



REPUBLIC OF KENYA  
FINANCIAL REPORTING CENTRE  
OLD MUTUAL TOWERS, UPPER HILL, UPPER HILL ROAD  
PRIVATE BAG 00200, NAIROBI TEL: +254 709858000

## FINANCIAL REPORTING CENTRE CIRCULAR NO. 6 OF 2023

November 6, 2023

TO: CHIEF EXECUTIVES OF REPORTING INSTITUTIONS

Dear Sirs/Madams,

### KEY CHANGES TO ANTI-MONEY LAUNDERING, COMBATING TERRORISM FINANCING AND COUNTERING PROLIFERATION FINANCING FRAMEWORK

---

#### 1 Background

- 1.1 The primary legislations for combating money laundering, terrorism financing and proliferation financing in Kenya are the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) and the Prevention of Terrorism Act, 2012 (POTA). The POCAMLA was enacted in December 2009 and came into force in June 2010 while the Prevention of Terrorism Act, 2012 was enacted in October 2012 and came into operation in the same month.
- 1.2 Kenya has over time amended and revised various laws, including POCAMLA and POTA and related Regulations to strengthen the Anti-Money Laundering (AML), Countering the Financing of Terrorism (CFT) and Countering Proliferation Financing (CPF) frameworks for the Country in line with the Recommendations of the Financial Action Task Force (FATF).

- 1.3 The most recent amendments were done through the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act of 2023 which came into effect on September 15, 2023 and amended key provisions of 17 Acts.
- 1.4 Subsequently, the Proceeds of Crime and Anti-Money Laundering Regulations 2023 (POCAMLA Regulations) and Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention and Suppression of Terrorism) Regulations, 2023 (POTA Regulations) were issued by the Cabinet Secretary to the National Treasury and Economic Planning and the Cabinet Secretary, Ministry of Interior and National Administration, respectively. Both the POCAMALA Regulations and POTA Regulations were gazetted on, and came into effect on October 6, 2023.
- 1.5 The Country has also developed regulations relating to the implementation of measures to combat proliferation financing. The Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention and Suppression and Disruption of Proliferation Financing) Regulations, 2023 have been published for public participation and can be found on the Financial Reporting Centre's website <https://frc.go.ke>.

## **2 Key Changes to the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA)**

- 2.1 Some of the key highlights on the changes to POCAMLA that are relevant to reporting institutions include: -
  - 2.1.1 Expansion of the scope of POCAMLA to cover terrorism financing and proliferation financing in addition to combating of money laundering. Reporting institutions are required to also apply preventative measures to combat the financing of terrorism and proliferation financing.

- 2.1.2 The mandate for the Financial Reporting Centre, Supervisory Bodies and Self-Regulatory Bodies under POCAMLA for purposes of AML/CFT supervision has also been enhanced to cover Countering Proliferation Financing.
- 2.1.3 Lawyers, notaries and other independent legal professionals are now part of the AML/CFT regime of the country. In this regard, the Law Society of Kenya has been designated as a Self-Regulatory Body with the responsibility of supervising and enforcing compliance with POCAMLA or any instruction, direction, guideline or rule made pursuant to or in terms of this Act by all lawyers, notaries and other independent legal professionals to whom the POCAMLA applies.
- 2.1.4 The Financial Reporting Centre (Centre), Supervisory Bodies and Self-Regulatory Bodies have been conferred the power to supervise and enforce the application of preventative measures by reporting institutions to combat the financing of terrorism, countering of proliferation financing, in addition to combating money laundering.
- 2.1.5 The timeline for reporting of suspicious transactions or activities by reporting institutions has been changed from seven days of the date of the transaction to reporting within two days of forming suspicion that could be related to money laundering, terrorism financing or proliferation financing.
- 2.1.6 While enforcing compliance with the obligations under POCAMLA, the penalties in Section 39(3) have been revised from KES 1M for individuals and KES 5M for corporates to KES 5M for an individual and KES 25M for a body corporate, respectively.
- 2.1.7 The Financial Reporting Centre, Supervisory Bodies and Self-Regulatory Bodies are now required to use a risk-based approach when fulfilling their respective supervisory obligations.

The mandate of Supervisory Bodies in the financial sector in so far as AML/CFT supervision is concerned has been strengthened.

### **3 Key Changes to the Prevention of Terrorism Act, 2012 (POTA)**

- 3.1 The provisions for the establishment of Counter Financing of Terrorism Inter-Ministerial Committee (The Committee), its functions, powers and establishment of sub-committees have been moved from the POTA Regulations and are now entrenched in the POTA.
- 3.2 The Committee has been given powers to deal with listing and delisting of persons and entities under the United Nations Security Council Resolutions in relation to the suppression of terrorism and terrorism financing, and proliferation financing. The Committee has also been empowered to propose designations to the 1267/1989 Committee and to the 1988 Committee for consideration.
- 3.3 The POTA now provides for sanctions of legal persons supporting terrorism activities. Section 30H has expanded and clarified to include terrorism financing offences with regard to legal persons.
- 3.4 Section 30G of POTA introduces a prohibition on making funds available for designated persons and entities and provides sanctions thereof for contravening the provision. These sanctions cover both natural and legal persons.
- 3.5 The Financial Reporting Centre and Supervisory Bodies have been conferred with the power to supervise and enforce the application of preventative measures to combat the financing of terrorism and proliferation financing.
- 3.6 The requirements to combat proliferation financing have been anchored in the POTA. Sections 4A and 4B of POTA now criminalize proliferation and financing of proliferation respectively.

#### 4 Key Changes in the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAMLRL)

- 4.1 The Proceeds of Crime and Anti-Money Laundering Regulations, 2013 have been repealed and replaced by the Proceeds of Crime and Anti-Money Laundering Regulations, 2023.
- 4.2 The new regulations provide for preventative measures to combat terrorism financing and proliferation financing in addition to combating money laundering;
- 4.3 The new regulations have enhanced the powers of the Financial Reporting Centre, Supervisory bodies and Self-regulatory bodies to:
  - i. supervise, monitor and conduct AML/CFT/CPF oversight of reporting institutions;
  - ii. undertake risk-based supervision;
  - iii. conduct fit and proper tests for all reporting institutions;
  - iv. issue guidelines in relation to AML/CFT/CPF; and
  - v. enforce remedial actions and impose sanctions for infringement of AML/CFT or CPF requirements; and
  - vi. conduct AML/CFT/CPF inspections.
- 4.4 The new regulations require reporting institutions to put in place policies and procedures to address any money laundering, terrorism financing or proliferation financing risks associated with non-face-to-face business relationships or transactions. In this regard, reporting institutions are required to formulate, adopt and implement internal control policies, measures and other procedures to combat money laundering terrorism financing and proliferation financing risks;
- 4.5 With respect to Customer Due Diligence requirements, the new Regulations have clearly identified and enhanced Customer Due Diligence requirements including, categorising requirements for natural persons, legal persons, partnerships and trusts.

- 4.6 The Customer Due Diligence requirements for Politically Exposed Persons (PEPs) have been updated and the treatment of Domestic PEPs is different from that of Foreign PEPs. The regulations also clarify the due diligence measures involving PEPs for life insurance policies.
- 4.6.1 All Foreign PEPs are considered high risk and reporting institutions are expected to **have in place management systems** to determine whether the foreign customer or foreign beneficial owner is a PEP and to apply the required due diligence measures.
- 4.6.2 Not all domestic PEPs are considered high risk and therefore reporting institutions are expected to **take reasonable measures** to determine whether the domestic customer or domestic beneficial owner is a PEP or not. The reporting institution should have risk management procedures to establish if whether a domestic PEP is high risk or not and apply the required due diligence measures.
- 4.6.3 For life insurance policies, a reporting institution is required to **take reasonable measures** to determine whether the beneficiary and the beneficial owner of the beneficiary is a PEP at the latest, at the time of the payout and apply the required due diligence measures.
- 4.7 The new regulations have introduced Simplified Customer Due Diligence measures where lower risks have been identified. While Simplified Customer Due Diligence measures should be commensurate with the lower risk factors, the 2023 Regulations clarifies that these measures **SHOULD NOT** be applied where there is suspicion of money laundering, terrorism financing or proliferation financing, or specific higher risk scenarios.
- 4.8 The new regulations have enhanced the requirements for beneficial ownership (Also separately see the Centre's circular on beneficial ownership; FRC Circular No. 5 of 2023). Reporting institutions are required to identify and verify the natural persons behind a legal person

and legal arrangement, by establishing the (natural) beneficial owners in all circumstances for legal persons and legal arrangements.

- 4.9 The new regulations have done away with the reporting forms for suspicious transactions and cash transactions and in their place allowed the Centre to specify the format to be used in transmitting this information. The Financial Reporting Centre has prescribed that reporting should be done through the goAML application.
- 4.10 The new regulations have also enhanced the penalties for violation in line with the new amendments by providing for proportionate and dissuasive civil and administrative sanctions to deal with natural or legal persons that fail to comply with the AML/CFT/CPF requirements.
- 4.11 The new regulations have also streamlined the timelines of reporting suspicious transactions or activities from the date a transaction is made to the time suspicion is formed in line with the FATF standards.
- 4.12 The new regulations now require Supervisory Bodies and Self-Regulatory Bodies to put in place mechanisms to determine the suitability of persons managing or controlling a reporting institution.

## **5 Key Changes in the Prevention of Terrorism (Implementation of United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2023**

- 5.1 Measures on the Implementation of United Nations Security Council Resolutions on Suppression of Terrorism and the Implementation of United Nations Security Council Resolutions on Suppression of Proliferation have been separated and are covered in two different subsidiary legislative instruments.
- 5.2 The provisions for the establishment of the Counter Financing of Terrorism Inter-Ministerial Committee (The Committee), its functions, powers and establishment of sub-committees have been moved from the regulations and are now entrenched in the POTA.

- 5.3 Communications of designations and provision of guidance by the Committee to reporting institutions and other persons or entities on their obligations to take the required action of freezing and not making funds available to the listed persons or entities have been streamlined.
- 5.4 The Law Society of Kenya, a self-regulatory body has been given the responsibility to circulate the designations or sanctions list, upon receipt, to all lawyers, notaries and other independent legal professionals to whom the POCAMLA applies.
- 5.5 Supervisory bodies and self-regulatory bodies are required to provide guidance to reporting institutions holding funds or other assets of designated persons on their obligations and to ensure compliance with the requirements of designations.
- 5.6 The Regulations have provided for measures to protect the rights of bona fide third parties acting in good faith when implementing the requirements of designations.
- 5.7 The Regulations introduce the obligation of reporting institutions to respect the delisting and unfreeze the funds or other assets of delisted persons and entities.

## **6 Key Changes to the Companies Beneficial Ownership Regulations**

- 6.1 The Companies (Beneficial Ownership Information) (Amendment) Regulations, 2023 has amended the Companies (Beneficial Ownership Information) Regulations, 2020 to allow access to beneficial ownership information held by Registrar of Companies by Reporting Institutions for purposes of verification of BO information. Some of the key changes include:
  - 6.1.1.1 Regulation 7 of the Companies (Beneficial Ownership Information) (Amendment) Regulations, 2023, which amends Regulation 13(2)(d)(1) of the Companies (Beneficial Ownership Information) Regulations, 2020 to provide that BO Information may be disclosed to Reporting Institutions; and

6.1.1.2 Regulation 8 of the Companies (Beneficial Ownership Information) (Amendment) Regulations, 2023 which introduced Regulation 14 in the Companies (Beneficial Ownership Information) Regulations, 2020 whereby, in sub-regulation (c), Reporting Institutions may apply to the Registrar for BO Information.

## 7 Directive to Reporting Institutions

7.1 Based on the foregoing, the Centre hereby directs Financial Institutions and Designated Non-Financial Businesses and Professions to:

- i. take note of the changes in the country's AML/CFT/CPF legal and regulatory framework;
- ii. review and update their risk assessments where necessary;
- iii. update their internal control policies, measures and other procedures to combat money laundering terrorism financing and proliferation financing risks; and
- iv. ensure compliance with all AML/CFT/CPF obligations covered in the above mentioned legislations.

7.2 Copies of the above mentioned legislations can be found at the Government Press or at the National Council of Law Reporting, the Centre's website <https://frc.go.ke> and Business Registration Service website <https://brs.go.ke>.

7.3 For any clarifications or further guidance, please contact the Centre through 0709858000 or [compliance@frc.go.ke](mailto:compliance@frc.go.ke).

Please be guided accordingly.



**SAITOTI K. MAIKA, MBS**  
**DIRECTOR GENERAL, FINANCIAL REPORTING CENTRE**

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  
**NAIROBI**

**The Chief Executive Officer**  
Sacco Societies Regulatory Authority  
**NAIROBI**

**The Chief Executive Officer**  
Retirement Benefits Authority  
**NAIROBI**

**The Chairperson**  
Estate Agents Registration Board  
**NAIROBI**

**The Chief Executive Officer**  
Institute of Certified Public Accountants of Kenya  
**NAIROBI**