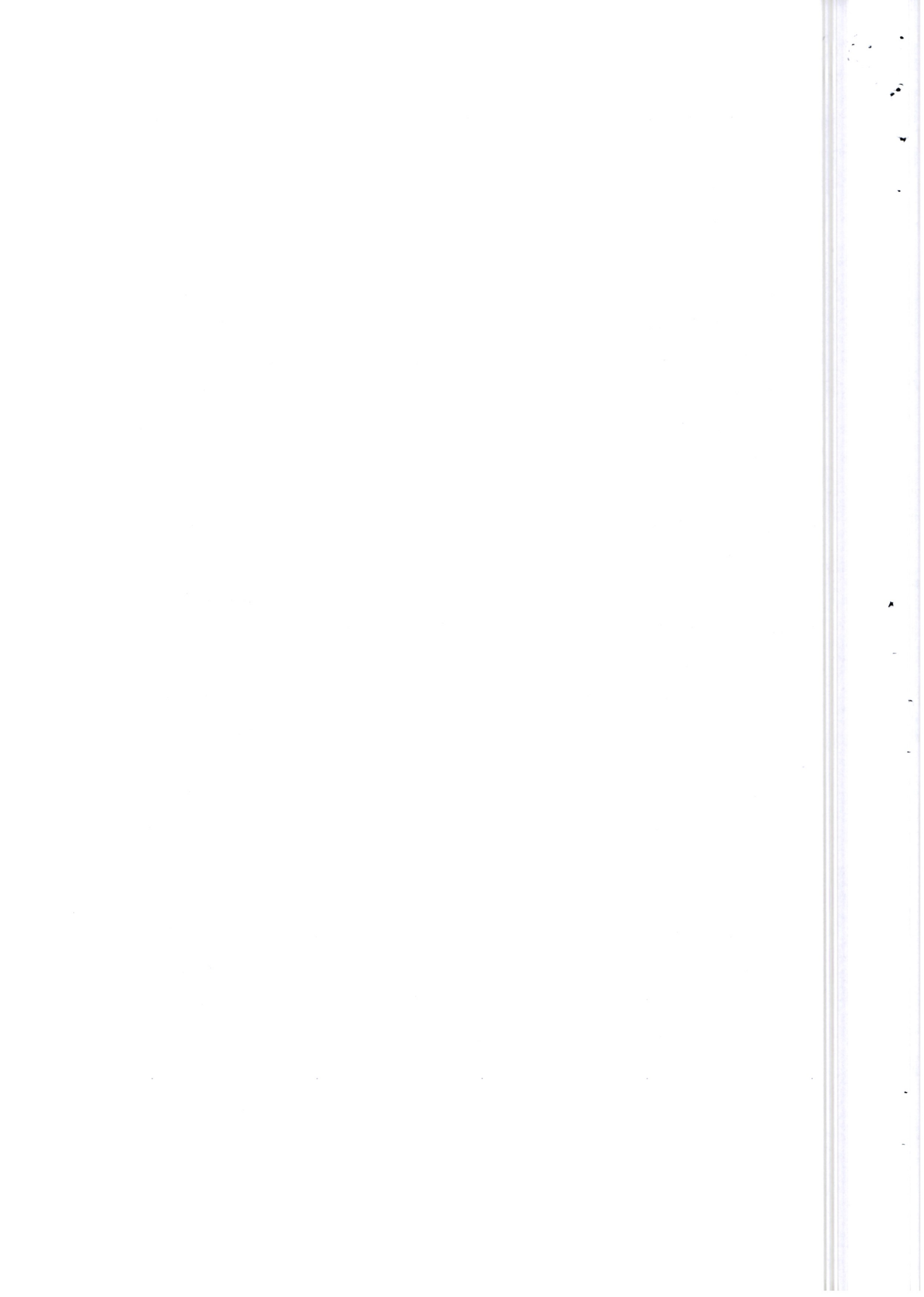
Reference is made to your letter dated August 9, 2023, Ref: NA/DDC/F&NP/2023/080 on the above subject matter following your request for submissions to the Departmental Committee on Finance and National Planning on the proposed amendments to the Capital Markets Act, Cap. 485A Laws of Kenya.

Please find attached our submissions for the Committee's consideration and confirm our attendance to the meeting to discuss the same on Wednesday 16th August, 2023.

Yours sincerely,

FOPA, Wyckliffe Shamiah
CHIEF EXECUTIVE OFFICER





**CMA SUBMISSIONS ON THE ANTI-MONEY LAUNDERING AND COMBATING OF
TERRORISM FINANCING LAWS (AMENDMENT) BILL 2023 (NATIONAL ASSEMBLY BILL
NO. 35 OF 2023) BY THE DEPARTMENTAL COMMITTEE ON FINANCE
AND NATIONAL PLANNING**

The Capital Markets Authority (CMA) is charged with the prime responsibility of regulating and facilitating the development of orderly, fair, and efficient capital markets in Kenya. The CMA approves capital markets products, licenses and supervises market intermediaries, conducts on-site and off-site market surveillance to enforce compliance, and conducts investigations and enforcement activities to promote market integrity and investor confidence.

1.0 Money Laundering/Terrorism Financing Threats in the Capital Markets Sector

The capital markets are vulnerable to money laundering and terrorism financing risks primarily due to their global nature, diverse range of products & services and increasing developments in technology, payment systems, depository & settlement systems, and other direct gateways into the markets. The speed and the relative anonymity of these avenues make the capital markets sector an option for criminals engaged in money laundering. In addition, the capital market has an additional distinguishing money laundering risk factor in that not only can it be used to launder illicit funds that result from illegal activity outside of the financial markets, but it can also be used to generate illicit funds from the market itself, for example, in cases of insider trading, market manipulation, front running and securities fraud.

The capital markets sector in Kenya has experienced an upsurge of new diverse products & services as well as a drastic increase in the number of new market players (reporting institutions) over the last 5 years. The sector has witnessed rapid innovation and development of new & complex products and services, for example online forex trading, online crowd funding, REITs, blockchain/fintech products/services, NSE day trading among others. In addition, the central depository and settlement system (CDSC) has been enhanced

and is moving towards real time execution, settlement, and depository of transactions at the Nairobi Securities Exchange (NSE) from the normal T+3.

The money laundering vulnerability of the sector was assessed as **Medium (0.59)**. The input variable Effectiveness of Supervision Procedures and Practices has a priority ranking of one, implying that mitigating the deficiency related to this variable is the first item at the top of the priority list. Therefore, the immediate key action points are enhancing the effectiveness of supervision in the securities sector, improving the AML knowledge of staff, promoting the effectiveness of suspicious activity monitoring and reporting, creating more awareness on suspicious activity reporting as well as enforcing administrative actions in the sector.

Capital markets products/services vulnerabilities:

	Products	Product's vulnerability
1.	Fixed Income Securities	Medium
2.	Equities	Medium
3.	Registered and Unregistered Collective Investments Schemes (CIS)	Medium
4.	Alternative Asset Classes (Online Foreign Exchange Trading and CFDs)	Medium high
5.	Private Wealth	Medium high
6.	Regulatory Sandbox	Medium low
7.	Hedge Funds, Private Equity Funds, Venture Capital Funds and Commodity Pools	Medium high

The **ML threat in the securities sector is rated Low but there is a likelihood of the level of threat to increase in the following years**. The rating for the sector is supported by the fact that there was no recorded case out of the 20 sampled cases that were reviewed involving abuse of the securities sector.

ML component related to terrorism is **Very Low** in the country as terrorist attacks in Kenya are largely ideological in nature and not an enterprise that aims to benefit the attackers financially. Therefore, the ML threat from terrorism related offences in Kenya was rated **Low**. This assessment is not likely to change in the future.

The findings of the NRA exercise as well as the Mutual Evaluation exercise has provided new insights to CMA on how to approach the fight against ML/TF in the capital markets sector and help take preventive and mitigating actions/measures against ML/TF in line with the National Policy.

2.0 Steps Taken by CMA Towards AML/CFT Compliance

Pursuant to its supervision mandate, the CMA has taken steps towards Anti-Money Laundering, Counter-Financing of Terrorism and Counter-Financing of Proliferation of Weapons of Mass Destruction (AML/CFT/CPF) compliance with Kenya's Mutual Evaluation Report (MER) requirements, local laws and international standards and best practices on AML/CFT by conducting the following activities;

1. Development of the Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets, 2015.
2. Development of an AML/CFT risk-based supervision framework which consists of AML/CFT risk-based supervision manual, risk assessment methodology, risk assessment tools i.e. (Questionnaires, data collection, risk profiling tool).
3. Conducting standalone AML/CFT onsite inspections in collaboration with the FRC
4. Stakeholder engagements on AML/CFT awareness.

3.0 Proposed Amendments to the Capital Markets Act.

In 2021-2022, Kenya underwent an Anti-Money Laundering and Counter Terrorist Financing Mutual Evaluation (ME), a peer review assessment by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) aimed at assessing Kenya's compliance with global Anti-Money Laundering, Counter-Financing of Terrorism and Counter-Financing of Proliferation of Weapons of Mass Destruction (AML/CFT/CPF) standards set by the Financial Action Task Force (FATF), an intergovernmental agency established in 1989 to develop and

promote international cooperation for combating money laundering and terrorism financing.

Following the adoption and publication of Kenya's Mutual Evaluation Report (MER) by ESAAMLG in September 2022, Kenya embarked on the process of addressing the deficiencies identified in the MER. One of the processes involved legal and policy reforms. Towards this end, the Legal Subgroup of the National Taskforce on Money Laundering and Combating the Financing of Terrorism (NTF) identified and proposed suitable amendments to legislations to address the identified technical compliance deficiencies (legal gaps), and proposed amendments to various legislations including the Capital Markets Act.

The ¹technical compliance deficiencies identified in the MER touching on CMA include the following:

1. CMA does not have the legal basis to issue AML/CFT guidelines for the capital markets sector.
2. The financial sector supervisors (CMA included) do not have powers to compel production of documents from Financial Institutions (Fis) and this limits their access to information for AML/CFT purposes.
3. Sectoral laws (in our case the CMA Act) do not have provisions on AML/CFT requirements and therefore the powers to access information is for prudential purposes and not for AML/CFT purposes.
4. There are no legal or regulatory measures to facilitate cooperation or coordination between supervisors with their domestic and foreign counterparts for AML/CFT purposes.
5. There is no requirement for supervisors to review the assessment of ML/TF risk profile of a financial institution or group periodically, and when there are major events or developments in the management and operations of the FIs group.

¹ Technical compliance assessment seeks to address the specific requirements of each of the FATF Recommendations, principally as they relate to the relevant legal and institutional framework of the country, and the powers and procedures of competent authorities. These represent the fundamental building blocks of an AML/CFT system.

6. The scope of laws is limited to prudential supervision and do not include AML/CTF supervision.
7. Sectoral laws do not provide for AML/CFT and do not cross-reference the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA).
8. Supervisors do not have explicit powers in their respective Acts to conduct AML/CFT inspections.
9. Sectoral laws do not cover Combating Financing of Terrorism (CFT) inspections.
10. There are no specific legal or regulatory powers which authorize supervisors to impose sanctions for failure to comply with the AML/CFT requirements asset out in the POCAMLA and the POCAML Regulations.
11. The scope of powers to issue sanctions relates to non-compliance with prudential requirements contained in the respective sectoral Acts and not AML/CFT requirements.
12. Supervisors do not have a legal basis to exchange regulatory AML/CFT information with their domestic and foreign counterparts including Law Enforcement Agencies (LEAs).
13. Supervisors have not established and implemented robust Combating Proliferation Financing (CPF) legal and institutional frameworks.

Following the MER identified technical compliance deficiencies touching on CMA, the Authority submitted to the Financial Reporting Center (FRC), the National Coordinator of AML/CFT Mutual Evaluation of the Republic of Kenya, the proposed draft amendments to the Capital Markets Act to address the legal gaps.

The table below details the proposed draft amendments made to the Capital Markets Act which is contained in the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill 2023:

Capital Markets Act Cap 485A	New	Insert the following new section immediately after section 11 A
---------------------------------------	------------	--

		<p>Anti-money laundering, countering the financing of terrorism and countering proliferation financing</p>	<p>11 B. (1) The Authority shall supervise and enforce compliance by market intermediaries with all legal requirements relating to anti-money laundering, countering the financing of terrorism and countering proliferation financing including compliance with the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Prevention of Terrorism Act, 2012 and any regulations, guidelines, rules, instruction, or direction made or issued pursuant to.</p>
			<p>(2) Without prejudice to the generality of sub-section (1), the Authority may—</p> <ul style="list-style-type: none"> (a) vet proposed shareholders, directors and key personnel of a market intermediary; (b) conduct onsite inspection or offsite monitoring of a market intermediary; (c) undertake consolidated supervision of a market intermediary and its group; (d) compel production of any document or information the Authority may require; (e) issue guidelines, directions, rules or instructions on AML/CFT and Countering Proliferation Financing; (f) cooperate and share information relating to AML/CFT and countering proliferation financing with any domestic or foreign

			financial intelligence unit, a financial sector regulator, fiscal or tax agency, law enforcement agency or any other competent authority.
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4.0 Stakeholder Engagements

CMA was requested by FRC (the National Coordinator of AML/CFT Mutual Evaluation of the Republic of Kenya) to submit its proposed amendments to the Capital Markets Act to address technical deficiencies (legal gaps) identified in Kenya’s MER. In this regard, the CMA proposed amendments were submitted to the FRC on 25th May 2023.

5.0 Kenya’s AML/CFT Rating Status

1. Kenya’s Mutual Evaluation Report revealed that there are significant deficiencies in the country’s AML/CFT/CPF systems and requires a more intensive process of follow-up.
2. Following the assessment, Kenya has been referred to the FATF’s International Co-operation Review Group (ICRG) for a preliminary review.
 - Under the one-year observation period to work with FATF to address the deficiencies which expires at the end of **September 2023**.
 - Submit a Post Observation Period Report (POPR) to FATF on the progress made in **November 2023**.
3. Failure to comprehensively address the identified technical compliance and effectiveness deficiencies might risk the country being placed in the FATF Grey List (increased monitoring).
4. Kenya has been placed under enhanced follow up and has been given three years to address the identified deficiencies.
5. Kenya is expected to present its first enhanced follow-up report at the first Task Force meeting 12 months after adoption of the MER – September 2023.

The CMA has and will continually enhance its regulation, licensing, supervision & enforcement aimed at protecting the capital markets industry from ML/TF risks and encourage greater compliance with the AML/CFT standards set by the Financial Action Task

Force (FATF). The CMA is indeed looking forward to strengthening the capital markets intermediaries' technical compliance and effectiveness on their AML/CFT obligations.



COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way,
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@coq.go.ke

Our Ref: COG/6/11

15th August 2023

Jeremiah Ndombi, MBS
Clerk of the National Assembly
Nairobi

*Dpts/Dks
DOCS/DKS
For attention of
Joint Committee
on Finance and
your meeting.
16/8*

Dear Clerk,

INVITATION TO SUBMIT VIEW ON THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL, 2023

Greetings.

The above subject matter refers.

We are in receipt of your letter Ref: NA/DDC/JLAC/2023/092 dated 14th August 2023 inviting the Chief Executive Officer for the Council of Governors to submit views on the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023 on 15th August 2023.

*Douglas Kattol
Benjamin magut
plc facilitate
17/8/23*

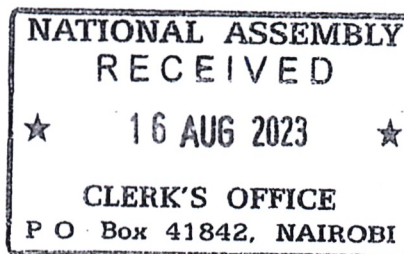
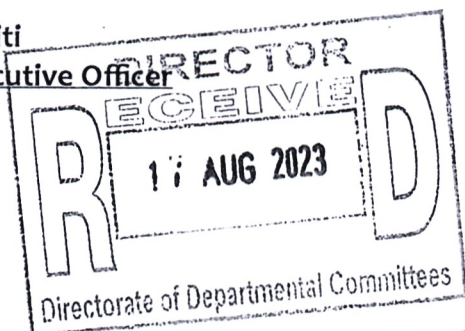
The Council of County Governments and other state agencies have been planning for the Devolution Conference 2023 taking place from 15th – 19th August 2023 in Eldoret, Uasin Gishu County.

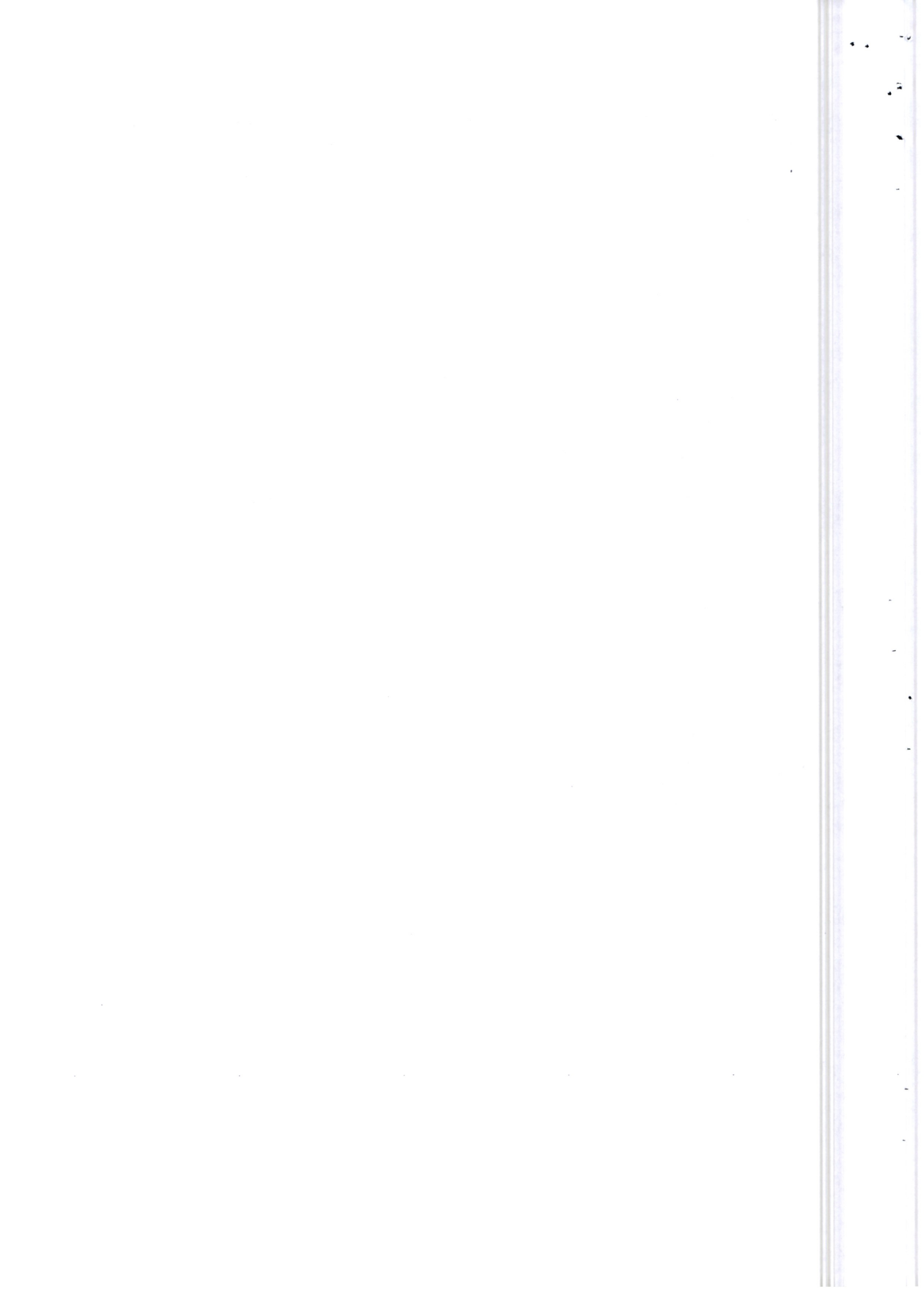
Premised on the above, the Council hereby writes to request your office to reschedule this meeting to a new date in the month of September 2023. Kindly note that our legal team will submit our written views on the bill before the meeting.

Please accept our apologies and the assurance of our highest esteem and consideration.

Yours sincerely,

Mary Mwiti
Chief Executive Officer





MINUTES OF THE 65th SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING HELD ON TUESDAY, 15TH AUGUST, 2023 IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE, AT 10:00 AM

PRESENT

1. Hon. (Amb.) Benjamin Kipkirui Langat, MP - *Vice-Chairperson*
2. Hon. George Sunkuyia Risa, MP
3. Hon. Dr. John Ariko Namoit, MP
4. Hon. Umul Ker Sheikh Kassim, MP
5. Hon. (CPA.) Joseph Maero Oyula, MP
6. Hon. Andrew Adipo Okuome, MP
7. Hon. Joseph Makilap Kipkoros, MP
8. Hon. Joseph Kamau Munyoro, MP
9. Hon. David Mwalika Mboni, MP

ABSENT WITH APOLOGIES

1. Hon. (CPA.) Francis Kuria Kimani, MP - *Chairperson*
2. Hon. Mohamed Soud Machele, MP
3. Hon. Dr. Adan Keynan Wehliye, MP
4. Hon. Dr. Shadrack Mwiti Ithinji, MP
5. Hon. Julius Kipletting Rutto, MP
6. Hon. Paul Kibichiy Biego, MP

IN ATTENDANCE

1. Hon. Titus Lotee, MP

COMMITTEE SECRETARIAT

- | | | |
|-------------------------|---|------------------------|
| 1. Mr. Benjamin Magut | - | Senior Clerk Assistant |
| 2. Mr. Nebert Ikai | - | Clerk Assistant I |
| 3. Mr. Benson Kamande | - | Clerk Assistant III |
| 4. Mr. Salem Lorot | - | Legal Counsel I |
| 5. Mr. James Macharia | - | Media Relations |
| 6. Mr. George Ndenjeshe | - | Fiscal Analyst |
| 7. Ms. Nelly Ondieki | - | Researcher Officer |
| 8. Ms. Shamsa Abdi | - | Research Officer |
| 9. Mr. Simon Ouko | - | Serjeant-At-Arms |
| 10. Mr. Mwangi Muchiri | - | Audio Officer |
| 11. Ms. Joyce Wachera | - | Hansard Reporter |
| 12. Mr. Alfas Mulunda | - | Intern |

MIN No. 234/2023:-

PRELIMINARIES

The Chairperson called the meeting to order at Thirty Minutes past Ten O'clock followed by word of prayer and introduction.

MIN No. 235 /2023:-

CONFIRMATION OF MINUTES

Confirmations of the Minutes of previous sittings were differed to next meeting

MIN NO. 236/2023:-

**CONSIDERATION AND ADOPTION OF THE
REPORT ON THE EQUALISATION FUND BILL
(NATIONAL ASSEMBLY NO. 47 OF 2022)**

The Committee made the following deliberations:

- i. The committee noted that retaining the functions of the county executive committee will reintroduce the county technical committee chaired by the county commissioner.
- ii. The committee also noted that the court ruling regarding the equalization fund bill was made at a time when members could not appeal the court decision as it was around the campaigns period.
- iii. The committee proposed that the amendment be aligned with the court ruling to avoid future challenges to the amendment.
- iv. The committee agreed that the county executive committee should control the funds as provided in the court ruling
- v. The committee requested the pastoralist forum to retreat and come up with a joint proposal and present the same to the committee for consideration.

MIN NO. 237/2023:-

**REPORT ON CONSIDERATION OF THE 1ST
SESSIONAL PAPER ON KENYA NATIONAL
POPULATION POLICY FOR SUSTAINABLE
DEVELOPMENT**

The committee requested to be availed with detailed analysis of issues covered in the session paper prior to adoption of report. The agenda was differed to Tuesday 22nd August, 2023.

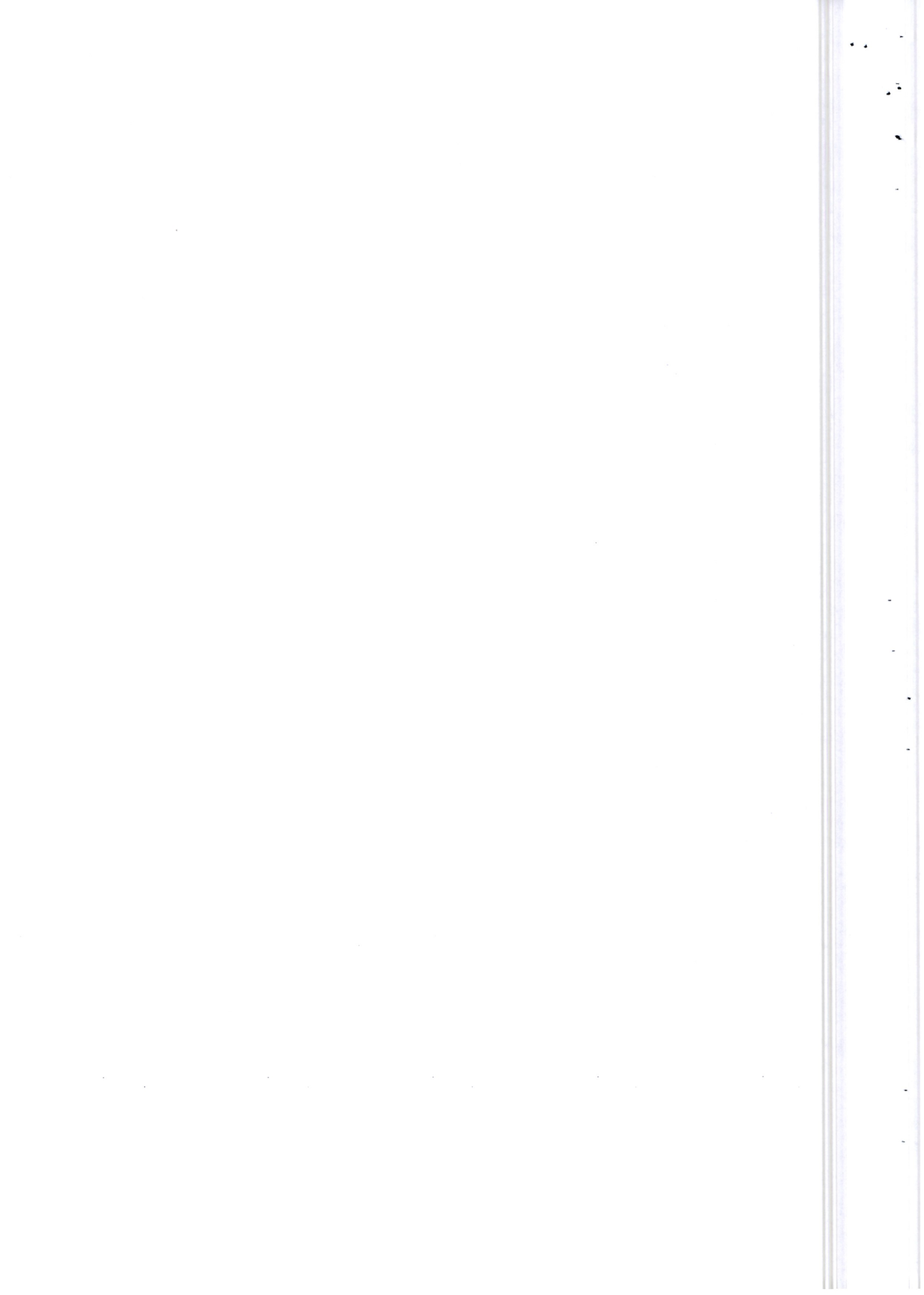
MIN No. 238/2023: -

ANY OTHER BUSINESS/ ADJOURNMENT

There was no any other business, the meeting was adjourned at One O'clock. The next meeting will be held on 15th, August 2023 at Thirty Minutes past Two O'clock at committee room 9, Main Parliament Buildings.

Signed.......... Date..... 17th August 2023

Chairperson



MINUTES OF THE 66TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 15TH AUGUST 2023 AT 2.30 PM IN THE COMMITTEE ROOM 9 MAIN PARLIAMENT BUILDING.

PRESENT

1. Hon. Benjamin Kipkirui Langat, MP - Vice- Chairperson
2. Hon. Adan Keynan Wehliye, MP
3. Hon. George Sunkuiya Risa, MP
4. Hon. Joseph Maero Oyula, MP
5. Hon. Andrew Adipo Okuome, MP
6. Hon. David Mwalika Mboni, MP
7. Hon. Joseph Makilap Kipkoros, MP
8. Hon. (Dr.) John Ariko Namoit, MP
9. Hon. Umul Ker Sheikh Kassim, MP

ABSENT WITH APOLOGY

1. Hon. Francis Kuria Kimani, MP - Chairperson
2. Hon. Joseph Kamau Munyoro, MP
3. Hon. Julius Kipletting Ruto, MP
4. Hon. Mohamed Soud Machele, MP
5. Hon. Dr. Shadrack Mwiti Ithinji, MP
6. Hon. Paul Kibichiy Biego, MP

IN ATTENDANCE

SECRETARIAT

1. Mr. Benjamin Magut - Senior Clerk Assistant
2. Mr. Nebert Ikai - Clerk Assistant I
3. Mr. Salem Lorot - Legal Counsel I
4. Mr. James Macharia - Media Relations
5. Mr. George Ndenjeshe - Fiscal Analyst
6. Ms. Nelly Ondieki - Researcher Officer
7. Ms. Shamsa Abdi - Research Officer
8. Mr. Simon Ouko - Serjeant-At-Arms
9. Mr. Mwangi Muchiri - Audio Officer
10. Ms. Joyce Wachera - Hansard Reporter
11. Mr. Alfas Mulunda - Intern

FINANCING REPORTING CENTER

1. Saitoti Maika – Director General
2. James Manyonge – Corporation Secretary and Director, Legal, Compliance, And External Relations
3. Shem Peter Gowi – Director, Financial Intelligence Analysis and Reporting

MIN. NO. 239/2023:

PRELIMINARIES

The Chairperson called the meeting to order at Thirty Minutes past Two O'clock followed by introductions and a word of prayer.

MIN. NO. 240/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

Confirmation of minutes of the previous sittings were deferred to the next meeting.

MIN NO. 241/2023: STAKEHOLDER ENGAGEMENT ON THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL 2023 (NATIONAL ASSEMBLY BILL NO. 32 OF 2023)

The CEO Financial Reporting Center appeared before the Committee and submitted as follows:

The FRC accepted all the proposed amendments as per the Bill. They identified the following legislative gaps in sectorial law that needed to be address by the above legislation. This includes:

- i. Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) only contains AML requirements and does not cover CFT.
- ii. POCAMLA and POTA do not have adequate provisions covering preventive measures in relation to CFT. Most of the requirements relating to TF preventive measures are not provided for in law.
- iii. Since there are no CFT requirements in POCAMLA, supervisory bodies are not mandated to supervise and ensure compliance with CFT/CPF requirements. In addition, supervisory bodies have no power to impose sanctions for failure to comply with CFT/CPF requirements.
- iv. POCAMLA does not prescribe that supervisory bodies should use the powers in their respective sectoral laws for AML/CFT supervision purposes. Sectoral laws do not provide for AML/CFT and do not cross-reference the POCAMLA.
- v. Kenya does not have a range of proportionate and dissuasive civil and administrative sanctions for dealing with natural or legal persons that fail to comply with the AML/CFT requirements or non-compliance with AML/CFT obligations.
- vi. Kenya does not have legal basis for the implementation of requirements of targeted financial sanctions related to proliferation. Implementation of United Nations Security Council Resolutions (UNSCRs) on Proliferation Financing (PF) are not supported by the primary Act (POTA) as POTA does not cover PF and therefore the POTA Regulations, 2013 cannot provide for proliferation financing.

- vii. There are no provisions which makes money laundering and Terrorism Financing as extraditable offences.
- viii. There is a legal gap in the country in relation to Terrorism Financing (TF) and this is impeding the country's efforts to fighting TF. This legal gap in relation to TF is also impacting the TF preventative measures.
- ix. The country does not have mechanisms for simplified Mutual Legal Assistance or simplified extradition.
- x. Virtual Assets (VAs) and Virtual Assets Service Providers (VASPs) are not prohibited and the country has not put in place regulatory frameworks to cover VASPs.
- xi. The POTA does not have provisions for sanctioning legal persons.
- xii. Supervisory authorities are not implementing risk based supervision across the board.

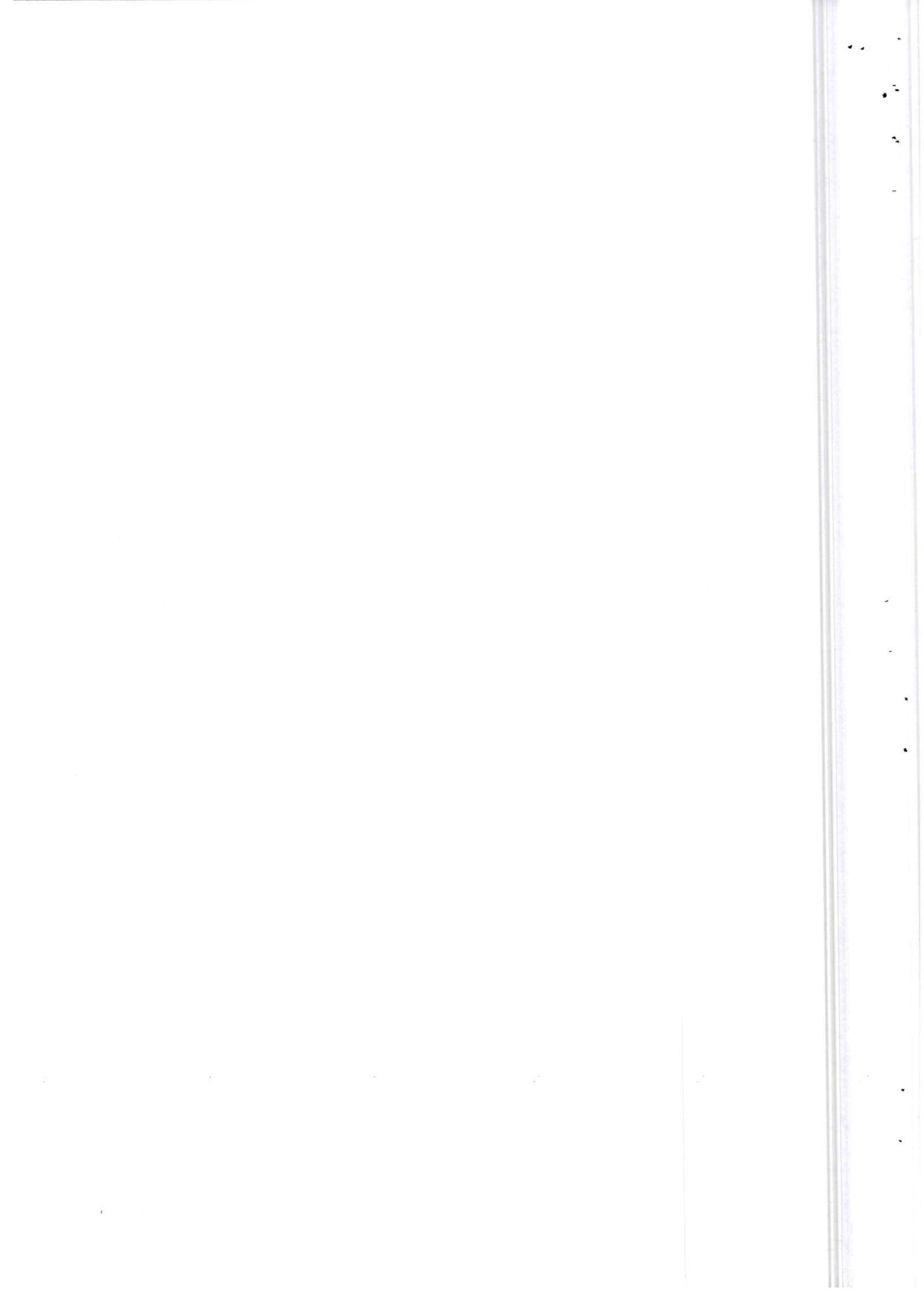
MIN. NO. 242/2023: ANY OTHER BUSINESS / ADJOURNMENT

There being no other business, the meeting was adjourned at Fifteen Minutes to Five O'clock
The next meeting will be held on 16th, August 2023 at Ten O'clock at committee room 9, Main
Parliament Buildings.

Signed.....

Chairperson

Date.....

CFN/IRA/00/028/01

14th August, 2023

Clerk of the National Assembly,
P.O. Box 41842 - 00100,
NAIROBI.

*Docs
for attention of
Committee on Finance
and JAC. J
7 CPA
15/8/23*

Dear Sir,

**RE: THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM
FINANCING LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.
35 OF 2023)**

*Benjamin magut
pls facilitate
re w/w
15/8/23*

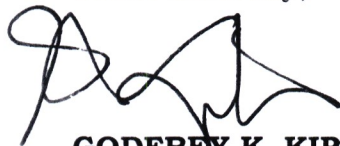
Reference is made to the above captioned subject.

The Insurance Regulatory Authority note the proposal to:

1. Amendment to the Insurance Act, CAP 487 Laws of Kenya to harmonize the licensing regime under the Insurance Act with the Financial Action Task Force (FATF) Standards. Being part of financial institutions, insurance companies are subject to core principles and are therefore required to be licensed.
2. Amend the Insurance Act, CAP 487, Laws of Kenya to empower the Authority to supervise its licensees and their agents under the Insurance Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.

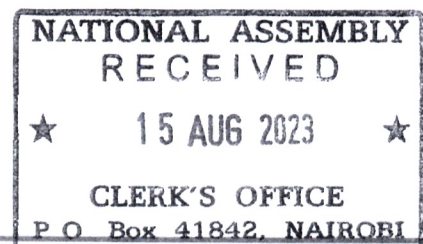
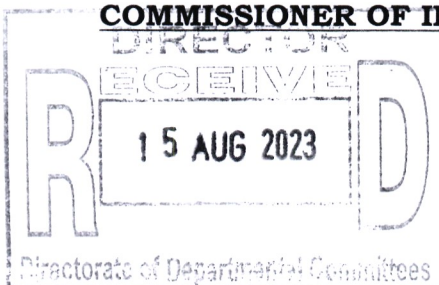
The Insurance Regulatory Authority is in support of the proposal to amend laws relating to anti-money laundering and combating of financing of terrorism and financing of proliferation of weapons of mass destruction.

Yours faithfully,



GODFREY K. KIPTUM

COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER





**THE ASSOCIATION OF MICROFINANCE INSTITUTIONS OF
KENYA (AMFI)**



*Setting the Standards
Of
Microfinance Best Practices
In Kenya*

**SUBMISSION ON THE ANTI-MONEY LAUNDERING AND
COMBATING OF TERRORISM FINANCING LAWS
(AMENDMENT) BILL, 2023**
NATIONAL ASSEMBLY BILL NO. 35 OF 2023

MADE ON 16TH AUGUST 2023 TO:

THE

**DEPARTMENTAL COMMITTEE ON FINANCE AND
NATIONAL PLANNING**

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Honourable Committee,

The Association of Microfinance Institutions - Kenya ("AMFI-K") is a member-based institution that was registered in 1999 under the Societies Act by the leading Micro-Finance Institutions in Kenya with the aim to build the capacity of the Kenyan Microfinance Industry. In her 24 years of existence, AMFI's membership has increased from the original 5 founder members to the current 63 fully paid up members in 2023.

Kenya's Vision 2030 identified the microfinance sub-sector as a pivotal element in achieving universal financial inclusion by 2030. Consequently, the government has diligently pursued financial inclusivity through the allocation of funds for the microfinance sector in the National budget, establishment of specific funds aimed at empowering women and youth, and the formulation of legislative frameworks to foster the growth of micro and small enterprises ("MSME's"). The Association of Microfinance Institutions - Kenya (AMFI-K) has consistently demonstrated progress and strategic acumen in its 24-year history.

AMFI-K, at the behest of this Honorable Committee's invitation dated 9th August, 2023, is duly present for the purpose of participating in your deliberations. Our representatives are prepared to present our submission, comments and considerations on the proposed Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill. Our submissions today are founded on the underlying premise that the contemplated Bill would exert a substantial influence on the members of AMFI-K. The Bill's implementation would, among other things, necessitate the fortification of our due diligence and monitoring mechanisms, thereby aligning with our collective commitment to combat money laundering and the financing of terrorism.

We remain at your disposal, today and in the future, should you require any clarifications, responses to inquiries, or elaboration on our position.

Yours Faithfully,

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Mr. Oscar Murigi
Board Chair
AMFI - KENYA

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Honourable Committee,

We are grateful for the opportunity afforded us to make our comments on The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023 ("the Amendment Bill").

Being a member association, the Association of Microfinance Institutions- Kenya (AMFI-K) is actively engaged in areas of legislative reform that have an impact on the operations of its members.

In the recent past, AMFI has undertaken a number key advocacy initiatives for the betterment of the business environment of its members and to also improve access to credit and credit related services for millions of Kenyans. AMFI has been engaging in for a that touch on legislative reforms in areas that impact its members. These initiatives include:

- (a) Engagement with the Central Bank of Kenya and other stakeholders on the promulgation and operationalization of Digital Credit Provider (DCP) Regulations;
- (b) Engaging with the National Treasury on a legislative/regulatory framework for Credit-Only Institutions; and
- (c)
- (d) Engaging with the Parliamentary (National Assembly) Committees on Budget & Finance on the Finance Bill (now Finance Act 2023).

In undertaking the above efforts, AMFI has spent considerable time building both understanding and consensus in its ranks which is consistent with its values of participation (by members).

For purposes of the current submission and on account of the narrow timelines, AMFI has had to engage its legal partner, Musyimi & Company, to highlight the key concerns arising from the Amendment Bill.

Yours Faithfully,

.....
Caroline Karanja
Chief Executive Officer
AMFI - KENYA

COMMENTS BY THE ASSOCIATION OF MICROFINANCE INSTITUTIONS (AMFI)

THE ANTI - MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL 2023.

Law Proposed for Amendment	Content (summary)	Comment by AMFI
1. Extradition (Contiguous and Foreign Countries) Act	<ul style="list-style-type: none"> • Definition of Central Authority (Attorney General). • Provision for simplified extradition (by consent). • Revision of schedule to clarify extradition for terrorist acts/offences under the Prevention of Terrorism Act 2012. 	Extradition proceedings are largely the preserve of government – government interactions.
2. Extradition (Commonwealth Countries) Act	<ul style="list-style-type: none"> • Definition of Central Authority (Attorney General). • Provision for simplified extradition (by consent). • Revision of schedule to clarify extradition for terrorist acts/offences under the Prevention of Terrorism Act 2012. 	Extradition proceedings are largely the preserve of government – government interactions.
3. State Corporations Act	Inclusion of the Financial Reporting Centre (FRC) as a State Corporation.	<ul style="list-style-type: none"> • Clarifies the status of FRC. • May result in an additional compliance cost center for AMFI members. • Important to clarify how FRC, CBK, Companies Registry and others will interact with reporting institutions.
4. Capital Markets Act	Empowerment of Capital Markets Authority (CMA) to supervise licensees on matters	<ul style="list-style-type: none"> • Cloaks CMA with power over matters under POCAMLA Act.



		relating to Proceeds of Crime and Anti - Money Laundering (POCAML A) Act 2009.	<ul style="list-style-type: none"> • Important to clarify how CMA will co - work with other supervising institutions. • Important for maximum penalty amounts to be set out.
5.	Insurance Act	<ul style="list-style-type: none"> • General amendments to replace "registered" with "licensed" • Empowerment of Insurance Regulatory Authority (IRA) and Commissioner to supervise licensees on matters relating to Proceeds of Crime and Anti - Money Laundering (POCAML A) Act 2009. • IRA tasked with retention of records on beneficial ownership. 	<ul style="list-style-type: none"> • Cloaks IRA & Commissioner with power over matters under POCAML A Act. • Important to clarify how IRA & Commissioners will co - work with other supervising institutions. • Retention of records should be a licensee matter and not primarily that of the IRA. • Will be important to update the Act so that the roles of IRA & Commissioner are unified. • Important for maximum penalty amounts to be set out.
6.	Banking Act	<ul style="list-style-type: none"> • Amendments to capture beneficial ownership in determining significant shareholders. • Right of CBK to share information with other authorities. • Empowerment of CBK to supervise licensees on matters relating to Proceeds of Crime and Anti - Money Laundering (POCAML A) Act 2009. 	<ul style="list-style-type: none"> • Ensures there is clarity on identity of significant shareholder. • Allows for information sharing on POCAML A matters. • Important to clarify how CBK will co - work with other supervising institutions. • Important for maximum penalty amounts to be set out.
7.	Central Bank of Kenya Act	Recognition of CBK power to supervise licensees on matters relating to Proceeds of Crime and Anti - Money Laundering (POCAML A) Act 2009.	Clarifies the CBK power on POCAML A matters.
8.	Microfinance Act	Empowerment of CBK to supervise licensees on matters relating to Proceeds of	<ul style="list-style-type: none"> • Important to clarify how CBK will co - work with other supervising institutions.

		Crime and Anti - Money Laundering (POCAMLA) Act 2009.	<ul style="list-style-type: none"> • Important for maximum penalty amounts to be set out. • There is need to clarify the position for non - licensees of CBK who operate microfinance business. The Departmental Committee should give direction on the licensing of these.
9.	Anti - Corruption and Economic Crimes Act	Addition of the offence of laundering of the proceeds of corruption as an economic crime.	<p>This provision needs to be counter checked with the provisions of the POCAMLA Act to ensure that provisions are harmonized.</p> <ul style="list-style-type: none"> • Allows for information sharing on POCAMLA matters. • Important to clarify how FRC will co - work with other supervising institutions especially in matters enforcement where a reporting institution is under the purview of multiple supervising institutions. • Dissemination of information should be with regard to rights of privacy and other rights of persons as captured in the Kenya Constitution 2010. Any limitation should be within the confines of Article 24.
10.	Proceeds of Crime and Anti - Money Laundering Act	<ul style="list-style-type: none"> • Revision of definitions for “designated business & professions”, “competent authority” and “financial group”. • Providing for the scope of application of Act. • Amendments to capture “financing of terrorism” and “proliferation financing” • Amendments to allow for preparation and forwarding of reports. • Amendments to allow for collaborative approach by supervisory bodies. • Enhancement of reporting threshold to US\$ 15,000. 	<p>“Controlled Delivery” actions should be with regard to rights of privacy and other rights of persons as captured in the Kenya Constitution 2010. Any limitation should be within the confines of Article 24.</p>
11.	National Police Service Act	Amendments to allow for “controlled delivery”.	Need to update Section 3 of EACC Act to recognize FRC and other supervising institutions.
12.	Ethics and Anti - Corruption Commission Act	Amendment to allow for access to information by the EACC.	



13.	Mutual Legal Assistance Act	Amendments to allow for designated non - financial business and professions to grant assistance.	Dissemination of information should be with regard to rights of privacy and other rights of persons as captured in the Kenya Constitution 2010. Any limitation should be within the confines of Article 24.
14.	National Payments Systems Act	Empowerment of CBK to supervise licensees on matters relating to Proceeds of Crime and Anti - Money Laundering (POCAMLA) Act 2009.	<ul style="list-style-type: none"> • Important to clarify how CBK will co - work with other supervising institutions. • Important for maximum penalty amounts to be set out.
15.	Limited Liability Partnership Act	<ul style="list-style-type: none"> • Amendments to capture “nominee partners” and “beneficial owners”. • Amendments to require the maintaining of certain records by LLPs. • Amendments relating to strike off of LLPs. • Amendments relating to insolvency of LLPs. • Amendments relating to registration of foreign LLPs. 	Important to ensure that LLP provisions are harmonized with those in Companies Act (relating to beneficial ownership) and those in the Insolvency Act on matters to do with winding up/liquidation.
16.	Companies Act	<ul style="list-style-type: none"> • Amendments to capture “nominee shareholders” and “nominee directors”. • Amendments to capture disclosure of “beneficial owners” at incorporation and the requirement for a company to keep a register of beneficial owners & nominee directors. • Amendments relating to company secretary for private company (capital below 5M) and guarantee companies. • Amendments for record keeping after 	<ul style="list-style-type: none"> • A number of these changes (beneficial ownership) are to capture what is already in operation under the Companies Act. • AMFI members will be impacted by the changes requiring the maintenance of registers (additional compliance cost). To reduce on costs, “virtual” registers should be expressly recognized.



	<p>strike off.</p> <ul style="list-style-type: none"> • Amendments for maintaining certain records at the registered office of the Company. 	
<p>17. Prevention of Terrorism Act</p>	<ul style="list-style-type: none"> • Amendments to capture definitions of "funds" and "proliferation acts". • Inclusion of new offences relating to financing travel of offenders and funding of designated persons. • Amendment to establish an inter - ministerial committee on counter financing of terrorism and recognition of role of FRC. • Recognition of entities that need to coordinate on combating of terrorism. 	<p>Important to ensure that it is clear to which supervising institution that a reporting institution should send reports to.</p>



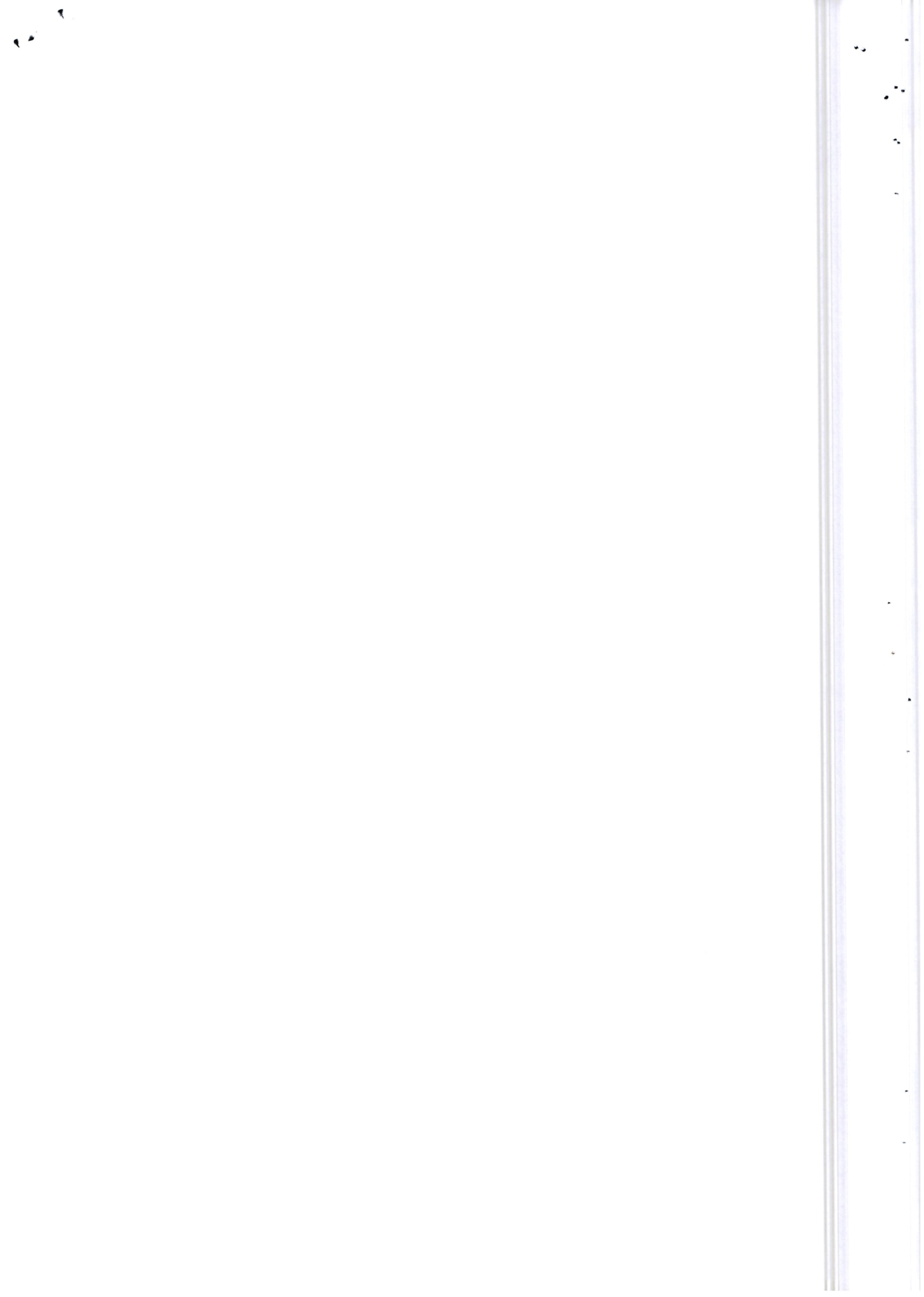


SUBMISSION

ON

**THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL,
2023**

August 2023



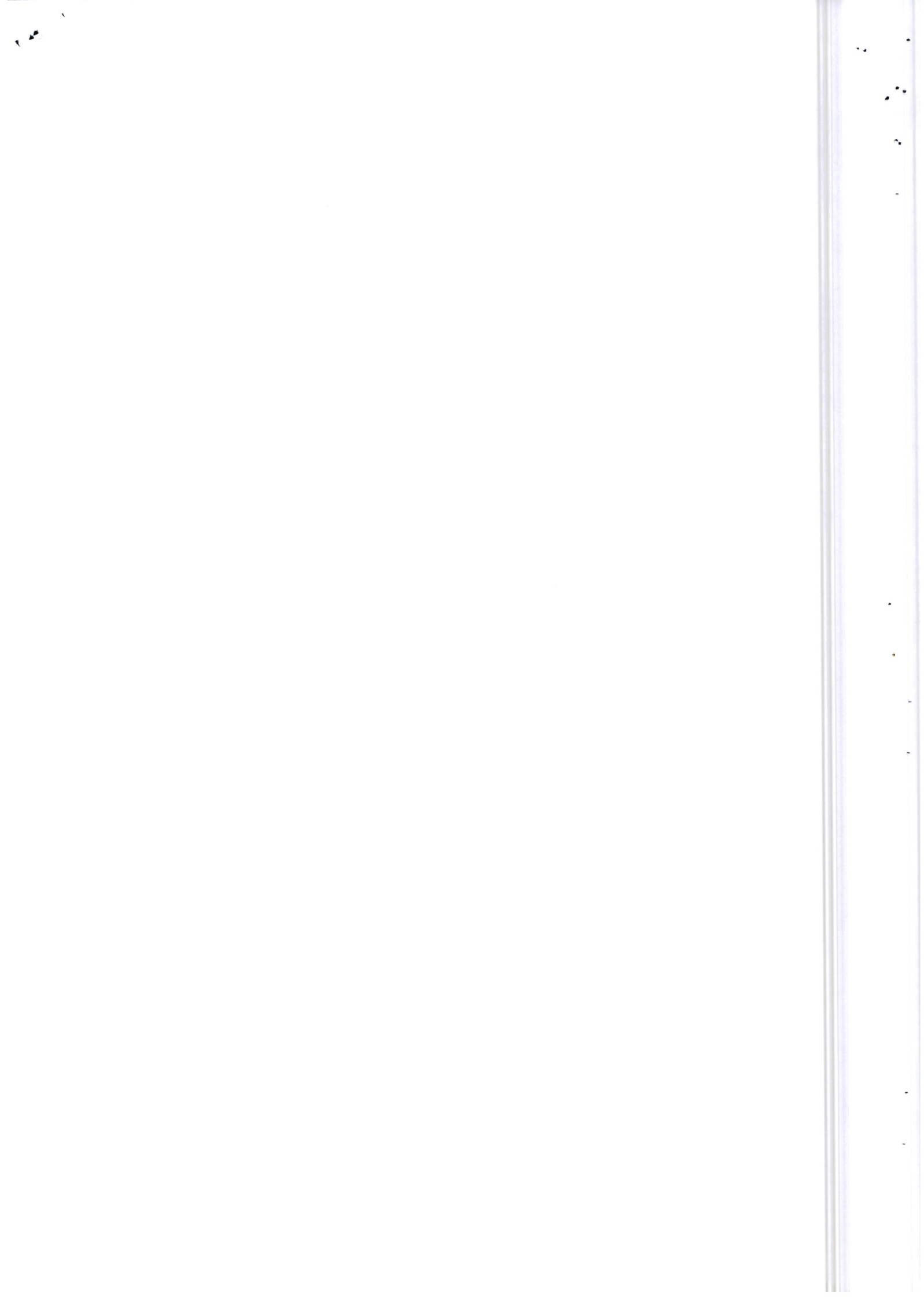
The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023

INTRODUCTION

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under the Accountants Act of 1978, and as repealed under the Accountants Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession and Pan Africa Federation of Accountants (PAFA), the continental body of Accountants.

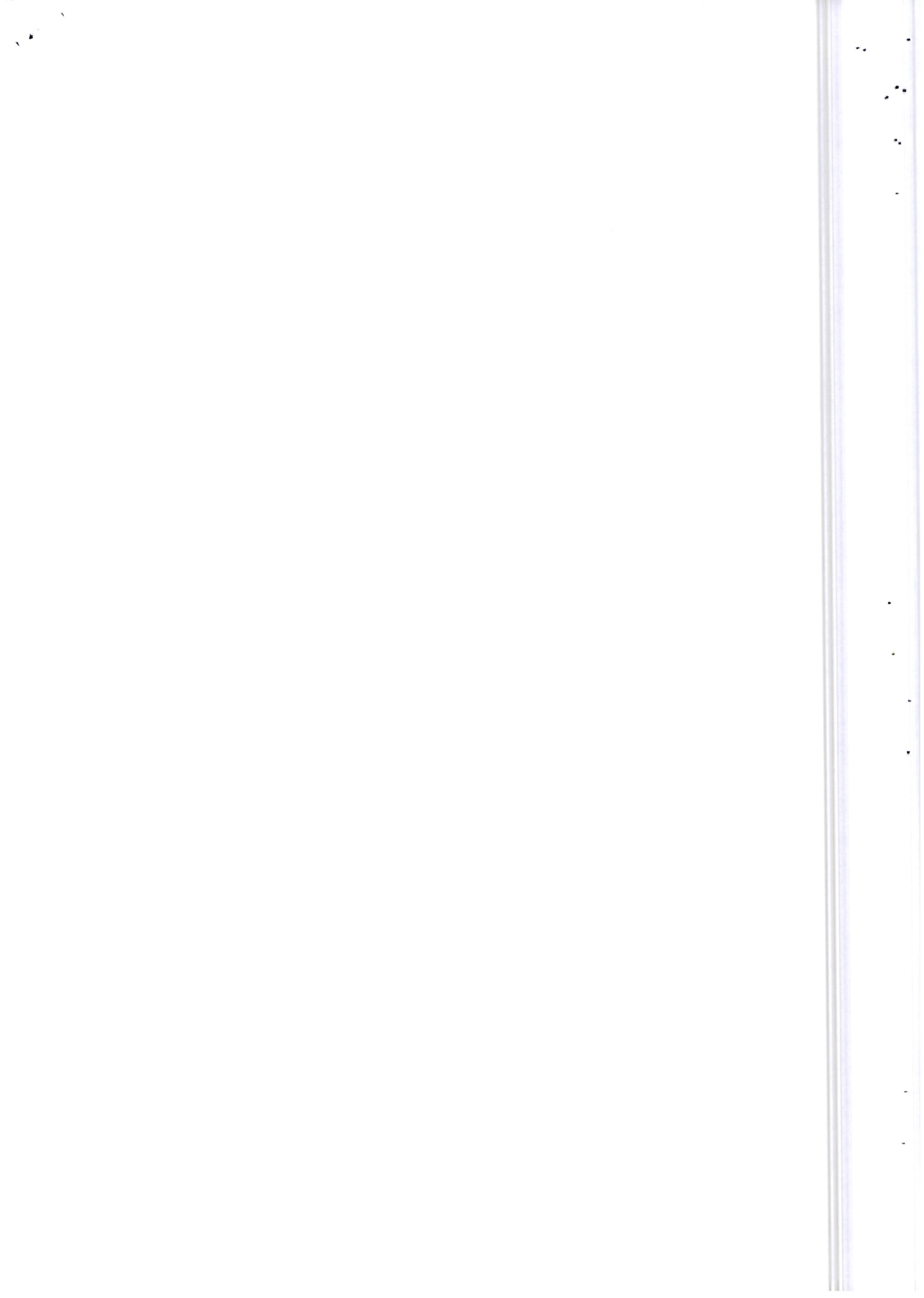
The Institute has reviewed the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill 2023 and developed the following set of recommendations for adoption:

Statute & Clause	Issue of Concern	Recommendation	Justification
<i>The Extradition (Contiguous and Foreign Countries) Act</i> Clause 10(A) (1): Simplified Extradition	The fugitive criminal might be coerced to consent	Amend to read: “A fugitive criminal being sought by a requesting state may consent, without coercion or undue influence, to be extradited to that requesting state without conducting formal extradition proceedings.”	To safeguard the fugitive criminal's rights and freedom of voluntary consent.
<i>The Extradition (Commonwealth Countries) Act</i> Clause 13(A) (1): Simplified Extradition	The fugitive criminal might be coerced to consent	Amend to read: “A fugitive criminal being sought by a requesting state may consent, without coercion or undue influence, to be extradited to that requesting state without conducting formal extradition proceedings.”	To safeguard the fugitive criminal's rights and freedom of voluntary consent.
<i>Capital Markets Authority Act</i>	Access to information by the Authority is already provided for under the Access to	Amend to read subsection 12 (A)(2)(e) by deleting <i>compel</i> and replace with <i>request</i> .	To be in conformity with Section 6 on Limitation and 8 on application of the Access to Information Act 2016.



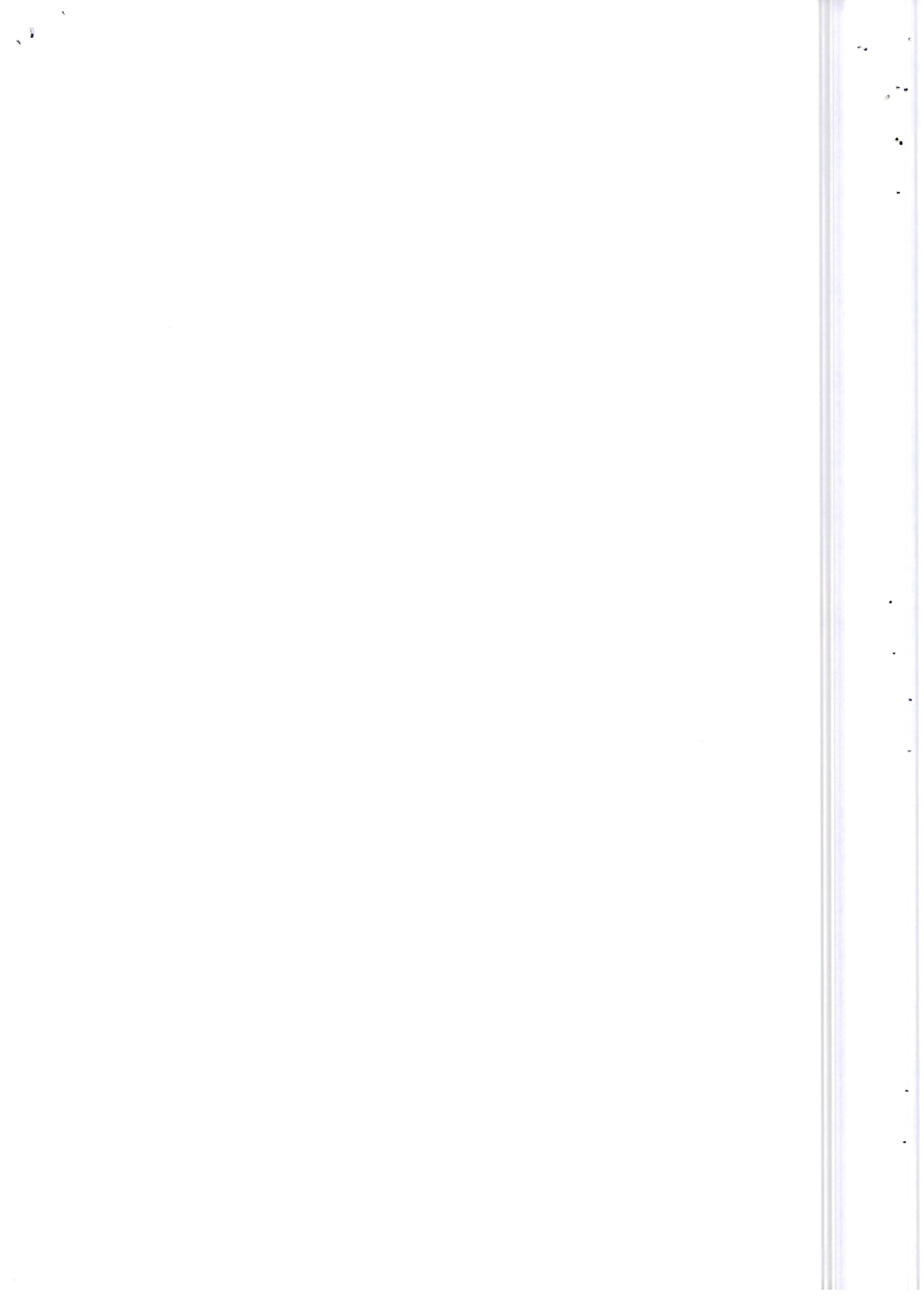
The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023

Statute & Clause	Issue of Concern	Recommendation	Justification
<p>Clause 12 (A) 2(b): Powers on Anti-money Laundering</p>	<p>Information Act 2016. Since Section 6 of the Access to Information Act provides limitation of right of access to information, the use of compulsion violates this provision.</p>		
<p><i>Capital Markets Authority Act</i> Clause 12 (A) 2(f)</p>	<p>Giving the Authority powers to impose sanctions may lead to duplicity of functions with FRC. Section 24B (1) of Proceeds of Crime and Anti-Money Laundering Act, 2009 provides for the powers of Financial Reporting Centre to impose civil penalties for non-compliance with provisions on anti-money laundering, combating the financing of terrorism and countering the proliferation of financing purposes.</p>	<p>Delete this proposal</p>	<p>To avoid duplication of functions that FRC has been mandated to perform</p>



The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023

Statute & Clause	Issue of Concern	Recommendation	Justification
<p><i>Insurance Act</i> Section 128</p>	<p>The Bill proposes that the Liquidator shall maintain information and records on beneficial ownership of the Insurer for at least five years after the date from which the company is dissolved.</p> <p>Five years is not aligned to the framework of record keeping of seven years as provided for in Kenya.</p>	<p>Amend to read: The Liquidator shall maintain information and records on beneficial ownership of the Insurer for at least five seven years after the date from which the company is dissolved.</p>	<p>This is to align with the Companies Act which requires records to be kept for at least seven years</p>
<p><i>Insurance Act</i> Section 194</p>	<p>The fine of five thousand shillings for false or misleading statements is lenient</p>	<p>Amend to read: A person who makes a false or misleading statement in an application for license or renewal of license or alteration of license, or in any document furnished under this Act to the Commissioner with or in support of or in connection with an application for license or renewal of license, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding three years or to both.</p>	<p>The fine of five thousand shillings is too lenient and there is need to make it more punitive as a deterrence to the would-be offenders.</p>



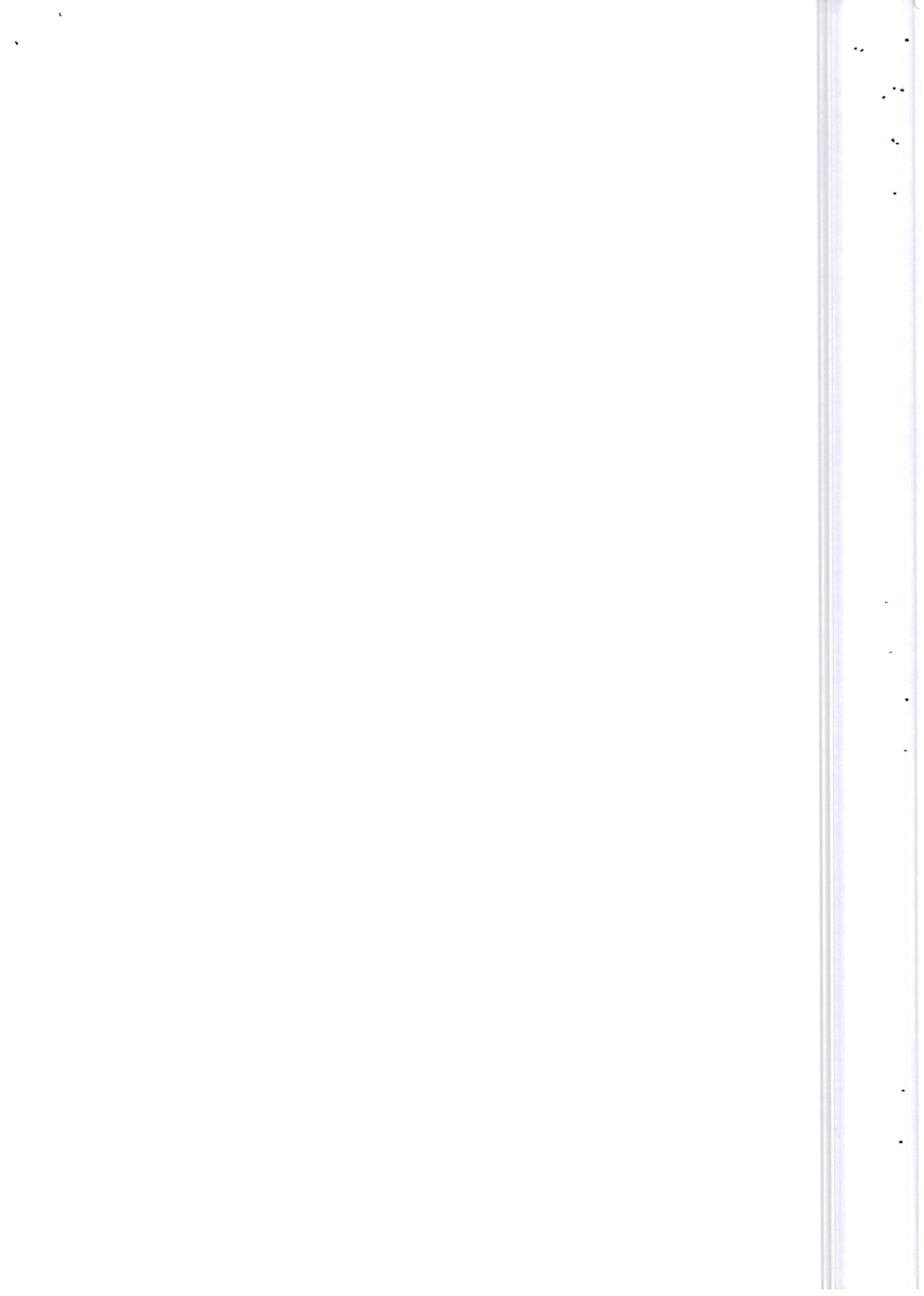
The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023

Statute & Clause	Issue of Concern	Recommendation	Justification
<p><i>Insurance Act</i> Section 196 (A) (2)(2)</p>	<p>The Bill proposes that the Authority shall maintain information and records on beneficial ownership of the persons whose license has been cancelled for at least five years after the date from which the license is cancelled.</p> <p>Five years is not aligned to the framework of record keeping of seven years as provided for in Kenya.</p>	<p>Amend to read: The Liquidator shall maintain information and records on beneficial ownership of the Insurer for at least five seven years after the date from which the company is dissolved.</p>	<p>This is to align with the Companies Act which requires records to be kept for at least seven years</p>
<p><i>Insurance Act</i> Clause 196 (2) (e): Powers on Anti-money Laundering</p>	<p>Access to information by the Authority is already provided for under the Access to Information Act 2016. Since Section 6 of the Access to Information Act provides limitation of right of access to information, the use of compulsion violates this provision.</p>	<p>Amend subsection 196 (b) (2) (f) by deleting compel and replace with request.</p>	<p>To be in conformity with Section 6 on limitation and 8 on application of the Access to Information Act 2016.</p>
<p><i>Insurance Act</i> section 196B 2(d) of the</p>	<p>The term group has not been defined and it may entail affiliates that are already supervised by another Supervisory Authority.</p>	<p>The term group requires to be defined to provide clarity on the regulatory reach of a Supervisory Authority circumstances in which entities operate within a Group.</p>	<p>Clarity on definition of a group for a Supervisory Authority to exercise its mandate in regard to anti-money laundering and prevention of terrorism financing.</p>
<p><i>Banking Act</i> section 31 (3) (b)</p>	<p>The bill proposes to delete the proviso under section 31 (3) (b) of the Act that reads,</p>	<p>Consider the merits and demerits of deleting such especially with jurisdictions that are unwilling to</p>	<p>Sharing of information should be based on reciprocity, for instance, Kenya is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes.</p>



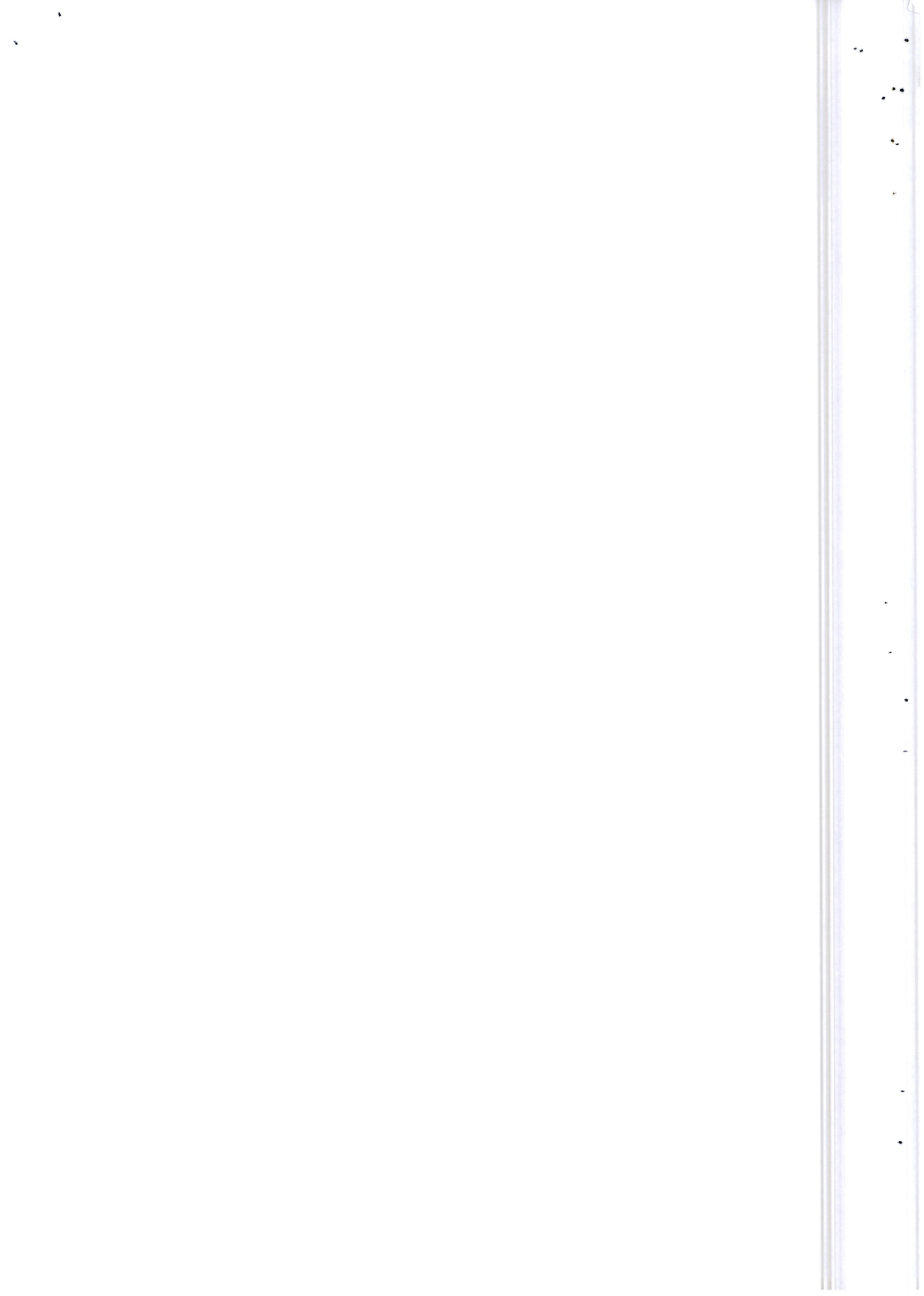
The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023

Statute & Clause	Issue of Concern	Recommendation	Justification
<p><i>Banking Act</i></p> <p>33 (2) (e) and (f) Powers on anti-money laundering for the Central Bank</p>	<p>“Provided that the sharing of information with institutions outside Kenya shall only apply where there is a reciprocal arrangement”</p>	<p>share information on a reciprocal basis eg Panama</p> <p>Consider ICPAK submissions on powers on anti-money laundering</p>	<p>To be in conformity with Section 6 on limitation and 8 on application of the Access to Information Act 2016.</p>
<p><i>Proceeds of Crime and Anti-Money Laundering Act, 2009</i></p>	<p>The Bill fails to define proliferation financing though it is used in various sections.</p>	<p>Proliferation financing means raising, moving, or making available funds or other economic resources/assets to assist for, in whole or in part, with the proliferation of nuclear, chemical, or biological weapons, that is, weapons of mass destruction (WMDs).</p>	<p>For ease of interpretation</p>
<p><i>Proceeds of Crime and Anti-Money Laundering Act, 2009</i></p> <p>36 (c) powers of supervisory bodies</p>		<p>Refer to ICPAK comments on Access to information and sanctions</p>	<p>To be in conformity with Section 6 on limitation and 8 on application of the Access to Information Act 2016.</p>
<p><i>Proceeds of Crime and Anti-Money</i></p>	<p>The direct link between a reporting institution and the Financial Action Task Force as</p>	<p>Retain the current provision of section 45(2)</p>	<p>We anticipate the FRC to be the link between Kenya and the Financial Action Task Force. FRC shall thereafter provide guidelines to reporting</p>



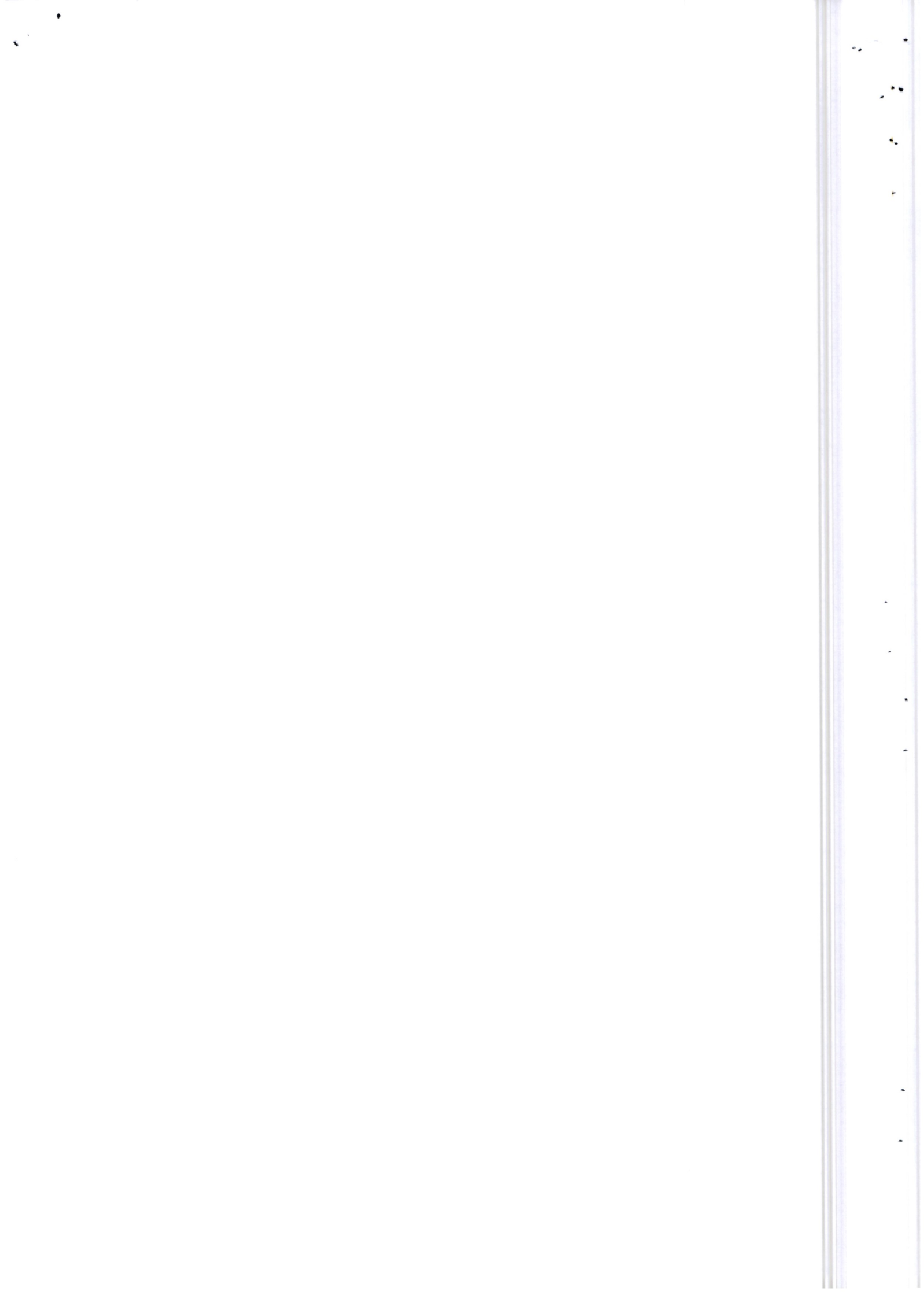
The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023

Statute & Clause	Issue of Concern	Recommendation	Justification
<p><i>Laundering Act, 2009</i></p>	<p>envisaged in 45(2)(a)(b) may undermine the mandate of FRC</p>		<p>institutions on the application of appropriate counter measures.</p>
<p>Section 45 A (2) <i>Proceeds of Crime and Anti-Money Laundering Act, 2009</i></p>	<p>The Bill proposes to increase the reporting threshold for cash transactions to US\$15,000 from the current US\$10,000.</p>	<p>Retain the current provision as: “A reporting institution shall file reports all cash transactions exceeding US\$ 10,000 or its equivalent in any other currency carried out by it”</p>	<p>Kenya is a signatory to the international instruments applied through the United Nations Security Council’s Anti-Money Laundering (AML) and Combating Financing of Terrorism (CFT) frameworks. The frameworks require the reporting of any cash transactions of at least \$10,000.</p>
<p>Fourth Schedule</p>	<p>There is danger of proliferation and resurgence of people or entities that will probably exploit this loophole to conceal their activities which were made difficult by the cash transaction limit and declaration obligation.</p>		<p>In compliance with this law, financial institutions are obligated to report any of their customers’ cash transactions above Sh1 million (\$10,000) to the Financial Reporting Centre (FRC) to enable the authorities to detect illicit financial flows such as money laundering. This was ratified vide the Central Bank of Kenya (CBK) in a circular dated 5th January 2016.</p>
	<p>This could in turn facilitate the return of untamed money laundering and terrorism financing activities in Kenya.</p>		<p>The Circular recognized that while most cash transactions were carried out from legitimate businesses, large cash transactions which are often characterized by informality and anonymity make the banking sector vulnerable to money laundering and terrorism financing.</p> <p>Examples of EU member states that have prescribed cash transaction thresholds include Euro 1000 in France, Euro 3000 in Belgium, US \$10,000.</p>



The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023

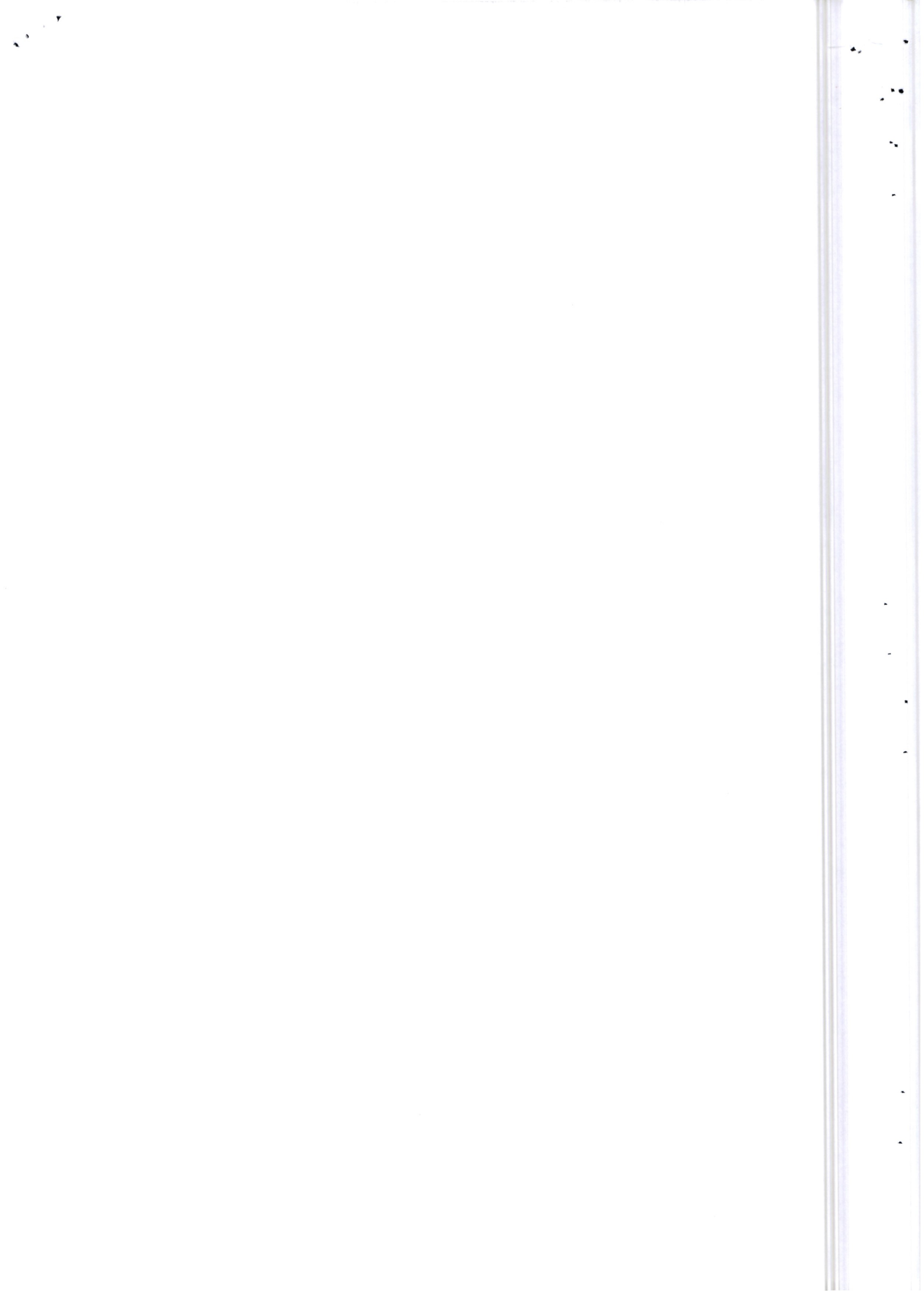
Statute & Clause	Issue of Concern	Recommendation	Justification
<p><i>Penalties, Fines and Offences</i></p>	<p>Throughout the Bill, different fines and penalties are prescribed for almost similar offences. There are instances of Ksh. Five thousand and; twenty million.</p> <p>This makes application and interpretation of the same difficult. In addition, some are too lenient and may encourage repeat offenders</p>	<p>Harmonize penalties and offences. Make the penalties punitive as a deterrent measure. For instance, a</p> <ul style="list-style-type: none"> a) a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding three years or to both for falsification or misleading statements. b) Not exceeding twenty million shillings for a legal person c) Not exceeding one million shillings for a natural person d) Or imprisonment not exceeding three years. 	<p>To harmonize and ensure deterrence</p>



Way-forward and Conclusion

The Institute thus recommends as follows:

1. The Bill should consider emerging trends such as blockchain and cryptocurrency. For instance,
 - a. There has been an increase in the use of cryptocurrencies. As by July 2023, the total value of cryptocurrency transactions was \$29.2 billion trillion globally.
 - b. Criminals are increasingly relying on moving funds through various blockchain networks, as part of their money laundering strategies to obscure the source and destination of ill-gotten wealth or funds.
 - c. Nearly \$14 billion was spent on illicit cryptocurrency transactions overall.
 - d. Governments and regulators from all across the world are therefore requesting new guidelines for crypto compliance.
 - i. Financial Crimes Enforcement Network (FinCEN) Treats crypto as money service businesses and requires providers to implement an AML program, obtain a license, maintain records, and submit reports to authorities.
 - ii. Securities of Exchange Commission (SEC) treats crypto as cash, cash equivalents, or securities.
 - iii. Office of Foreign Assets Control (OFAC) includes virtual currency addresses associated with authorized persons on the Sanctions list.
2. Measures should be put in place to ensure that declaration and reporting of suspicious transactions result in investigation and possible prosecution in cases where the source of suspicious transactions are not verifiable. Currently, such cases are reported to the Financial Reporting Centre but there is no robust policy for follow-up.
3. The Institute recommends the adoption of the UK model that requires companies using large volumes of cash to be designated High Value Dealers (HVD) and hence subjected to specific reporting requirements. A regulation can be put in place to ensure that businesses that accept more than \$10,000 are registered as HVD and obligated to carry AML checks.
4. It is not clear what safeguards are in place to flag suspicious transactions by criminals who disperse their cash transactions across several banks to defeat any probable suspicion. Currently, it is not easy to pool all the suspicious transaction reports from all the banks since reporting is within the purview of individual banks. In addition, the volume of suspicious transactions is enormous, and the investigative agencies may not have the capacity to investigate all the cases to logical conclusion. There is need to enact policies that can facilitate investigations.
5. The government should actively support electronic alternatives such as contactless cards, mobile payment systems, or electronic benefit disbursement schemes. Benchmarking with Denmark and Sweden, providing free bank accounts and debit cards will ensure low-income households without bank accounts are able to access their funds and reduce cash transactions as customers and businesses use electronic alternatives. This could also be a good move towards digital currency. This is possible in Kenya with more than two-thirds of the adult population using the M-PESA system, with an annual transaction volume equivalent to 25% of GDP.



~~CONFIDENTIAL~~

**CMA SUBMISSIONS ON THE ANTI-MONEY LAUNDERING AND COMBATING OF
TERRORISM FINANCING LAWS (AMENDMENT) BILL 2023 (NATIONAL ASSEMBLY BILL
NO. 35 OF 2023) BY THE DEPARTMENTAL COMMITTEE ON FINANCE
AND NATIONAL PLANNING**

The Capital Markets Authority (CMA) is charged with the prime responsibility of regulating and facilitating the development of orderly, fair, and efficient capital markets in Kenya. The CMA approves capital markets products, licenses and supervises market intermediaries, conducts on-site and off-site market surveillance to enforce compliance, and conducts investigations and enforcement activities to promote market integrity and investor confidence.

1.0 Money Laundering/Terrorism Financing Threats in the Capital Markets Sector

The capital markets are vulnerable to money laundering and terrorism financing risks primarily due to their global nature, diverse range of products & services and increasing developments in technology, payment systems, depository & settlement systems, and other direct gateways into the markets. The speed and the relative anonymity of these avenues make the capital markets sector an option for criminals engaged in money laundering. In addition, the capital market has an additional distinguishing money laundering risk factor in that not only can it be used to launder illicit funds that result from illegal activity outside of the financial markets, but it can also be used to generate illicit funds from the market itself, for example, in cases of insider trading, market manipulation, front running and securities fraud.

The capital markets sector in Kenya has experienced an upsurge of new diverse products & services as well as a drastic increase in the number of new market players (reporting institutions) over the last 5 years. The sector has witnessed rapid innovation and development of new & complex products and services, for example online forex trading, online crowd funding, REITs, blockchain/fintech products/services, NSE day trading among others. In addition, the central depository and settlement system (CDSC) has been enhanced

and is moving towards real time execution, settlement, and depository of transactions at the Nairobi Securities Exchange (NSE) from the normal T+3.

The money laundering vulnerability of the sector was assessed as **Medium (0.59)**. The input variable Effectiveness of Supervision Procedures and Practices has a priority ranking of one, implying that mitigating the deficiency related to this variable is the first item at the top of the priority list. Therefore, the immediate key action points are enhancing the effectiveness of supervision in the securities sector, improving the AML knowledge of staff, promoting the effectiveness of suspicious activity monitoring and reporting, creating more awareness on suspicious activity reporting as well as enforcing administrative actions in the sector.

Capital markets products/services vulnerabilities:

	Products	Product's vulnerability
1.	Fixed Income Securities	Medium
2.	Equities	Medium
3.	Registered and Unregistered Collective Investments Schemes (CIS)	Medium
4.	Alternative Asset Classes (Online Foreign Exchange Trading and CFDs)	Medium high
5.	Private Wealth	Medium high
6.	Regulatory Sandbox	Medium low
7.	Hedge Funds, Private Equity Funds, Venture Capital Funds and Commodity Pools	Medium high

The **ML threat in the securities sector is rated Low but there is a likelihood of the level of threat to increase in the following years**. The rating for the sector is supported by the fact that there was no recorded case out of the 20 sampled cases that were reviewed involving abuse of the securities sector.

ML component related to terrorism is **Very Low** in the country as terrorist attacks in Kenya are largely ideological in nature and not an enterprise that aims to benefit the attackers financially. Therefore, the ML threat from terrorism related offences in Kenya was rated **Low**. This assessment is not likely to change in the future.

The findings of the NRA exercise as well as the Mutual Evaluation exercise has provided new insights to CMA on how to approach the fight against ML/TF in the capital markets sector and help take preventive and mitigating actions/measures against ML/TF in line with the National Policy.

2.0 Steps Taken by CMA Towards AML/CFT Compliance

Pursuant to its supervision mandate, the CMA has taken steps towards Anti-Money Laundering, Counter-Financing of Terrorism and Counter-Financing of Proliferation of Weapons of Mass Destruction (AML/CFT/CPF) compliance with Kenya's Mutual Evaluation Report (MER) requirements, local laws and international standards and best practices on AML/CFT by conducting the following activities;

1. Development of the Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets, 2015.
2. Development of an AML/CFT risk-based supervision framework which consists of AML/CFT risk-based supervision manual, risk assessment methodology, risk assessment tools i.e. (Questionnaires, data collection, risk profiling tool).
3. Conducting standalone AML/CFT onsite inspections in collaboration with the FRC
4. Stakeholder engagements on AML/CFT awareness.

3.0 Proposed Amendments to the Capital Markets Act.

In 2021-2022, Kenya underwent an Anti-Money Laundering and Counter Terrorist Financing Mutual Evaluation (ME), a peer review assessment by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) aimed at assessing Kenya's compliance with global Anti-Money Laundering, Counter-Financing of Terrorism and Counter-Financing of Proliferation of Weapons of Mass Destruction (AML/CFT/CPF) standards set by the Financial Action Task Force (FATF), an intergovernmental agency established in 1989 to develop and

promote international cooperation for combating money laundering and terrorism financing.

Following the adoption and publication of Kenya's Mutual Evaluation Report (MER) by ESAAMLG in September 2022, Kenya embarked on the process of addressing the deficiencies identified in the MER. One of the processes involved legal and policy reforms. Towards this end, the Legal Subgroup of the National Taskforce on Money Laundering and Combating the Financing of Terrorism (NTF) identified and proposed suitable amendments to legislations to address the identified technical compliance deficiencies (legal gaps), and proposed amendments to various legislations including the Capital Markets Act.

The ¹technical compliance deficiencies identified in the MER touching on CMA include the following:

1. CMA does not have the legal basis to issue AML/CFT guidelines for the capital markets * sector. 12 A(1)
2. The financial sector supervisors (CMA included) do not have powers to compel production of documents from Financial Institutions (Fis) and this limits their access to information for AML/CFT purposes. 12(A)2
3. Sectoral laws (in our case the CMA Act) do not have provisions on AML/CFT requirements and therefore the powers to access information is for prudential purposes and not for AML/CFT purposes. 12(A)
4. There are no legal or regulatory measures to facilitate cooperation or coordination between supervisors with their domestic and foreign counterparts for AML/CFT purposes. 12(H)
5. There is no requirement for supervisors to review the assessment of ML/TF risk profile of a financial institution or group periodically, and when there are major events or developments in the management and operations of the FIs group.

¹ Technical compliance assessment seeks to address the specific requirements of each of the FATF Recommendations, principally as they relate to the relevant legal and institutional framework of the country, and the powers and procedures of competent authorities. These represent the fundamental building blocks of an AML/CFT system.

6. The scope of laws is limited to prudential supervision and do not include AML/CTF supervision.
7. Sectoral laws do not provide for AML/CFT and do not cross-reference the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA).
8. Supervisors do not have explicit powers in their respective Acts to conduct AML/CFT inspections.
9. Sectoral laws do not cover Combating Financing of Terrorism (CFT) inspections.
10. There are no specific legal or regulatory powers which authorize supervisors to impose sanctions for failure to comply with the AML/CFT requirements asset out in the POCAMLA and the POCAML Regulations.
11. The scope of powers to issue sanctions relates to non-compliance with prudential requirements contained in the respective sectoral Acts and not AML/CFT requirements.
12. Supervisors do not have a legal basis to exchange regulatory AML/CFT information with their domestic and foreign counterparts including Law Enforcement Agencies (LEAs).
13. Supervisors have not established and implemented robust Combating Proliferation Financing (CPF) legal and institutional frameworks.

12A(1)

2(a) and (b)

12(H)

Following the MER identified technical compliance deficiencies touching on CMA, the Authority submitted to the Financial Reporting Center (FRC), the National Coordinator of AML/CFT Mutual Evaluation of the Republic of Kenya, the proposed draft amendments to the Capital Markets Act to address the legal gaps.

The table below details the proposed draft amendments made to the Capital Markets Act which is contained in the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill 2023:

Capital Markets Act Cap 485A	New	Insert the following new section immediately after section 11 A
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	<p>Anti-money laundering, countering the financing of terrorism and countering proliferation financing</p>	<p>11 B. (1) The Authority shall supervise and enforce compliance by market intermediaries with all legal requirements relating to anti-money laundering, countering the financing of terrorism and countering proliferation financing including compliance with the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Prevention of Terrorism Act, 2012 and any regulations, guidelines, rules, instruction, or direction made or issued pursuant to.</p>
		<p>(2) Without prejudice to the generality of sub-section (1), the Authority may—</p> <ul style="list-style-type: none"> (a) vet proposed shareholders, directors and key personnel of a market intermediary; (b) conduct onsite inspection or offsite monitoring of a market intermediary; (c) undertake consolidated supervision of a market intermediary and its group; (d) compel production of any document or information the Authority may require; (e) issue guidelines, directions, rules or instructions on AML/CFT and Countering Proliferation Financing; (f) cooperate and share information relating to AML/CFT and countering proliferation financing with any domestic or foreign

			financial intelligence unit, a financial sector regulator, fiscal or tax agency, law enforcement agency or any other competent authority.
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4.0 Stakeholder Engagements

CMA was requested by FRC (the National Coordinator of AML/CFT Mutual Evaluation of the Republic of Kenya) to submit its proposed amendments to the Capital Markets Act to address technical deficiencies (legal gaps) identified in Kenya’s MER. In this regard, the CMA proposed amendments were submitted to the FRC on 25th May 2023.

5.0 Kenya’s AML/CFT Rating Status

1. Kenya’s Mutual Evaluation Report revealed that there are significant deficiencies in the country’s AML/CFT/CPF systems and requires a more intensive process of follow-up.
2. Following the assessment, Kenya has been referred to the FATF’s International Co-operation Review Group (ICRG) for a preliminary review.
 - Under the one-year observation period to work with FATF to address the deficiencies which expires at the end of **September 2023**.
 - Submit a Post Observation Period Report (POPR) to FATF on the progress made in **November 2023**.
3. Failure to comprehensively address the identified technical compliance and effectiveness deficiencies might risk the country being placed in the FATF Grey List (increased monitoring).
4. Kenya has been placed under enhanced follow up and has been given three years to address the identified deficiencies.
5. Kenya is expected to present its first enhanced follow-up report at the first Task Force meeting 12 months after adoption of the MER – September 2023.

The CMA has and will continually enhance its regulation, licensing, supervision & enforcement aimed at protecting the capital markets industry from ML/TF risks and encourage greater compliance with the AML/CFT standards set by the Financial Action Task

Force (FATF). The CMA is indeed looking forward to strengthening the capital markets intermediaries' technical compliance and effectiveness on their AML/CFT obligations.

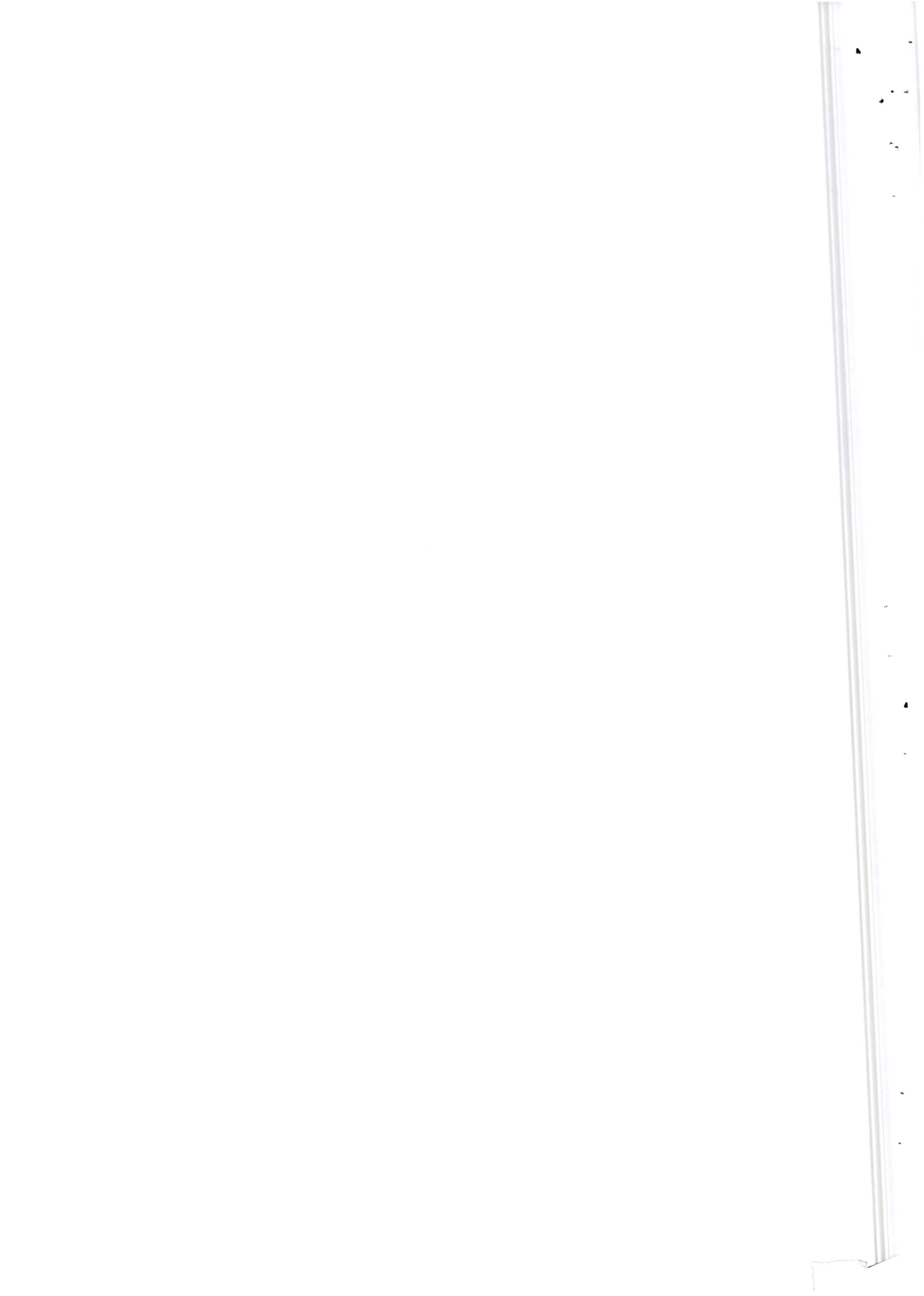


Central Bank of Kenya

**PRESENTATION TO THE DEPARTMENTAL COMMITTEE
ON FINANCE AND NATIONAL PLANNING ON AML/CFT
(AMENDMENT) BILL, 2023**

Wednesday, August 16, 2023

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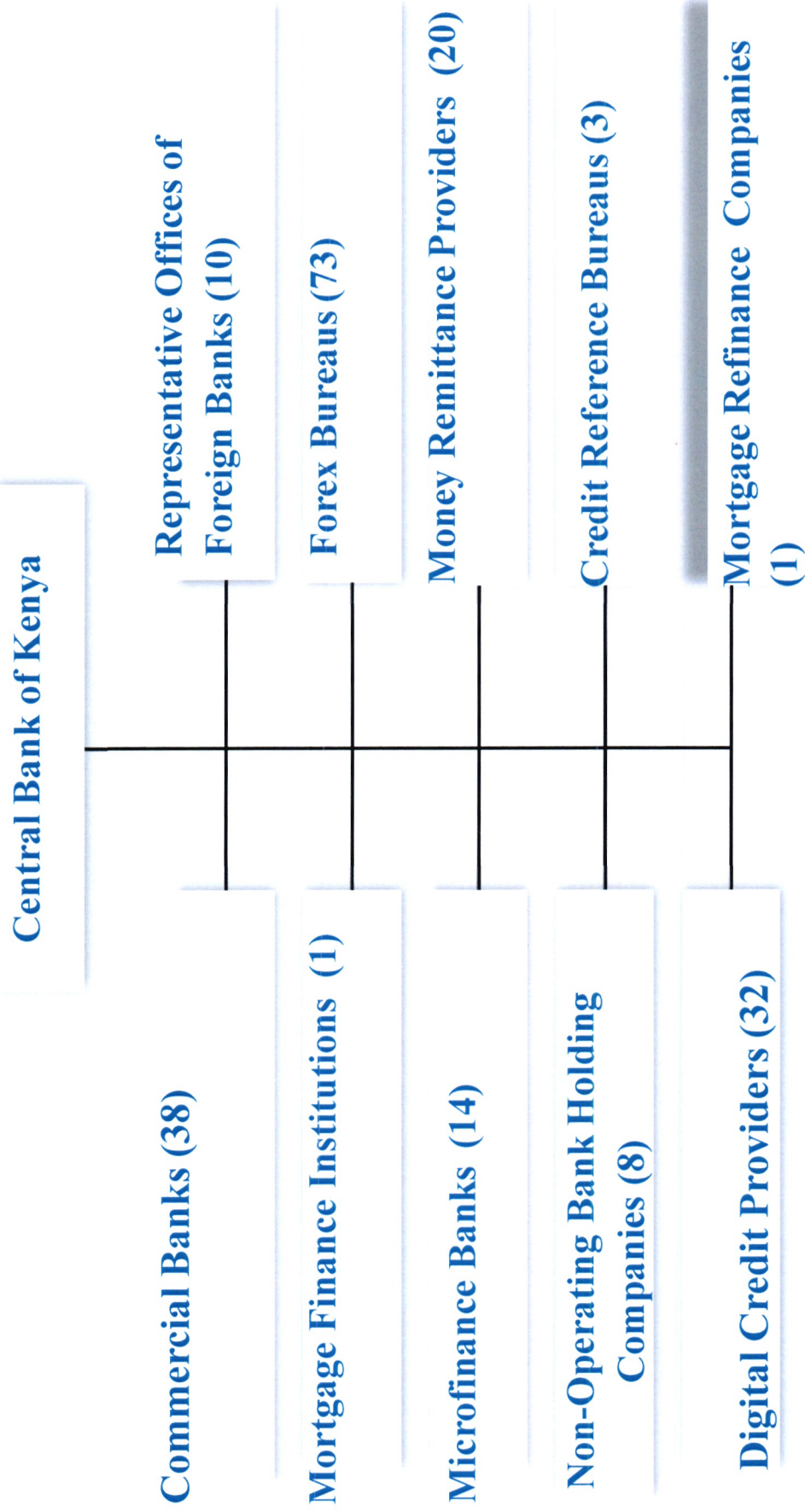


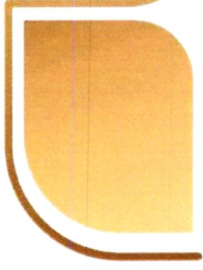


Outline

1. Structure
2. Mandate
3. Legal and Regulatory Framework
4. Mutual Evaluation Findings
5. AML/CFT (Amendment) Bill
6. Concluding Remarks

Structure of the Kenyan Banking Sector





Constitutional and Legal Mandate of CBK

Constitutional Mandate of CBK

- Formulation of monetary policy
- Promotion of price stability
- Issuance of currency
- Performance of other functions conferred on it by Parliament

Statutory Mandate of the CBK under the CBK Act – Principal Objects

- To formulate and implement monetary policy directed to achieving and maintaining price stability
- To foster the liquidity, solvency and proper functioning of a stable market-based financial system
- To support the economic policy of the Government, including its objectives for growth and employment

AML/CFT Legal Framework applicable to the Banking Sector

Kenya's AML/CFT Laws and Regulations

- The Proceeds of Crime and Anti-Money Laundering Act, 2009
- The Proceeds of Crime and Money Laundering Regulations, 2013
- The Prevention of Terrorism Act, 2010
- The Prevention of Terrorism Regulations, 2012

Relevant Laws

- > The Central Bank of Kenya Act
- > The Banking Act
- > The Microfinance Act
- > The National Payment System Act

AML/CFT Sector-Specific Guidelines & Regulations

- Prudential Guideline on Anti-Money Laundering and Combating the Financing of Terrorism (CBK/PG/08)
- The Microfinance Regulations, 2008

Gaps in Sectoral Laws

CBK did not have legal mandate to supervise institutions and enforce compliance of financial institutions (FIs) for AML/CFT purposes.

Supervisors of financial institutions have no powers to issues guidelines on AML/CFT.

CBK does not have power to share AML/CFT supervisory information with other supervisors.

Weaknesses in requirements for beneficial ownerships during licensing and vetting of significant shareholders in financial institutions.

CBK does not have power to compel financial institutions to produce documents for purposes of AML/CFT/CPF supervision.

Proceeds of
Crime and
Anti-Money
Laundering
(POCAMLA)

Did not provide for terrorist financing (TF) and measures to combat it

Did not provide for Proliferation Financing and measures to counter it

Does not provide for monetary penalties for violation of POCAMLA provisions

Proposed amendments to the Banking Act, Microfinance Act and National Payment System Act

Enable CBK to:

	Conduct onsite inspections and undertake offsite surveillance.		Carry out AML/CFT/CPF consolidated supervision.		Compel production of documents by FIs.		Impose monetary, civil and administrative sanctions.		Issue guidelines.
	Share information with its counterparts and other competent authorities such as the Financial Reporting Centre (FRC).		Supervise and enforce compliance with POCAMLA.		Vet significant shareholders, directors and senior officers.				

Omission

Act	Proposed amendment	Rationale
<p>CBK Act</p>	<p>Sec 2: Introduce a definition of</p> <ul style="list-style-type: none"> i) Significant shareholder ii) Beneficial owner 	<ul style="list-style-type: none"> • Enable the vetting of beneficial owners in financial institutions • Require CBK and the financial institutions to identify and verify persons who are exercising ultimate control in financial institutions. • Address MER deficiencies
	<p>New Sec 51A Introduce a new section on information sharing</p>	<p>Enable CBK to share AML/CFT/CPF supervisory information with its counterparts and other competent bodies.</p>
	<p>New Sec 51B Introduce a new section providing for powers on anti-money laundering, combating the financing of terrorism and countering proliferation financing matters</p>	<p>Give CBK express powers for onsite inspection, consolidated supervision, issuing guidelines, compelling production of documents, vet significant shareholders and share information with counterparts.</p>

Omission

Act	Proposed amendment	Rationale
Microfinance Act	<p>Sec 2: Introduce a definition of:</p> <ul style="list-style-type: none"> i) Significant shareholder ii) Beneficial owner 	<ul style="list-style-type: none"> • Enable the vetting of beneficial owners • Require CBK and the financial institutions to identify persons who are exercising ultimate control in financial institutions.
National Payment System Act	<p>Sec 2: Introduce a definition of:</p> <ul style="list-style-type: none"> i) Significant shareholder ii) Beneficial owner 	<ul style="list-style-type: none"> • Enable the vetting of beneficial owners • Require CBK and the financial institutions to identify persons who are exercising ultimate control in financial institutions. • Address MER deficiencies

Concluding Remarks on the need to amend laws

Kenya is a regional financial hub and on the way to being at international financial centre

Faces ML/TF/PF vulnerabilities

- Cash based economy
- Geographical locations
- Linkage with international financial system
- Diversified products and services

Strong AML/CFT/CPF Regime necessary to support:

- International transactions
- International trade
- Correspondent banking relationships

Secure and safe country

Integrity of financial sector/system

Attract investment

Job creation

Avoid “grey listing” by FATF

Concluding Remarks on the need to amend laws

If Kenya does not substantially address the deficiencies including legal reforms by October 2023. It stands the risk of being placed in the FATF “grey list”

- Public Statement being issued by FATF on Kenya’s strategic AML/CFT/CPF deficiencies
- Negative impact on international trade.
- Negative impact on International transactions.
- Termination of banking relationships with international banks due to high AML/CFT/CPF compliance costs.
- Difficulties in establishing correspondent banking relationships.
- Delays in processing international transactions.

Thank You!

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Companies Act,
2015
(No. 17 of 2015)

s.2

Insert the following definition in proper
alphabetical sequence—

“company secretary” has the meaning assigned to
it under the Certified Public Secretaries of Kenya
Act, 1988;

“nominator” means an individual, group of
individuals or legal person that issues instructions
directly or indirectly to a nominee to act on their
behalf in the capacity of a director or a
shareholder;

“nominee” means an individual or legal person
instructed by the nominator to act on their behalf
in a certain capacity regarding a company;

“nominee director” means an individual or legal
entity that routinely exercises the functions of the
director in the company on behalf of and subject to
the direct or indirect instructions of the
nominator;
and

The Bill proposes to amend section 2 of the Act to
provide clarity by introducing new definitions into the
Act. These definitions include the definition of
“Company Secretary”, “Nominator”, “Nominee,”
“Nominee Director”, and “Nominee Shareholder” which
terms have been introduced by the Bill.

“nominee shareholder” means a shareholder who exercises the associated voting rights according to the instructions of the nominator or receives dividends on behalf of the nominator.

s.13(4) Add the following new paragraph immediately after paragraph (c) —

The Bill proposes to amend section 13 subsection (4) to expressly provide for the requirement to provide beneficial owner particulars at the time of registering the company.

(d) a statement of the particulars in respect of each beneficial owner of the proposed company in accordance with section 16A of this Act.

s.14(3) Insert the following new paragraph immediately after paragraph (a) —

the Bill proposes to insert the following new sections 14(3) requiring nominee shareholders and nominee directors to provide details of their nominators

(aa) contains information as to whether any shareholder is a nominee and the particulars of their nominator;

s.16(3) Add the following new paragraph immediately after paragraph (c) —

the Bill proposes to insert the following new sections 16(3) requiring nominee shareholders and nominee directors to provide details of their nominators

(d) in the case of a nominee director, the fact that they are nominees and the particulars of their nominator.

New

Insert the following new section immediately after section 16—

Statement of particulars of beneficial owners.

16A. (1) The applicant for registration shall ensure that the requisite statement of particulars of the company's beneficial owners complies with subsection (2).

(2) The statement of particulars of beneficial owners shall contain—

The Bill proposes to insert new section 16A, to further provide for the requirement to provide beneficial owner particulars at the time of registering the company.

(a) the required particulars of anyone who is a beneficial owner; and

(b) any other matters that, on incorporation, shall be required to be entered in the company's register of beneficial owners under this Act.

s.93(1)

Delete the words "which shall include information relating to beneficial owners of the company, if any".

The Bill proposes to ensure that there is clarity on the different registers to be provided clarity on the two different registers required to be kept that is the register of members and that of beneficial owners. The Bill proposes to amend sections 93(2) (a), (b), and (d) to further provide for the disclosure of nominee shareholders.

s.93(2)(a)

Insert the words "including information on whether the member is a nominee shareholder" immediately after the word "members".

s.93(2)(b)

Insert the words "or a nominee shareholder" immediately after the word "member".

s.93(2)(d)

Delete and substitute therefor the following paragraph—

(d) the date on which any person ceased to be a member or a nominee shareholder.

s.93A

Delete and substitute therefor the following section—

Company
to keep a
register of
beneficial
owners

93A. (1) Every company shall keep a register of its beneficial owners.

(2) A company shall enter in its register of beneficial owners, information relating to its beneficial owners as prescribed in the regulations.

(3) A company shall lodge with the Registrar a copy of its register of beneficial owners—

The Bill proposes to delete and replace section 93(A) to enhance compliance with the disclosure of beneficial ownership information.

(a) in the case of a proposed company, when submitting documents as provided section 13 of this Act; and

(b) in the case of existing companies, within sixty days of coming into force of this section.

(4) The Registrar may, on the application of the company or for any other reason the Registrar thinks fit, extend the period referred to in subsection (3)(b) for a period not exceeding thirty days.

(5) A company, other than a public listed company, shall lodge with the Registrar a copy of any amendment to its register of beneficial owners within fourteen days after making the amendment.

(6) Notwithstanding the provisions of subsection (5), a public listed company shall lodge with the Registrar a copy of any amendment to its register of beneficial owners within thirty days after making the amendment.

(7) Every company shall keep records of its beneficial owner's information for at least ten years from the date, which a person ceases to be a beneficial owner.

(8) If a company fails to comply with the requirements of subsection (5) or subsection (6), the company, and each officer of the company in default is

liable to pay to the Registrar, an administrative penalty of two thousand shillings.

(9) If the company continues to fail to comply with the requirement of subsection (8), the company, and each officer of the company in default, is liable to pay to the Registrar a further administrative penalty of one hundred shillings for each day of default.

(10) If the company does not comply with subsection (3)(b), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(11) If, after a company or any of its officers is convicted of an offence under subsection (10), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(12) Notwithstanding the provisions of subsection (10) and (11), the Registrar may give a direction to a company that is in breach of subsection (3)(b) specifying—

- (a) the statutory requirement of which the company is in breach;

*The Anti-Money Laundering and Combating of Terrorism Financing Laws
(Amendment) Bill, 2023*

(b) the action that the company is required to take;

(c) that the company has to comply with the direction within fourteen days;

(d) the consequence provided for under section 894 for failure to comply with the direction by the Registrar.

s.104

Repeal.	The Bill proposes to delete section 104 to enable the identification of nominee arrangements in the register of members.
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New Insert the following new section immediately after section 138—

Register of nominee directors. **138A.** (1) Every company shall keep a register of nominee directors at its registered office. The Bill proposes to amend section 138 by inserting a new section 138A to further provide for the disclosure of the

The Anti-Money Laundering and Combating of Terrorism Financing Laws

(Amendment) Bill, 2023

(2) A company shall enter in its register of nominee directors—

nominee director.

(a) the name and address of the nominee director;

(b) the date on which the person became a nominee director;

(c) the name and address of the nominee director's nominator.

(3) Every company registered before the coming into effect of this provision shall lodge with the Registrar, a copy of its register of nominee directors within sixty days of coming into effect of this provision.

The Anti-Money Laundering and Combating of Terrorism Financing Laws

(Amendment) Bill, 2023

Companies electing to have a company secretary or a contact person.

243A. (1) A private company with a paid-up capital of less than five million shillings or a company limited by guarantee may appoint a company secretary.

(2) A private company or company limited by guarantee not having a company secretary or a resident director shall be required to—

- (a) appoint a contact person who shall be a natural person with a

The Bill proposes to amend section 243 by inserting a new section 243A to further provide for the requirement for local companies to have at least one person, resident in the country authorized by the company, and be accountable to competent authorities, for providing all basic and available information on BO, and/or any further assistance.

permanent residence in Kenya;
and

(b) in the case of a company registered before the coming into effect of this provision, lodge a notice with the Registrar of the said appointment, within sixty days of coming into force of this provision.

(3) The company shall lodge with the Registrar for registration a notice of the appointment of the contact person, specifying the person's name and residential address and such other particulars (if any) as are prescribed for the purposes of this section.

(4) The contact person shall—

(a) keep a copy of the record relating to directorship, shareholding, beneficial ownership and any other information required to be kept by the company under the Act; and

(b) make the copies available to competent authorities and the Registrar.

(5) A contact person who fails to comply with the provisions of subsection (4) above commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(6) Within fourteen days after a person who is the contact person of a registered company has—

(a) died, resigned or otherwise ceased to be the contact person, the company shall lodge with the Registrar for registration a notice to the effect that the person has ceased to be a contact person of the company in Kenya and that a new contact person has been appointed in their place; or

(b) changed his or her residential address in Kenya, the company shall lodge with the Registrar for registration a notice giving details of the change.

(7) If the company does not comply with subsection (2), the company, and each officer of the company who is in default, commits an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(8) If, after a company or any of its officers is convicted of an offence under subsection (7), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(9) Notwithstanding the provisions of subsection (7) and (8) the Registrar may give a direction to a company that is in breach of subsection (2) and (6) specifying—

- (a) the statutory requirement of which the company is in breach;
- (b) the action that the company is required to take;
- (c) that the company has to comply with the direction within fourteen days;
- (d) the consequences of failing to comply with the direction.

s.706(1)

Add the following new paragraph immediately after paragraph (d)—

The Bill proposes to amend section 708 (1) by inserting a new paragraph (e) to provide a mechanism

- for notifying the registrar where there has been a change in the register to further provide for the disclosure of the nominee director.
- (e) statement on whether there has been change in the register of beneficial owner and the date of the change;
- s.850(1) Delete the words “three years” and substitute therefor the words “seven years”.
- s.851 Delete the words “two years” appearing in the marginal note and substitute therefor the words “seven years”.
- s.851(1) Delete the words “two years” and substitute therefor the words “seven years”.
- s.894 Insert the following new subsections immediately after subsection (1)—
- (1A) For purposes of subsection (1), grounds upon which the Registrar may form a reasonable
- The Bill proposes to amend sections 850, 851, and 851(1) by regularizing the number of years taken to provide a standard form.
- The Bill proposes to provide modalities within which the registrar can strike companies off the registrar for belief that the company is not carrying on business in Kenya.

belief that a company is not carrying on business may include—

- (a) where a company has failed to file annual returns or financial statements for a period of five years or more; or
- (b) where a company has failed to comply with the requirement to lodge a copy of the register of beneficial ownership after being issued with a directive under section 93A.
- (1B) The Cabinet Secretary may make regulations specifying the grounds upon which a company may be considered not to be carrying on business for the purpose of this section.

New
Insert the following new section immediately after section 904—

The Bill proposes to provide modalities within which the registrar can strike companies off the registrar for

belief that the company is not carrying on business in Kenya.

904A. Where a company is struck-off pursuant to sections 894 and 897 or under any other provision in this Act, it shall be the duty of the officers, administrator or liquidator to maintain all the company records required to be maintained by the company under this Act for at least seven years from the date of the strike off.

Record
keeping
after strike-
off.

s.975

Insert the following new subsection immediately after subsection (1)—

The Bill proposes to facilitate the disclosure of beneficial ownership information by foreign companies

(1A) The provisions of section 93A, with the exception of subsections (5) and (6), shall apply to foreign companies registered under this Part.

s.975(3)

Add the following new paragraph immediately after paragraph (g)—

(h) a statement of particulars of the beneficial owners of the foreign company in accordance with section 93A of the Act.

s.986(1) Insert the following new paragraph immediately after paragraph (b)—

(ba) its beneficial owners.

New Insert the following new section immediately after section 992—

Record
keeping
after strike-
off.

992A. Where a foreign company is struck-off pursuant to sections 991 and 992, it shall be the duty of the local representative of the company or the liquidator, as the case may be, to maintain all the records required to be maintained by the company under this Act for at least six years from the date of the strike off.

The Bill seeks to provide for record-keeping for at least six years after a company has been struck off this is to ensure that competent authorities and the registrar as and when needed can access the information.

New Insert the following new section immediately after section 1006—

The seeks to ensure that all relevant documents issued to the company are kept by the company

Duty of a company to keep records

1006A. (1) A company shall keep at its registered office, or at any other location that may be prescribed in regulations pursuant to section 1006, all documents required to be kept under this Act in relation to the company including—

- (a) the evidence of name reservation of the company name;
- (b) the certificate of incorporation issued by the Registrar;

-
- (c) certificate of change of name, if any;
 - (d) registered address or addresses of the company;
 - (e) registration documents or documents submitted to the Registrar during the registration of the company;
 - (f) articles of the company, if any;
 - (g) the company's register of members;
 - (h) the company's register of directors;
 - (i) the company's register of contact persons;
 - (j) the register of nominee directors and their nominator;

- (k) the company's records relating to its directors' service contracts;
- (l) the company's records relating to directors' indemnities;
- (m) the company's register of company secretaries;
- (n) the records of resolutions passed by the company;
- (o) in the case of a private company, the company's

contracts relating to purchase of its own shares out of capital and documents relating to redemption or purchase of own shares out of capital;

(p) the company's register of debenture holders;

(q) in the case of a public company—

(i) reports made by the company to members regarding the outcome of investigations by the company into interests in its shares; and

(ii) the company's register of interests disclosed;

(r) beneficial ownership information; and

(s) financial records.

(2) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(3) If, after a company or any of its officers has been convicted of an offence under subsection (2), the company, and each officer of the company who is in default, commit a further offence and on conviction are

each liable to a fine not exceeding fifty thousand shillings for each such offence.



REPUBLIC OF KENYA

**PRESENTATION
ON
ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM
FINANCING LAWS (AMENDMENT) BILL, 2023
BY
THE FINANCIAL REPORTING CENTRE
TO THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL
PLANNING**

AUGUST, 2023

A. **BACKGROUND**

- 1.0 The Proceeds of Crime and Anti Money Laundering Act, 2009 (POCAMLA) was enacted in December 2009 and came into force in operation in June 2010. the Prevention of Terrorism Act, 2012 was enacted in October 2012 and came into operation in the same month.
- 1.1 The country's regime to combat Money Laundering, Terrorism Financing and Proliferation Financing is largely contained in the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), 2009 and the Prevention of Terrorism Act, 2012 and the attendant Regulations thereunder namely, the Proceeds of Crime and Anti-Money Laundering Regulations, 2013 and the Prevention of Terrorism Act (Implementation of United Nations Security Council Resolutions on Suppression of Terrorism Regulations), 2013.
- 1.2 POCAMLA amongst others, criminalizes Money Laundering (ML) and related offences and introduces measures for combating the crime. It also places various obligations such as reporting of suspicious transactions on reporting institutions and sets out the responsibilities of supervisory bodies in supervising and enforcing Anti-Money Laundering and Combating Terrorism Financing (AML/CFT) compliance. The Act provides for the identification, tracing, freezing, seizure and confiscation of the proceeds of crime and also establishes the Financial Reporting Centre (FRC), the Anti-Money Laundering Advisory Board (AMLAB), the Assets Recovery Agency (ARA) and the Criminal Assets Recovery Fund.
- 1.3 The Financial Action Task Force (FATF) is an inter-governmental body whose mandate is to set global standards to promote the effective implementation of legal, regulatory and operational measures for combating Money Laundering, Terrorist Financing and the Financing of Proliferation (ML/TF/PF) and other related threats to the integrity of the international financial system. The FATF has developed universally

recognized international standards (also known as FATF Recommendations) on combating ML/TF/PF to increase transparency and enable countries successfully take action against illicit use of their financial system.

- 1.4 In accordance with the Financial Action Task Force (FATF) Standards, countries are required to align their laws to the FATF Standards and effectively implement the requirements domestically. In line with this requirement, Kenya has in the past amended its laws to conform to the FATF Standards, with the most recent amendments being the designation of lawyers and insurance intermediaries as reporting institutions under Proceeds of Crime and Anti Money Laundering (Amendment) Act, 2021 which was enacted in December 2021.
- 1.5 Kenya is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), a regional anti-money laundering body and an associate member of the FATF. ESAAMLG monitors the progress of implementation of the FATF Recommendations by its members through a peer review self-assessment process known as Mutual Evaluations.
- 1.6 In 2021-2022, Kenya underwent its second Anti-Money Laundering and Counter Terrorist Financing Mutual Evaluation (ME), peer review assessment by the ESAAMLG to assess Kenya's compliance with global Anti-Money Laundering, Counter-Financing of Terrorism and Counter-Financing of Proliferation of Weapons of Mass Destruction (AML/CFT/CPF) standards. Kenya's Mutual Evaluation Report (MER) was adopted by the ESAAMLG Council of Ministers in September 2022.
- 1.7 The MER summarises the AML/CFT/CPF regime in the country, analyses the extent to which Kenya's AML/CFT/CPF laws comply with the FATF Recommendations and their level of effectiveness. It also identifies

deficiencies in Kenya's AML/CFT/CPF framework and provides recommendations to strengthen the country's AML/CFT/CPF regime.

- 1.8 The FATF Assessment Methodology examined two broad areas, namely:
 - 1.8.1 Technical Compliance (TC) Assessment – Examines the country's legal and regulatory framework and assesses whether the country has the legal requirements in place. Technical compliance ratings can be either a C – Compliant, LC – Largely Compliant, PC – Partially Compliant or NC – Non Compliant;
 - 1.8.2 Effectiveness Assessment – Examines implementation of the legal and regulatory framework and assesses the practical implementation of the country's AML/CFT/CPF regime in line with the FATF Standards. Effectiveness ratings can be either a High – (HE) High Level of Effectiveness; Substantial - (SE) Substantial Level of Effectiveness; Moderate – (ME) Moderate Level of Effectiveness, or Low – (LE) Low Level of Effectiveness level of effectiveness.
 - 1.8.3 In terms of Technical Compliance, the country was rated;
 - Compliant (C) with 2 Recommendations;
 - Largely Compliant (LC) with 1 Recommendation;
 - Partially Compliant (PC) with 26 Recommendations and,
 - Non-Compliant (NC) with 11 Recommendations.
 - 1.8.4 In terms of the Effectiveness Assessment, the MER for Kenya concluded that the country had;
 - Low Level of Effectiveness in nine (9) out of the eleven (11) Immediate Outcomes (IOs) and,
 - Moderate Level of Effectiveness in two (2) out of the eleven (11) Immediate Outcomes.
- 1.9 Despite Kenya's improvements to its AML/CFT/CPF legal and institutional frameworks since the first ME of Kenya conducted in 2011, the 2022 assessment found that there are outstanding strategic gaps as indicated in the most last MER which require urgent attention. There are

moderate and major shortcomings in relation to enhanced measures for correspondent banking relationships; new technologies; powers of supervisors; due diligence for Designated Non-Financial Businesses and Professions (DNFBPs); risk-based supervision; targeted financial sanctions related to terrorism financing (TF) and Proliferation Financing (PF); and requirements in relation to Non –Profit Organisations (NPOs) at risk of abuse for TF.

B. POST MUTUAL EVALUATION FOLLOW UP PROCESSES

- 3.0 In terms of the post evaluation Follow-Up process, given the number of deficiencies identified in Kenya's MER, the country has been subjected to the ESAAMLG's Enhanced Follow-Up Process which entails reporting to the ESAAMLG Taskforce twice a year (in March/April and in August/September ESAAMLG meetings) on the country's progress in addressing the deficiencies in the MER. Kenya's first follow-up report to ESAAMLG is expected in July 2023.
- 3.1 Additionally, Kenya has been subjected to the International Co-operation Review Group (ICRG) of the FATF as a result of its ME results. The FATF's ICRG continually identifies and reviews jurisdictions with strategic AML/CFT deficiencies that present a risk to the international financial system and closely monitors their progress. During the ICRG process, Kenya will be required to report to the FATF at its plenary meetings (three times a year in February, June, and October) on the progress made by the country in implementing core priority areas identified by the FATF. Kenya is currently under a one-year ICRG Observation Period which lapses in September 2023. During this period, the country is expected to address deficiencies in its MER before possible public identification and formal review by the FATF. What this means is that by September 2023, should Kenya fail to demonstrate sufficient progress in addressing the issues highlighted in

its Mutual Evaluation Report (MER), then it will be placed in the FATF Public Statement on High-Risk Jurisdictions and be subject to the International Cooperative Review Group (ICRG) Process.

D. LEGAL REFORMS

- 4.0 During the one-year observation period, Kenya is expected to demonstrate positive and tangible progress towards addressing the deficiencies identified in the ME including working towards improving technical compliance through legislative reforms as both the ESAAMLG and the FATF will assess the country's progress following the lapse of the observation period in September 2023.
- 4.1 The Financial Reporting Centre, in the capacity as the country's focal point for combating money laundering, terrorism financing and proliferation financing and also as the Secretariat to the National Taskforce on Anti-Money Laundering and Combating the Financing of Terrorism (NTF) and National Coordinator of the ME exercise, began the process of legal and policy reforms to address the deficiencies identified in Kenya's MER. The NTF formed a legal-sub working group which spearheaded the analysis of the TC findings as the start point for proposals of legal reform/amendments. The legal sub-working group developed a TC matrix which assisted various institutions charged with implementation of AML/CFT in formulating proposed actions and amendments to various legislations to address the deficiencies identified. The comments and proposals received were consolidated and transformed into legislative proposals.
- 4.2 Some of the major deficiencies picked from the MER that need to be addressed through legal reforms include:
- 4.2.1 POCAMLA only contains AML requirements and does not cover CFT.

- 4.2.2 POCAMLA and POTA do not have adequate provisions covering preventive measures in relation to CFT. Most of the requirements relating to TF preventive measures are not provided for in law.
- 4.2.3 Since there are no CFT requirements in POCAMLA, supervisory bodies are not mandated to supervise and ensure compliance with CFT/CPF requirements. In addition, supervisory bodies have no power to impose sanctions for failure to comply with CFT/CPF requirements.
- 4.2.4 POCAMLA does not prescribe that supervisory bodies should use the powers in their respective sectoral laws for AML/CFT supervision purposes. Sectoral laws do not provide for AML/CFT and do not cross-reference the POCAMLA.
- 4.2.5 Kenya does not have a range of proportionate and dissuasive civil and administrative sanctions for dealing with natural or legal persons that fail to comply with the AML/CFT requirements or non-compliance with AML/CFT obligations.
- 4.2.6 Kenya does not have legal basis for the implementation of requirements of targeted financial sanctions related to proliferation. Implementation of United Nations Security Council Resolutions (UNSCRs) on Proliferation Financing (PF) are not supported by the primary Act (POTA) as POTA does not cover PF and therefore the POTA Regulations, 2013 cannot provide for proliferation financing.
- 4.2.7 There are no provisions which makes money laundering and Terrorism Financing as extraditable offences.
- 4.2.8 There is a legal gap in the country in relation to Terrorism Financing (TF) and this is impeding the country's efforts to fighting TF. This legal gap in relation to TF is also impacting the TF preventative measures.

4.2.9 The country does not have mechanisms for simplified Mutual Legal Assistance or simplified extradition.

4.2.10 Virtual Assets (VAs) and Virtual Assets Service Providers (VASPs) are not prohibited and the country has not put in place regulatory frameworks to cover VASPs.

4.2.11 The POTA does not have provisions for sanctioning legal persons.

4.2.12 Supervisory authorities are not implementing risk based supervision across the board.

E. PROPOSED AMENDMENTS

5.0 Based on the findings of the Mutual Evaluation Report for Kenya, the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2023 proposes amendments to seventeen (17) Acts of Parliament, all touching on the following subjects:

5.1 Supervision and Enforcement

5.1.1 POCAMLA is amended to expand the preventative measures to extend the application of preventative and enforcement measures applicable to anti-money laundering under the Act to also apply to combating terrorism financing and combating the financing of proliferation of weapons of mass destruction.

5.1.2 To enhance the powers of AML/CFT supervisory authorities to supervise, monitor and conduct AML/CFT oversight of reporting institutions, to undertake risk based supervision, to exchange information for AML/CFT purposes, to conduct fit and proper tests for reporting institutions, to issue AML/CFT guidelines, to impose sanctions for AML/CFT violations and infringements as well as to conduct AML/CFT/CPF inspections.

5.1.3 To empower the FRC to directly impose sanctions for violations of POCAMLA and indicate the circumstances under which it might request for the revocation of a reporting institution's license.

- 5.1.4 To amend the Capital Markets Act (Cap 485A), the Insurance Act (Cap 487), the Banking Act (Cap 488) Central Bank of Kenya Act (Cap 491), the Microfinance Act, 2006 (No. 19 of 2006), the National Payments Systems Act, 2011 (No. 39 of 2011), the Proceeds of Crime and Anti-Money Laundering Act, 2009 (No. 9 of 2009) for purposes of enhancing the supervisory powers of the AML/CFT Regulators for purposes of AML/CFT supervision and to cross reference the respective legislations of the supervisory authorities with the POCAMLA.
- 5.1.5 To amend the Insurance Act to provide for licensing of insurance companies. The current regime under the insurance act provides for registration which is a deficiency for financial Institutions subject to core principles.

5.2 Cross Border Declaration of Monetary Instruments

To enhance the penalties for violations for declarations for cross border currency to align them to be proportionate and dissuasive as required by the FATF Standards.

5.3 Reporting Suspicious Transactions

To align the reporting requirement by requiring Reporting Institutions to report suspicious transactions promptly upon forming suspicion. It also aligns the reporting obligations to the FATF standards by requiring reporting institutions to file suspicious transaction or activity reports on terrorism financing with the Financial reporting Centre.

5.4 Reporting Cash Transactions

To raise the cash transaction reporting threshold from US\$ 10,000 to US\$ 15,000.

5.5 Transparency On Beneficial Ownership

To provide for the requirement for companies to keep a register of beneficial owners. It also seeks to entrench the beneficial ownership requirements under the Limited Liability Partnership Act.

5.6 **Combating Terrorism Financing**

To align the Prevention of Terrorism Act with the FATF standards by amongst others, aligning the definition of “funds”, providing for the offence of financing of travel of individuals for supporting terrorism, entrenching the establishment of the Counter Financing of Terrorism Inter-Ministerial Committee under the POTA, providing for sanctions for legal persons supporting terrorism activities. The Bill also seeks to cross reference the POCAMLA and POTA to provide for preventative measures to combat terrorism financing.

5.7 **Combating Proliferation Financing (PF)**

To amend the POTA to provide for the offence of proliferation financing and financing of proliferation act. It also provides for preventative measures to combat proliferation financing and targeted financial sanctions in relation to PF.

5.8 **Targeted Financial Sanctions**

To align the mechanisms for targeted financial sanctions both for terrorism financing and proliferation financing purposes with the FATF standards. It also seeks to ensure that designations and obligations regarding targeted financial sanctions relating to PF are communicated to Reporting Institutions, Designated Non-Financial Businesses and Professions (DNFBPs), law Enforcement Agencies (LEAs) and other relevant sectors without delay.

5.9 **Mutual Legal Assistance**

To amend the Extradition (Commonwealth Countries) Act and Extradition (Contiguous and Foreign Countries) Act to make money laundering and terrorism financing extraditable offenses. It also seeks to provide for measures for simplified extradition and mutual legal assistance mechanisms.

✓
This does not follow

⇒ limitation of withdrawals:

5.10 Other Amendments

Other amendments incorporated in the Bill cover diverse issues including VASPs, due diligence for DNFBPs, risk-based supervision, record keeping, controlled deliveries amongst others.

F. FINANCIAL IMPLICATIONS

There is no financial implication envisaged in the publication and enactment of this Bill other than the normal operational expenditure already catered for in the Budget.

Financial Reporting Centre

August, 2023

