



THE FINANCIAL REPORTING CENTRE

**GUIDANCE TO CASINOS IN RELATION TO ANTI-MONEY-LAUNDERING,
COUNTER-TERRORISM FINANCING AND COUNTER-PROLIFERATION FINANCING**

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ABBREVIATIONS

AML	Anti-Money Laundering
AML/CFT /CPF	Anti-Money Laundering, Countering the Financing of Terrorism and Countering the Proliferation of Weapons of Mass Destruction
BCLB	Betting Control and Licensing Board
CDD	Customer Due Diligence
CFT	Countering Financing of Terrorism
CPF	Counter Proliferation Financing
CTR	Cash Transactions Report
DNFBP	Designated Non-Financial Businesses and Professions
EDD	Enhanced Due Diligence
FATF	Financial Action Task Force
FRC	Financial Reporting Centre
KYC	Know Your Customer
MLRO	Money Laundering Reporting Officer
NRA	National Risk Assessment
PEP	Politically Exposed Persons
POCAMLA	Proceeds of Crime and Anti-Money Laundering Act, 2009
POCAMLR	Proceeds of Crime and Anti-Money Laundering Regulations, 2023
STR	Suspicious Transaction Report
SAR	Suspicious Activity Report

Overview of This Guidance

The casino sector in Kenya significantly contributes to the economy. With increasing popularity of recreational gambling and an increasing interest in investment in the sector, there is a need for guidance on the application of preventative measures aimed at curbing the abuse of casinos for money laundering (ML), terrorism financing (TF) and Proliferation Financing (PF) purposes.

The Money Laundering and Terrorism Financing National Risk Assessment Report (NRA) (2021)¹, documents findings of the threats and vulnerability in the casino sector for abuse of ML. The vulnerability of the sector for abuse for ML was assessed as **medium**, having considered factors such as the **comprehensiveness of the legal framework**, **effectiveness of supervision** and **effectiveness of suspicious activity monitoring and reporting**. The NRA findings supports the need for guidance to the sector to lower the degree of vulnerability for ML/TF abuse.

Kenya is a member of the **East and Southern Africa Anti-Money Laundering Group (ESAAMLG)**, a regional inter-governmental body established to combat money laundering and terrorism financing in the Eastern and Southern African region. By virtue of her membership to ESAAMLG, Kenya is periodically assessed on the implementation of the Financial Action Task Force (FATF) Standards, which is the international standards on combating money laundering, combating terrorism financing and combating proliferation financing. The FATF Standards require that casinos apply preventative measures to counter ML and TF. The requirements of these Standards informed Kenya's position to include casinos as reporting institutions under the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAML) which imposes the obligations on the sector highlighted in this document.

In light of the above, this Guidance provides a general information intended to guide casinos on how the provisions under the POCAML, the Proceeds of Crime and Anti-Money Laundering Regulations, 2023, the Prevention of Terrorism Act, 2012, and the Prevention of Terrorism (Implementation of The United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2023 apply to the operations of casinos in Kenya. The guidance applies to land-based casinos (those with physical premises) and online casinos (those without a physical presence).

This guidance document is not intended to be a substitute for the provisions of any written law and shall be read alongside the Laws of Kenya.

¹ Accessible on the Financial Reporting website <https://www.frc.go.ke/>

Scope and Statement of This Guidance

1. Title

Guidance to Casinos in Relation to Anti-Money Laundering, Counter-Terrorism Financing and Counter-Proliferation Financing, 2023

2. Authorization

This Guidance is issued pursuant to Section 24A of the Proceeds of Crime and Anti Money Laundering Act, 2009 (POCAMLA).

3. Application

This Guidance applies to casinos, including internet casinos.

4. Purpose

The purpose of this Guidance is to provide direction to casinos in relation to their AML/CFT/CPF statutory obligations. The Guidance, therefore, complements existing AML/CFT/CPF legislation, and should not be taken as a substitute for them.

5. Responsibility

It is the casino's responsibility to ensure compliance with this Guidance and the existing AML/CFT/CPF legislative framework. Accordingly, casinos are encouraged to read and understand this Guidance.

6. Review

The Guidance shall be subject to review at least once every three years and may be updated when the need arises.

1. Combating Money Laundering and Terrorism Financing – The Key Stakeholders

Combating money laundering, terrorism financing and proliferation financing effectively requires a concerted effort from all stakeholders. This means that casinos should work hand in hand with the Financial Reporting Centre (FRC) by meeting the obligations set out in the law and in these guidelines.

Below is a brief discussion of the roles of casinos, the Financial Reporting Centre (FRC) and the Betting Control and Licensing Board in combating Money Laundering (ML), Terrorism Financing (TF) and Proliferation Financing (PF). Other key stakeholders include Law Enforcement Agencies, the Office of the Director of Public Prosecution, the Judiciary and the public.

a. Role of The Casinos in Combating Money Laundering (ML) and Terrorism Financing

Casinos play a crucial role in preventing ML, TF and PF as a first line of defense. The implementation of preventative measures such as conducting customer due diligence and reporting suspicious transactions to the FRC, deters criminals from laundering proceeds of crime through casinos. Casinos are required to report any suspicion as to the legitimacy of the funds transacted in the casino, or any suspicious activities linked to ML and/TF undertaken by their clients in the casinos.

b. Role of the Financial Reporting Centre in Relation to Supervision

The primary mandate of the FRC is the identification of the proceeds of crime and combating of money laundering and terrorism financing. Reporting institutions, including casinos, report suspicious activity and transactions to the FRC, which analyses the reports and transmits the results of the analysis to relevant law enforcement agencies for further action.

The FRC also supervises reporting institutions for the implementation of ML/TF preventative measures under POCAMLA and POCAMLR. Other supervisory functions of the FRC include:

- (a) Issuing instructions, directions, guidelines or rules;
- (b) Designing training requirements and training reporting institutions;
- (c) Imposing civil and administrative penalties;
- (d) Maintaining a database of Suspicious Transaction Reports;
- (e) Exchange of information; amongst others.

c. Role of the Betting Control and Licensing Board in relation to Supervision

The BCLB is the licensing Authority for casinos in Kenya and is the designated supervisor of casinos for AML/CFT/CPF purposes under POCAMLA. BCLB and the FRC coordinate in the execution of their supervisory mandates.

Kenya has adopted a collaborative supervision model in which the FRC and Supervisory Bodies, such as BCLB, jointly supervise and monitor AML/CFT compliance by the sector players in accordance with Section 36 A (7) of the POCAMLA.

2. The Risk Based Approach

To effectively combat ML, TF and PF, the law imposes a number of obligations on reporting institutions. These obligations include maintaining records, monitoring transactions, conducting customer due diligence and reporting suspicious activities and transactions to the FRC. These obligations are discussed in the following sections.

In meeting these obligations, casinos are required to adopt a risk-based approach.

2.1 Application of The Risk Based Approach

2.1.1 Overview of the risk based approach

The casino business faces diverse ML/TF/PF risks and it is unlikely that two casinos will face identical risks. As such, the measures put in place to mitigate the risks cannot be the same for all casinos and it is expected that each casino tailors its controls in a manner fit to mitigate the individual risks identified by the casino.

In light of the above, casinos are required to identify, assess and manage ML/TF/PF risks. Once these risks are identified, measures **commensurate** to the risks should be put in place to address the level of risks faced. This is termed as taking a “risk-based approach”.

This guide shall be read, taking into account the application of the risk-based approach when meeting the obligations set hereunder.

2.1.2 Understanding and documenting risks

Casinos are required to understand their risks. This understanding comes is informed by:

1. Findings of a risk assessment conducted by the business; and
2. The findings of the National Risk Assessment (NRA).

A **risk assessment** is a means to ascertain the residual risk from the inherent risks, which remains following the application of control measures. The purpose of the assessment is for the casino to understand its inherent risks and vulnerabilities so that it may tailor its AML/CFT/CPF controls accordingly.

The inherent risk is a factor of various risk categories, including:

- **Geographic risk**- Some jurisdictions pose a higher ML/TF risk than others. To determine which jurisdictions pose higher risks, consider information from variety of credible sources including the FATF, FRC and other government publications;

- **Customer risk** - the ML/TF risks posed by customers varies. For instance, Politically Exposed Persons (PEPs)², high spending customers may be considered as posing a higher ML/TF risk than low spending customers;
- **Transaction risk** – The transaction channels, such as cash, use of mobile money, casino wallets presents varied ML/TF/PF risks;
- **Delivery channel risk** – This describes the manner in which the casino’s clients engage with its products, for instance online or in person; and
- **Products and service risk** – Products and services present ML/TF risks to varying degrees. For instance, peer-to-peer gambling may be considered high risk for ML/TF since it allows one individual to play directly against another.

The above factors are non-exhaustive and casinos may consider additional factors to establish the ML, TF and PF risks faced by the business and impose commensurate mitigating measures.

Aside from the risk assessment described above targeting the business risks, casinos are also required to assess the risk of new technologies, prior to implementation of the same. Adequate risk mitigation measures should be put in place prior to launching a new technology.

² The FATF defines PEPs as follows: “individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories”.

3. Obligations of Reporting Institutions

The following are the obligations imposed on all Reporting Institutions, including casinos in an effort to combat ML, TF and PF.

These obligations shall be applied, having in mind the risks identified by the casino at institutional level, as well as the risks identified at national level in the National Risk Assessment (NRA).

3.1 Registration with the FRC

Pursuant to Section 47A of POCAMLA, casinos are required to register with the FRC through the GoAML Platform. The GoAML platform serves as the secure communication interface between the FRC and the casino. Guidance on the registration process can be found on the FRC website. Any change of particulars of the casino should be communicated to the FRC within 90 days from the date when the change is made.

Failure to register with FRC is an offence.

3.2 Appointment of a Money Laundering Reporting Officer

Casinos are required to appoint a Money Laundering Reporting Officer (MLRO) pursuant to Regulation 12 of the POCAMLR. Based on the functions undertaken by MLROs, they are described as the point-persons of the organization on matters AML/CFT. The work undertaken by an MLRO is of critical importance to meet the AML/CFT obligations of the casino.

Persons appointed as MLRO are required to be **competent** and to have **authority and independence** in conducting his/her functions. Moreover, the MLRO should be of management position to enable him/her to have direct access to the directors of the casino, to have access to customer due diligence documents, and to have any other powers necessary to undertake his/her functions.

Chief Executive Officers, or an officer of an equivalent position e.g. a Managing Director, and Internal Auditors are prohibited from holding the position of an MLRO except where the casino is a sole proprietorship.

The appointment or removal of the MLRO should be communicated to the FRC within fourteen (14) days from the date of appointment or removal.

All staff of the casino are required to monitor and report to the MLRO any suspicious activities or transactions which may be related to the proceeds of crime, money laundering or the financing of terrorism. It is expected that the casino shall have **clear, documented** procedures for escalation of reports to the MLRO.

3.2.1 Functions of the MLRO

Once a report has been received by the MLRO, he/she shall assess the report to establish whether there are indicators of ML and TF. Once the MLRO is satisfied that the indicators are consistent with possible ML and/or TF, the MLRO shall report the same to the FRC as required by the POCAMLA and the POCAMLR.

The MLRO should document the reasons informing a choice not to submit a report to the FRC where he/she feels that a report made by a member of staff does not warrant reporting to the FRC.

In addition, the MLRO shall ensure that;

- a) all employees of the casino are made aware of POCAMLA as well as the audit systems adopted; and
- b) in liaison with the human resource department, persons are screened before being hired as employees.

3.3 Implementing Internal Controls

Regulation 11 of the POCAMLR requires casinos to develop and implement internal control measures and procedures to combat ML/TF/PF, including:

- a) Formulating programs for identifying, assessing, understanding, monitoring, managing and mitigating ML/TF risk;
- b) Developing monitoring programs in relation to complex, unusual or large transactions or suspicious transactions/activities;
- c) Establishing Enhanced Due Diligence (EDD) procedures with respect to persons and business relations and transactions carrying high risk and with persons established in jurisdictions that do not have adequate systems in place to combat ML/TF;
- d) Providing AML/CFT training to employees to facilitate the implementation of the casinos compliance with the AML/CFT measures and to skill them in handling suspicious transactions and activities;
- e) Formulating and maintaining a manual of compliance procedures, processes, and working methods in relation to ML/TF;
- f) Providing for the necessary processes and working methods to ensure compliance with AML/CFT legislation and internal rules; and
- g) Provide for the responsibility of the management of the reporting institution in respect of compliance with the AML/CFT legislation and internal rules.

The purpose of the internal controls and procedures is to ensure overall compliance with the AML/CFT legislation and internal rules.

3.4 Conducting Customer Due Diligence (CDD)

Pursuant to Section 45 of POCAMLA, Casinos have an obligation to conduct customer due diligence (CDD) on their customers, beneficial owner(s) and those purporting to act on behalf of a customer. CDD involves identifying and verifying the customer's identity, establishing the **source of funds** and conducting ongoing monitoring.

Casinos are under obligation to **identify** and **verify** the customers' identity using reliable, independent source documents, data or information. Identification of customers involves the collection of information required to establish a person, whether the customer or beneficial owner while verification of identity involves taking additional steps to ascertain that that such a person exists.

CDD is done when:

- (a) when **establishing initial business relations** (at first contact);
- (b) when undertaking **occasional or one-off transactions**;
- (c) when there is **cause to be suspicious**; and
- (d) when there is **doubt about veracity or adequacy** of previously obtained customer information.

Casinos are also required to conduct ongoing due diligence on the customer and scrutiny of transactions undertaken throughout the course of a relationship to ensure that the transactions being conducted are consistent with the casino's knowledge of the customer, their business and risk profile, including the source of funds.

Additionally, casinos are required to establish the identity of **ultimate beneficial owners** (BO) behind legal persons (companies and limited liability partnerships) or legal arrangements (trusts). They should therefore take necessary steps to identify the natural persons exercising control and ownership behind the legal persons and legal arrangements.

Regulation 2 of the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 defines a "beneficial owner" to mean a **natural person** who ultimately owns or controls a customer or the natural person on whose behalf a transaction is being conducted, and includes any natural person who ultimately exercises effective control over a legal person or arrangement.

Lastly, casinos are prohibited from establishing or maintaining a business relationship with an anonymous customer or a customer using a fictitious name. For non-face-to-face

customers, casinos are required to guard against the risk of possible false identities and impersonations by employing additional or enhanced measures to supplement the documentary or electronic data.

The POCAML Regulations provide comprehensive information on the documents and information to source from customers ranging from natural persons to legal persons and legal arrangements such as trusts. Therefore, casinos should familiarize themselves with the POCAMLA and POCAML Regulations for further guidance.³

3.4.1 Reliance on Third Parties for CDD

Casinos may engage third parties to conduct CDD on their behalf. Where a casino outsources CDD services from a third party, the **ultimate responsibility** to ensure compliance with CDD requirements lies with the casino.

Reliance on third parties is subject to the following conditions:

- a) Casinos relying on a third party should enter into an agreement with the third party outlining the responsibilities of each party.
- b) The ultimate responsibility for CDD measures remains with the institution that is relying on the third party, i.e. the casino.
- c) Casinos relying on a third party should have the ability to obtain the necessary information concerning the relevant elements of CDD measures immediately as and when required.
- d) The casino intending to rely on a third party should ensure that that the third party is regulated, supervised or monitored by a competent authority and has measures in place for compliance with, CDD and record-keeping requirements in line with international best practice.⁴

Where a casino intends to rely on a third party that is based in another country, the casino should assess the money laundering and terrorism financing risks that the country poses and the adequacy of CDD measures adopted by financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs) in that country.

³ The POCAMLA and POCAML Regulations are available on the FRC Website at www.frc.go.ke and www.kenyalaw.org

⁴ The third party providing CDD services should be AML obliged and regulated for the same. For example, financial institutions licensed and supervised by the Central Bank of Kenya, the Capital Markets Authority or any other RI under Section 2 of POCAMLA.

3.4.2 Conducting Enhanced Due Diligence

In some instances, casinos are required to undertake enhanced due diligence (EDD) on their customers. These instances include when the customer is **identified** as being a high-risk person such as PEPs, legal persons or legal arrangements.⁵

EDD is conducted by taking measures to:

- a) Obtain further information relevant to verifying the customer's true identity;
- b) Apply extra measures to verify the documents provided;
- c) Obtain senior management approval before establishing the new business relationship;
- d) Establish the customer's source of funds; and
- e) Conduct ongoing monitoring through the subsistence of the relationship.

3.4 Record-Keeping

Pursuant to Section 46 of POCAMLA, casinos have an obligation to establish and maintain records for at least **seven years** or such longer periods as the FRC may require from the date the relevant business or transaction was completed or following the termination of an account or business relationship.

The Casino should maintain the following records:

- (a) Records of **all** transactions;
- (b) Records obtained through CDD measures such as copies or records of official documents like passports, identification cards or similar documents;
- (c) Business correspondence;
- (d) The results of any analysis undertaken such as inquiries to establish the background and purpose of complex, unusual, large transactions for the period specified;
- (e) Account files maintained in the correct name of the customer;
- (f) Training records i.e. content of the training program, training schedule, attendance sheets for the training, training policy, training plan;
- (g) Documentation of internal controls and processes such as policies and procedures in relation to AML/CFT;
- (h) Reports made by the MLRO to the senior management and board of directors;

⁵ An institutional risk assessment, sectoral risk assessments and National Risk Assessments are some of the means used to identify high-risk persons subject to EDD.

- (i) Documentation of findings of an independent audit; and
- (j) Board discussions on AML/CFT issues affecting the business where applicable.

Casinos should maintain the records in a manner that permits reconstruction of individual transactions where necessary. The records kept should be made available to competent authorities⁶ upon request and in a timely manner on appropriate authority.

The records referred to in this section should be maintained from the date the relevant business or transaction was completed or following the termination of an account or business relationship.

3.5.1 Reliance on Third Parties and Record-Keeping

Where the Casino outsources CDD services, the casino should take necessary steps to ensure that the documents are maintained for at least 7 years as discussed above.

The ultimate responsibility of ensuring compliance with the record-keeping requirements lies with the Casino and its MLRO, even when the CDD services are outsourced.

3.6 Reporting and Monitoring

POCAMLA requires casinos to submit the following categories of reports to the FRC:

1. Suspicious Transaction Report (STR);
2. Suspicious Activity Reports (SAR); and
3. Cash Transaction Reports (CTR).

These reports contain information collected by the casino when conducting CDD. Thus, casinos are required to ensure that they update the CDD on an ongoing basis, as informed by the risk profile of the customer and of the casino.

3.6.1 Transaction monitoring

Pursuant to Section 44 (1) of POCAMLA, casinos are required to monitor on an ongoing basis all complex, unusual, suspicious, large transactions whether completed or not. They are also required to pay attention to all unusual patterns of transactions and to insignificant but periodic patterns of transactions which have no apparent economic or lawful purpose.

⁶ ‘Competent authority’ means a public authority other than a self-regulatory body with designated responsibilities for combating money laundering, financing of terrorism and proliferation financing.

3.6.2 Cash Transaction Reports

Pursuant to Section 44 (6) of POCAMLA, casinos have an obligation to submit Cash Transaction Reports (CTR) for all transactions equivalent to or exceeding USD 15,000 or its equivalent in any other currency, whether they appear to be suspicious or not.

3.6.3 Suspicious Transaction Reports and Suspicious Activity Reports

Pursuant to Section 44 (2), casinos have an obligation to report any suspicious or unusual transaction or activity to the FRC within two days after the suspicion arose. Failure to file the report within the stipulated timeline is an offence attracting a penalty of either a fine or imprisonment.

The procedure for filing STRs and SARs may be accessed on FRC's website www.frc.go.ke.

The FRC may require a Casino to provide particulars of any matter concerning suspicion to which the report relates and the grounds upon which it is based. The Casino is required to furnish the FRC with the required particulars and copies of documents to the extent that such particulars or documents are available to that person within a reasonable time, but in any case not later than thirty days from the date of the receipt of the request.

Casinos are required to submit a report listing customers, both natural and legal persons, and legal arrangements, originating from higher risk countries to the FRC on an annual basis.

3.7 Training

Casinos should ensure that staff, including the board and management, are adequately and regularly trained on AML/CFT measures in the prevention, detection and control of ML/TF. The training should cover among other areas, AML/CFT regulatory requirements, the Casinos AML/CFT policies, procedures and controls, and identification and handling of suspicious activities that may be indicative of ML/TF.

Casino should provide appropriate training **tailored to the individual specific roles**. For instance, frontline staff should be trained on detection and escalation of suspicion. Further, casinos should ensure that employees are trained upon being hired and regularly to refresh, expand their knowledge and remind them of the emerging risks. Other factors such as change of roles, change of legislation or regulations, launch of new products or services may trigger training.

3.8 Independent Audit

Casinos are required to adopt an independent audit function to check for compliance with AML/CFT regulatory requirements and to assess effectiveness of internal policies, controls and procedures. The function can be conducted by an internal or external auditor.

The purpose of an independent audit is to test the effectiveness of the AML/CFT program including:

- (a) adequacy of and adherence to the casino's internal policies, procedures and controls;
- (b) consistency of reviewing and updating on the casino's internal controls;
- (c) adherence to AML/CFT regulatory framework in relation to their functions and obligations;
- (d) adequacy of the AML/CFT risk assessment;
- (e) adequacy of board, senior management and staff training; and
- (f) involvement of the senior management in the implementation of the internal controls, for instance, updating management through compliance reports and the provision of resources by senior management to the casino to fulfil its functions and obligations.

The findings of the independent audit should be documented and reported to the board and senior management including the MLRO. The management should ensure that any deficiencies identified are addressed and implementation of the recommendations tracked.

The FRC may request for the independent audit report and the MLRO is required to provide the audit report upon receiving such requests from the FRC.

3.9 Submission of Annual Compliance Report

Casinos additionally have an obligation to submit an Annual Compliance Report (ACR) in the prescribed form to the FRC by 31st January of the following calendar year or as may be required by the FRC. The ACR is used to gauge compliance with the POCAMLA, POCAML Regulations, and its internal rules in relation to AML/CFT. The procedure for filing ACRs may be accessed on FRC's website.

4. Sanctions Related to Non-Compliance

The POCAMLA and POCAMLR provide for the following sanctions applicable for non-compliance:

- a. Administrative sanctions;
- b. Civil penalties; and
- c. Criminal sanctions.

4.1 Administrative Sanctions

These are non-monetary actions that may be taken by the FRC for non-compliance with the provisions of POCAMLA and POCAML Regulations.

The FRC may for reasons disclosed in writing;

- issue a warning to a specified person or casino; or
- issue an order requiring a specified person or casino to comply with any specific instruction or direction issued by the FRC;
- issue an order barring an individual or individuals from employment within the specified casino whether entirely or in a specified capacity;
- issue an order to a competent supervisory authority requesting the suspension or revocation of a license, registration, permit or authorization of a specified casino whether entirely or in a specified capacity or of any director, principal, officer, agent or employee of the casino.

Before taking administrative action imposed against any person or casino, the FRC shall give the person or casino a written notice of not less than fourteen days requiring the person or casino to show cause as to why the prescribed administrative action should not be taken.

4.2 Criminal Sanctions

The following is a summary of criminal offences and the applicable penalties.

POCAMLA		
Offence	Description	Penalty
Money Laundering Section 3	A person who knows or who ought reasonably to have known that	<u>Natural person</u> Imprisonment of a term not exceeding 14 years or a fine not exceeding 5

	<p>property is or forms part of the proceeds of crime and—</p> <p>(a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether that agreement, arrangement or transaction is legally enforceable or not; or</p> <p>(b) performs any other act in connection with such property, whether it is performed independently or with any other person, whose effect is to—</p> <p>(i) conceal or disguise the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or</p> <p>(ii) enable or assist any person who has committed or commits an offence, whether in Kenya or elsewhere to avoid prosecution; or</p> <p>(iii) remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence,</p> <p>commits an offence.</p>	<p>million, or both the fine and imprisonment.</p> <p><u>Body corporate</u></p> <p>A fine not exceeding 25 million</p>
<p>Acquisition, Possession, or Use of Proceeds of Crime</p> <p>Section 4</p>	<p>A person who—</p> <p>(a) acquires;</p> <p>(b) uses; or</p> <p>(c) has possession of, property and who, at the time of acquisition, use or possession of such property, knows or ought reasonably to have known that it is or forms part of the proceeds of a crime committed by</p>	<p><u>Natural person</u></p> <p>Imprisonment of a term not exceeding 14 years or a fine not exceeding 5 million, or both the fine and imprisonment.</p> <p><u>Body corporate</u></p> <p>A fine not exceeding 25 million</p>

	him or by another person, commits an offence.	
Failure to Report Suspicion regarding Proceeds of Crime Section 5	A person who willfully fails to comply with an obligation contemplated in section 44(2) commits an offence.	<p><u>Natural person</u></p> <p>Imprisonment of a term not exceeding 7 years or a fine not exceeding 2.5 million, or both the fine and imprisonment.</p> <p><u>Body corporate</u></p> <p>A fine not exceeding 10 million</p>
Financial Promotion of an Offence Section 7	A person who, knowingly transports, transmits, transfers or receives or attempts to transport, transmit, transfer or receive a monetary instrument or anything of value to another person, with intent to commit an offence, that person commits an offence.	<p><u>Natural person</u></p> <p>Imprisonment of a term not exceeding 14 years or a fine not exceeding 5 million, or both the fine and imprisonment.</p> <p><u>Body corporate</u></p> <p>A fine not exceeding 25 million</p>
Tipping off Section 8	<p>A person who—</p> <p>(i) knows or ought reasonably to have known that a report under section 44 is being prepared or has been or is about to be sent to the FRC; and</p> <p>(ii) discloses to another person information or other matters relating to a report made under paragraph (i), commits an offence.</p>	<p><u>Natural person</u></p> <p>Imprisonment for a term not exceeding seven years, or a fine not exceeding two million, five hundred thousand shillings, or both the fine and imprisonment.</p> <p><u>Body corporate,</u></p> <p>A fine not exceeding ten million shillings or the amount of the value of the property involved in the offence, whichever is the higher.</p>
Misrepresentation Section 9	A person who knowingly makes a false, fictitious or fraudulent statement or representation, or	<p><u>Natural person</u></p> <p>Imprisonment of a term not exceeding 2 years or a fine not exceeding 1 million</p>

	<p>makes, or provides, any false document, knowing the same to contain any false, fictitious or fraudulent statement or entry, to a reporting institution, or to a supervisory body or to the FRC, commits an offence.</p>	<p><u>Body corporate</u> A fine not exceeding 5 million</p>
<p>Malicious Reporting Section 10</p>	<p>Any person who willfully gives any information to the FRC or an authorized officer knowing such information to be false commits an offence.</p>	<p><u>Natural person</u> Imprisonment of a term not exceeding 2 years or a fine not exceeding 1 million</p> <p><u>Body corporate</u> A fine not exceeding 5 million</p>
<p>Non-Compliance Section 11 (1)</p>	<p>A reporting institution that fails to comply with any of the requirements of sections 44, 45 and 46, or of any regulations, commits an offence.</p>	<p><u>Natural person</u> Imprisonment of a term not exceeding 7 years or a fine not exceeding 2.5 million, or both the fine and imprisonment.</p> <p><u>Body corporate</u> A fine not exceeding 10 million</p>
<p>Willfully failing to report the conveyance of monetary instruments Section 12(3)</p>	<p>A person who willfully fails to report the conveyance of monetary instruments into or out of Kenya, or materially misrepresents the amount of monetary instruments reported in accordance with the requirements of Section 12 (1) commits an offence.</p>	<p>A fine not exceeding fifty percent of the amount of the monetary instruments involved in the offence, or imprisonment for a term not exceeding five years, or both.</p>
<p>Misuse of Information Section 13 (1)</p>	<p>A person who knows or ought reasonably to have known—</p>	<p><u>Natural person</u> Imprisonment of a term not exceeding 7 years or a fine not exceeding 2.5</p>

	<p>(a) that information has been disclosed under the provisions of Part II; or</p> <p>(b) that an investigation is being, or may be, conducted as a result of such a disclosure, and directly or indirectly alerts, or brings information to the attention of another person who will or is likely to prejudice such an investigation, commits an offence.</p>	<p>million, or both the fine and imprisonment.</p> <p><u>Body corporate</u></p> <p>A fine not exceeding 10 million</p>
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POCAML A Regulations		
General Penalty for Contravention of the Regulations Regulation 48	Any person, reporting institution or supervisory body who contravenes the provisions of these Regulations commits an offence.	Imprisonment of a term not exceeding 3 years or a fine not exceeding 5 million or both.

In addition to criminal sanctions, the FRC may also impose civil and administrative sanctions.

4.3 Civil Sanctions

Where a person or a casino is in breach of, or fails to comply with any instruction, direction, rules or guidelines issued by the FRC;

- in the case of a natural person, a person shall be liable to a monetary penalty not exceeding five million shillings;
- in the case of a corporate body, the corporate body shall be liable to a monetary penalty not exceeding twenty-five million shillings;
- in the case of continued failure, the person or reporting institution shall be liable to an additional monetary penalty of ten thousand shillings per day on which such failure continues for a maximum period of one hundred and eighty days.

Before imposing a monetary penalty on any person or casino, the FRC shall give not less than fourteen days' notice in writing, requiring the person or casino to show cause as to why the prescribed monetary penalty should not be imposed.

4.4 Protection from Liability

In the fulfilment of their obligations under POCAMLA, Reporting Institutions, including casinos, are protected from liability pursuant to Section 19. The section provides that legal proceedings shall not lie against any reporting institution, their partner or employee, or a third party on behalf of the above mentioned persons, performing a function or in the exercise of an obligation under POCAMLA provided that it is done with due diligence and in good faith.

FRC and any other government entity or any officer or any employee are likewise protected from liability as provided under Section 19 in the performance of their functions or obligations under POCAMLA.

Effective Date

The effective date of this Guidance shall be **November 1, 2023**.

Enquiries

For more information and queries regarding the Guidance, you can reach FRC through:

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