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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 PADOSS I AD	
DATE: 17 AUG 2023	DAY: THURS
TABLED BY:	Hon George Munigara, MP
CLERK-AT THE DESK:	On behalf of the Chairperson: Anne Shuloko

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 MARKT AUTHORITY

POTA: PREVENTION OF TERRORISM ACT

TF: TERRORISM FINANCING

UNSCR: UNITED NATIONS SECURITY COUNCIL RESOLUTIONS

CFT: COUNTER FINANCING TERRORISM

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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. Biego Paul Kibichiy, MP

Chesumei Constituency

UDA Party

Hon. CPA Oyula Joseph H. Maero, MP

Butula Constituency

ODM Party

Hon. Sunkuyia George Risa, MP

Kajiado West Constituency

UDA Party

Hon. Mboni David Mwalika, MP

Kitui Rural Constituency

WDM Party

Hon. Joseph Kamau Munyoro, MP

Kigumo Constituency

UDA Party

Hon. Okuome Adipo Andrew, MP

Karachuonyo Constituency

ODM Party

Hon. Sheikh Umul Ker Kassim, MP

Mandera County

UDM Party

Hon. Kipkoros Joseph Makilap, MP

Baringo North Constituency

UDA Party

Hon. Ithinji Shadrack Mwiti, MP

South Imenti Constituency

Jubilee Party

Hon. CPA Rutto Julius Kipleting, MP

Kesses Constituency

UDA 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 (POCAMLA) 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 (POCAMLA) 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 POCAMLA 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.

3.8 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—

	Insert the following new section immediately after section 35
New	Rights and 35A. All persons subject to this Act shall fundamental enjoy all rights and fundamental freedoms 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 35B. (1) The right to privacy guaranteed of right to under Article 31 of the Constitution is hereby privacy 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 violations196C. (1) No institution, director, officer, employer, relating to moneyagent or any other person shall violate or fail to comply laundering, terrorismwith 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.
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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).
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(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 freedoms	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 of right to privacy	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	fundamental 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	51A.
	anti-money		(1) Pursuant to sections 2A, 36A, 36B
	laundering,		and 36C of the Proceeds of Crime and Anti-
	combating the		Money Laundering Act, 2009, the Central
	financing of		Bank shall regulate, supervise and enforce
	terrorism and		compliance for anti-money laundering,
	countering		combating the financing of terrorism and
	proliferation		countering proliferation financing purposes by
	financing		all reporting institutions regulated and
	matters.		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

- 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.
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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
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		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	17C. All persons subject to this Act shall
	fundamental	enjoy all rights and fundamental freedoms
	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	17D. (1) The right to privacy guaranteed
	of right to	under Article 31 of the Constitution is hereby
	privacy	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
PAPER 10
DATE: 17 AUG 2023
TABLED BY: Hon George Munaga MP
On behalf of the chairperson
Kone Shuboko

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.......... DATE.....17/08/2023.....

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