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FINANCIAL REPORTING CENTRE CIRCULAR NO. 10 OF 2023

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TO: CHIEF EXECUTIVES OF REPORTING INSTITUTIONS

Dear Sirs/Madams,

IMPLEMENTATION OF TERRORISM FINANCING PREVENTATIVE MEASURES BY REPORTING INSTITUTIONS

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1 Background

1.1 Terrorists and their networks require financing to carry out terrorist activities. Access to funding not only allows terrorists to carry out specific terrorist operations, but also to meet the cost of developing and maintaining their organisation and thus creating an environment that sustains their activities.

1.2 While funding an individual attack might require fewer resources, maintaining a terrorist cell or network requires funds to support recruitment and support of members, procurement of weapons and explosives, planning, and support legitimate activities to maintain a veil of legitimacy.

1.3 Terrorists raise funding from both legitimate and illegitimate sources, including the abuse of charitable activities and criminal activities which range from low-level crime to organized crime.

1.4 Kenya has criminalised terrorist financing (TF) on the basis of the International Convention for the Suppression of the Financing of Terrorism through the Prevention of the Terrorism Act, 2012. The subsidiary legislation to the Act also provides for the implementation of the United Nations Security Council Resolutions on prevention and suppression of terrorism and terrorist financing.

2 Changes to the Legislative Framework

2.1 The recent amendment to Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) through the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act of 2023 which came into effect on September 15, 2023 has enhanced the efforts to combat the financing of terrorism.

2.2 The Cabinet Secretary to the National Treasury and Economic Planning thereafter issued the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLR) which were gazetted on, and came into effect on October 6, 2023 overhauling the 2013 Regulations.

2.3 The legislative changes to POCAMLA and POCAMLR have widened the scope of application of the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) to include matters relating to terrorist financing and proliferation financing in Kenya.

2.4 POCAMLA, read together with the Prevention of Terrorism Act 2012 (POTA), requires reporting institutions to apply preventative measures to combat the financing of terrorism alongside the combating of proliferation financing.

2.5 Further, POCAMLA and POTA confer the Financial Reporting Centre (Centre) and Supervisory Bodies the power to supervise and enforce the application of preventative measures to combat the financing of terrorism.

3 Institutional Terrorism Financing Risk Assessments

3.1 With the changes, Regulation 11 of the (POCAMLR) requires reporting institutions to formulate, adopt and implement programmes for assessing risks relating to terrorism financing. The programmes need not be different from the pre-existing ones as long as they are adequate to incorporate TF risks and are updated regularly but at least every two years taking into consideration new changes or developments.

3.2 Regulation 7(1) of POCAMLR requires reporting institutions to undertake a risk assessment associated with terrorism financing risks. All reporting institutions are therefore required to identify, assess, and understand the TF risks inherent in their businesses, and the level of the CFT controls and establish residual TF risks.

3.3 While undertaking the risk assessments, Regulation 7(2)(b) requires reporting institutions to take into consideration all relevant risk factors including customers; countries or geographical areas; products, services and transactions and delivery channels for products, services and transactions.

3.4 Regulation 7(2)(d) further requires reporting institutions to have appropriate mechanisms to provide risk assessment information to competent authorities and Self-Regulatory Bodies.

3.5 Regulation 8 requires reporting institutions to identify, assess and take appropriate measures to manage and mitigate the TF risks that may be associated with the development of new products, new delivery mechanisms, and use of new or developing technologies for both new and pre-existing products and business practices. Further, Regulation 8(4), requires reporting institutions to make available the risk assessment information to the Centre or respective supervisory body through appropriate mechanisms upon request.

3.6 Regulation 7(2)(a) and Regulation 7(2)(c) of POCAMLR respectively require a reporting institution to document its risk assessments, and to keep these assessments up to date. As such, any risk assessments conducted by the reporting institution should be documented and maintained to be up to date.

4 Incorporation of Information from National and Sectoral Terrorism Financing Risk Assessments

4.1 At the national level, Kenya assessed the terrorism financing risks during the National Money Laundering and Terrorism Financing Risk Assessment (NRA) of 2021 and the findings are outlined in Section 2.8 of the NRA Report, 2021.

4.1.1 The NRA identified Al-Shabaab, an Al-Qaeda affiliate group operating in Somalia, the Islamic State in Somalia (ISIS), self-radicalized individuals and the Al-Qaeda as the main terrorist threats in Kenya.

4.1.2 Domestic threats arise from the Al-Shabaab as it was noted to be the most prominent group carrying out attacks in the country. On the other hand, regional and global threats arise mainly from Somalia which has active terrorist cells and operational bases for Al-Shabaab, Al-Qaeda and ISIS.

4.1.3 Existence of these threats present a risk of individuals or organisations with the potential to raise, move or use funds or assets to support terrorist activities. These individuals could be part of the criminal network or sympathizers to the organizations.

4.2 The country has further undertaken separate risk assessments particularly on terrorism financing, legal persons and legal arrangements, virtual assets and virtual asset service providers and Non-Profit organisations terrorism financing risk assessment. The outcomes of these risk assessments feed into the 2021 NRA, and amongst other objectives, enhance the understanding of the terrorism financing at the national level. The assessments also cover sectoral analysis to understand the risks in various sectors of the economy.

4.3 The National Terrorism Financing Risk Assessment Report of 2023 identified that the level of TF risk for Kenya remain *Medium*. The risk assessment supports the findings of the 2021 NRA that Al-Shabaab and Islamic State in Somalia are the primary terrorist organizations which pose a threat to the country from their operational bases in Somalia. Both Al-Shabaab and Islamic State in Somalia raise funds through self-funding from legitimate sources, crowdfunding through social media, individual funders, external sources and virtual assets among others. The illegal sources of funds include kidnapping for ransomware, illegal businesses and illegal taxation of households and extortion of NPOs.

4.4 The NRA of 2021, the National Terrorism Financing Risk Assessment of 2023 and other sectoral risk assessments are key sources of information for reporting institutions to utilize and incorporate when updating their institutional risk assessments.

4.5 It is the expectation of the Centre that reporting institutions have already considered the findings of the NRA report, published in February 2022 to update their TF risk assessments.

4.6 The Centre is also hereby requiring reporting institutions to take note of the findings of the National Terrorism Financing risk assessment, the Legal Persons and Legal Arrangements ML/TF risk assessment, Virtual Assets and Virtual Asset Service Providers ML/TF risk assessments and Non-Profit Organizations Terrorism Financing risk assessment to update their respective institutional risk assessments.

5 Review and Update of Existing Policies, Procedures and Controls

5.1 Based on the institutional risk assessments, reporting institutions are required to review their existing internal policies, controls and procedures to ensure that they are adequate and remain up-to-date to effectively mitigate the identified risks.

5.2 Reporting institutions should also have procedures and mechanisms to monitor the implementation of the controls and to enhance them accordingly.

6 Preventative measures in respect of combating of terrorism financing

6.1 Reporting institutions are required to apply preventive measures commensurate to the TF risks identified.

6.2 Reporting institutions are, inter alia, obliged to implement the following terrorism financing preventative measures:

6.2.1 **Customer Due Diligence Measures-** Reporting institutions are required to undertake CDD measures on customers, a person purporting to act on behalf of a customer, applicants, and beneficial owners seeking to enter into a business relationship or carry out a transaction or a series of transactions with it. They are also required to understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship.

6.2.2 **Enhanced Due Diligence Measures-** Reporting institutions are required to undertake enhanced due diligence measures where persons, entities or beneficial owners present a higher risk to the reporting institution. This also includes business relationships and transactions with natural and legal persons, legal arrangements, or financial institutions that involve countries identified as posing a higher risk of terrorism financing.

6.2.3 **Ongoing Monitoring and Due Diligence Measures-** Reporting institutions are required to conduct ongoing monitoring of the business relationship on a risk sensitive basis and to scrutinize the transactions undertaken to ensure that they are consistent with the known business and risk profile of the customer. In so doing, the reporting institution should ensure that any document or information obtained through the customer due diligence process remains relevant and up to date.

6.2.4 **Transactions/ Activities monitoring and Suspicious Transactions/Activities Reporting -** Reporting institutions are required to conduct ongoing monitoring of transactions and activities related to terrorism financing and to report suspicious or unusual transactions or activities to the Centre within two days of forming suspicion. This includes suspicion that arises in the course of carrying out customer due diligence.

6.2.5 **Temporary Suspension of a Transaction** - Reporting institutions are required not to proceed with a transaction, proposed transaction or any other transaction that could be connected to terrorism financing related activities for a period not exceeding five working days upon receiving direction from the Centre to do so; and

6.2.6 **Record Keeping** – Reporting institutions are required to establish and maintain customer records for a period of at least seven years, or such longer period as the Centre may require, from the date the transaction was completed or following the termination of an account or business relationship.

7 Terrorism Financing Risk Indicators

7.1 Terrorism Financing involves three stages: raising or collection of funds; movement of funds; and usage of funds. Understanding how TF can occur at the various stages is critical when undertaking customer and transaction monitoring.

7.2 It is advisable to consider the red flag indicators of TF to assist the reporting institution to establish suspicion that could be linked to terrorism financing.

7.3 The TF risk indicators include, but are not limited to, those relating to customer identification, customer behaviour, customer financial profile, geographical location, transactional activity, and the possibility of crowd funding.

7.4 While a single indicator may not necessarily point to terrorism financing, observing such indicators could indicate an unusual pattern and trigger scrutiny of contextual factors thus making it easier to detect and report suspicious transactions or activities.

8 For any clarifications or further guidance, please contact the Centre through 0709858000 or compliance@frc.go.ke.

Please be guided accordingly.

SAITOTI K. MAIKA, MBS
<u>DIRECTOR GENERAL, FINANCIAL REPORTING CENTRE</u>

cc **The Governor**
Central Bank of Kenya
NAIROBI

The Chief Executive Officer
Insurance Regulatory Authority
NAIROBI

The Chief Executive Officer
Betting Control and Licensing Board
NAIROBI

The Chief Executive Officer
Capital Markets Authority
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The Chief Executive Officer
Sacco Societies Regulatory Authority
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Retirement Benefits Authority
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