



REPUBLIC OF KENYA
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FINANCIAL REPORTING CENTRE CIRCULAR NO. 7 OF 2023

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TO: CHIEF EXECUTIVES OF REPORTING INSTITUTIONS

Dear Sirs/Madams,

RISK BASED APPROACH TO MITIGATE MONEY LAUNDERING AND TERRORISM FINANCING RISKS POSED BY DIFFERENT SECTORS

1 Background

- 1.1 Recommendation 1 of the Financial Action Task Force (FATF) requires countries to identify, assess and understand the Money Laundering (ML), Terrorist Financing (TF) and Proliferation Financing (PF) risks to which they are exposed, and take commensurate measures to effectively mitigate these risks.
- 1.2 Financial Institutions and Designated Non-financial Businesses and Professions (DNFBPs) are similarly required to identify, assess and take appropriate actions to mitigate the ML and TF risks they are predisposed to.
- 1.3 In Kenya, Regulation 7 of the Proceeds of Crime and Anti-money Laundering Regulations, 2023 (POCAMLRL) requires reporting institutions, both financial institutions and designated non-financial businesses and professions, to undertake institutional risk assessments to enable it (the reporting institution) identify, assess, understand, monitor, manage and mitigate the risks

associated with money laundering, terrorism financing and proliferation financing.

2 National Risk Assessment (NRA) on Money Laundering (ML) and Terrorism Financing (TF)

2.1 Kenya undertook a National Risk Assessment (NRA) on Money Laundering (ML) and Terrorism Financing (TF) between 2019 and 2021 and the results were published in the Money Laundering and Terrorism Financing National Risk Assessment Report, 2021. This Report is available in the Financial Reporting Centre's <https://frc.go.ke>.

2.2 The main objectives of the NRA included, amongst others:

- i. developing the country's understanding of risks related to money laundering, terrorism financing and proliferation financing;
- ii. to assist reporting institutions to assess the adequacy of their Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) controls thus enabling them to incorporate the outcomes of the NRA into their respective institutional ML/TF risk assessments; and
- iii. to implement the application of a Risk-Based Approach by ensuring preventive measures are commensurate to the risks identified.

2.3 The National Risk Assessment considered amongst other areas, the ML risks posed by various sectors of the economy. A summary of the sectoral money laundering vulnerability assessment is provided in the table below.

High	<ul style="list-style-type: none">• Real estate• Legal profession• Motor Vehicle Dealers
Medium High	<ul style="list-style-type: none">• Securities sector• Accountancy profession

	<ul style="list-style-type: none"> • Banking sector • Deposit Taking- Saccos • Forex Exchange Bureaus • Certified Secretaries profession • Money Remittance Providers
Medium	<ul style="list-style-type: none"> • Insurance and Retirement Benefits sector • Payment Service Providers • Casinos • Dealers in Precious Metals and Stones

3 Changes to Legislative Framework on ML/TF/PF Risk Assessments and Risk Based Approach

- 3.1 The recent amendments to the Proceeds of Crime and Anti-Money Laundering Act, 2009 through the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act of 2023 which came into effect on September 15, 2023 and the subsequent gazettelement of the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (POCAML Regulations) in October 6, 2023 introduces a Risk-Based Approach to mitigation of ML/TF/PF risks.
- 3.2 Regulation 20(2) of the POCAML Regulations requires reporting institutions to apply enhanced measures to mitigate and manage higher risks identified, either at national, sectoral or institutional level and ensure the outcomes of the national and sectoral risk assessments are incorporated into the institutional risk assessments. The national and sectoral risk assessments help enhance a reporting institution's understanding of the ML and TF risk profiles at national and sectoral levels.
- 3.3 Regulation 20(4) of the POCAML Regulations requires a reporting institution to perform enhanced due diligence where the money laundering and terrorism financing risks are higher.
- 3.4 Regulation 21 introduces a new requirement for reporting institutions to apply simplified customer due diligence measures where lower risks have

been identified through an adequate analysis of risks either at national or institutional level. While Simplified Customer Due Diligence measures should be commensurate with the lower risk factors, the Regulation clarifies that these measures **SHALL NOT** be applied where there is suspicion of money laundering, terrorism financing or proliferation financing, or specific higher risk scenarios.

4 Update to Kenya's ML and TF Risk Profile

4.1 The FATF standards require countries to keep their risk assessments and understanding of risks up to date. In this regard, since the 2021 Money Laundering and Terrorism Financing National Risk Assessment, the country has conducted the following:

- i. National Terrorism Financing Risk Assessment;
- ii. Virtual Assets (VAs) and Virtual Assets Service Providers (VASPs) ML/TF Risk Assessment;
- iii. Legal Persons and Legal Arrangements ML/TF Risk Assessment; and
- iv. Non-Profit Organizations (NPO) TF Risk Assessments.

4.2 The country is also conducting a Tax Crime Risk Assessment, whose findings will help in building the understanding of Tax Crime money laundering vulnerability.

4.3 The respective risk assessment reports will be published in the Financial Reporting Centre's website <https://frc.go.ke> and a summary of the preliminary findings of the risk assessments is as below:

4.3.1 National Terrorism Financing Risk assessment

The National Terrorism Financing Risk Assessment of 2023 identified that the level of TF risk for the country is *Medium*. The risk assessment considered amongst others, an analysis of various sectors and the level of TF risk they pose. The National TF Risk Assessment found out that the channels likely to

be exploited for TF abuse include cash, mobile money, banks, money remittance providers and cash couriers.

4.3.2 Virtual Assets (VAs) and Virtual Assets Service Providers (VASPs) ML/TF Risk Assessment

The National ML/TF Risk Assessment on VAs and VASPs of 2023 assessed the levels of ML/TF risks posed by VAs and VASPs as *Medium* for ML and *Low* for TF risk. The assessment observed the existence of interactions between reporting institutions and the VAs and VASPs ecosystem and noted that reporting institutions could potentially be exposed to VAs and VASPs ML and TF risks associated with such interactions.

4.3.3 Legal Persons and Legal Arrangements ML/TF Risk Assessment

The Legal Persons and Legal Arrangements ML/TF Risk Assessment of 2023 identified the overall ML threat as Medium, TF threat as Low and ML/TF vulnerability as Medium. The assessment took into consideration, the risks presented by various legal structures of legal persons and legal arrangements and identified that trusts and private limited companies pose relatively higher risks than foreign companies, public limited companies, limited liability partnerships, companies limited by guarantee and unlimited companies.

4.3.4 Non-Profit Organizations (NPO) TF Risk Assessment

The NPO TF Risk Assessment has identified the following categories of NPOs to be at risk of TF.

- i. NPOs working with, or in places where there may be, individuals that are sympathetic or supportive of terrorist causes
- ii. NPOs engaged in activities which may bring them into contact with terrorist groups or supporters
- iii. NPOs with unverified or unverifiable funding sources
- iv. NPOs with high risk and/or foreign funding sources

- v. NPOs with without adequate financial controls or the ability to verify their own activities
- vi. NPOs with unverified partners
- vii. NPOs operating in or near areas with active terrorist presence

Faith Based Organizations with religious alignment of members being sympathetic to terror groups

4.4 Supervisory Bodies and the Financial Reporting Centre from time to time also conduct sectoral risk assessments to enhance the understanding of the money laundering and terrorist financing risks to which reporting institutions under their respective supervision may be exposed to. Such sectoral ML and TF Risk Assessments are relevant to key stakeholders, including reporting institutions in terms of the role they play in combating money laundering and terrorism financing.

4.5 Just like the NRA and other thematic risk assessments, the sectoral assessments should be considered by reporting institutions while updating their institutional risk assessments. In addition, the reporting institutions should understand the risks posed by different sectors and take appropriate measures commensurate with the risks.

5 Directive to Reporting Institutions

Accordingly, Reporting Institutions are hereby directed to:

- i. Take note of the results of the NRA of 2021, National TF Risk Assessment of 2023, VA and VASPs ML/TF Risk Assessment of 2023, Legal Persons and Legal Arrangements ML/TF Risk Assessment of 2023, Non-Profit Organizations (NPO) TF Risk Assessment of 2023 and any other sectoral ML/TF risk assessments as applicable;

- ii. Based on the risk assessments in (i) above, update their institutional risk assessments, policies, controls, and procedures to enable effective mitigation of the identified risks;
- iii. Update their customer risk profiles to reflect the findings of the risk assessments in (i) above;
- iv. Ensure application of commensurate risk mitigation measures to the level and nature of the risks identified;
- v. Apply enhanced measures for higher-risk situations; and
- vi. If necessary, consider applying simplified measures for lower-risk situations. However, reporting institutions **SHOULD NOT** apply simplified measures where there is suspicion of money laundering, terrorism financing or proliferation financing or where specific higher risk situations are presented.

6 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
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
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The Chief Executive Officer
Sacco Societies Regulatory Authority
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The Chairperson
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