



Insurance  
Regulatory  
Authority

*Bima Bora kwa Taifa*

**IRA**



**STAKEHOLDERS WORKSHOP –AML /CFT  
LEGAL FRAMEWORK**

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# Presentation Outline

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- i. Introduction
- ii. The Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) and regulations
- iii. Prevention of Terrorism Act, 2012 (POTA) and regulations
- iv. Revised AML/CFT guidelines – Key provisions
- v. Conclusion

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# INTRODUCTION

## ▪ Kenya's AML/CFT legal and institutional framework

- The Proceeds of Crime and Anti-Money Laundering Act 2009 (POCAMLA) and POCAMLA Regulations 2013
- The Prevention of Terrorism Act 2012 (POTA and POTA Regulations 2013
- AML/CFT Guidelines 2011 revised 2018 and other guidelines issued by other regulators

## ▪ International AML/CFT Standard Setting Bodies

- The FATF 40 Recommendations on ML and 9 special recommendations on TF
- FATF-Style Regional Bodies (FSRBs) – ESAAMLG,
- IAIS - ICP 22 –AML and CFT

# INTRODUCTION

- The Purpose of the two Acts (POCAMLA & POTA);
  - (a) provide for the offence of money laundering and to introduce measures for combating the offence;
  - (b) to provide for the mechanism for identification, tracing, freezing, seizure and confiscation of the proceeds
  - (c) measures for the detection and prevention of terrorist activities;
  
- The legislations have generally provided for the responsibilities of financial institutions and /or the reporting institutions
  
- Insurance Regulatory Authority is recognized as a supervisory body in the First Schedule of POCAMLA alongside others (CBK, CMA, B&LCB, ICPAK, EARB, NGOCB & RBA)

## Definition of Terms – Section 2 (POCAMLTA)

“**financial institution**” means any person or entity, which conducts as a business, one or more of the following activities or operations—

- (a) accepting deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions;
- (c) .....
- (l) ***underwriting and placement of life insurance and other investment related insurance***; and
- (m) money and currency changing;

“**proceeds of crime**” means any property or economic advantage derived or realized, directly or indirectly, as a result of or in connection with an offence irrespective of the identity of the offender and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains or benefits derived or realized from such property from the time the offence was committed;

“**Reporting Institution**” means financial institution and designated nonfinancial business and profession (DNFBPs).

## Offence of Money Laundering

➤ Means an offence under section 3,4 and 7 of POCAMLA 2009

### Section 3 - money laundering

- A person who knows or ought to have known and enters into any agreement in respect to property or perform any other act with such property whose effect is to-
- ✓ Conceal or disguise the nature, source, location, disposition or movement of the property or interest therein; or
  - ✓ Enable or assist any person who has committed or commits an offence ;or
  - ✓ removes or diminish any property acquired directly or indirectly as a result of commission of an offence, commits an offence

## Offence of Money Laundering

### Section 4 - Acquisition, possession or use of proceeds of crime

- A person who-
- ✓ acquires;
  - ✓ uses; or
  - ✓ has possession of property that forms part of the proceeds of a crime committed by him or by another person, commits an offence

### Section 7 – Financial promotion of an offence

A person who, knowingly transports, transmits, transfers a monetary instrument or anything of value to another person, with intent to commit an offence. That person commits an offence.

**Section 8- Tipping off-** when a person who knows that a report is being made under section 44 of the Act and discloses to another person information or other matters which is likely to prejudice any investigation of offence of Money-laundering.

## **Offence of Money Laundering**

### **Section 10 - Malicious reporting**

- Any person who wilfully gives any information to the FRC knowing such information to be false commits an offence

### **Section 16 – Penalties**

A person who contravenes provisions of sections 3,4 or 7 is on conviction liable-

- (a) in case of a natural person, imprisonment for a term not exceeding 14 years or a fine not exceeding 5 million shillings
- (b) in case of a body corporate, a fine not exceeding 25 million shillings or the amount of the value of property involved in the offence, whichever is the higher.



# Obligations of Reporting Institutions (PART IV of POCAMLA)

Section 44. Monitoring and Reporting suspicious activity

Section 45. Verify customer identity.

Section 46. Establish and maintain customer records.

Section 47. Establish and maintain internal reporting procedures.

Section 47A. Register with the Centre.

# Anti- Money Laundering Obligations of reporting Institutions

## Section 44- Monitoring and Reporting suspicious activity

- Some of the obligations of the reporting institutions
  - ✓ monitor on an ongoing basis all complex, unusual, suspicious, large or such other transactions as may be specified in the regulations
  - ✓ report any suspicious or unusual transactions to Financial Reporting Centre established under section 21 of POCAMLA;
  - ✓ report all cash transactions equivalent to or exceeding US\$ 10,000 or its equivalent in any other currency.

All suspicious transactions, including **attempted** transactions, should be reported to FRC regardless of the amount or whether the transaction turns out to be ML/or TF related

## Anti- Money Laundering Obligations of reporting Institutions

### Section 45 – Verify Customer Identity

- A reporting institution shall take reasonable measures as to true identity of any applicant seeking to enter into business relationship
- the reporting institution should require an applicant to produce an official record which is capable of establishing the true identity of the applicant.
- In case of an individual customer;
  - ✓ a birth certificate

# Anti- Money Laundering Obligations of reporting Institutions

## Section 45 – Verify Customer Identity

- ✓ a national identity card;
- ✓ a drivers license;
- ✓ a passport; or
- ✓ any other official means of identification as may be prescribed
- In case of body corporate:
  - ✓ Evidence of registration or incorporation;
  - ✓ The Act establishing the body corporate;
  - ✓ Corporate resolution authorizing the person to act on behalf of the body corporate

# Anti- Money Laundering Obligations of reporting Institutions

## Section 45 – Verify Customer Identity

In case of beneficial owners:

- ✓ identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner, such that the reporting institution is satisfied that it knows who the beneficial owners is and it understands the ownership and control structure of the customer in case of legal persons and arrangements;

## Section 45 – Verify Customer Identity cont.....

Additional measures that may be used to identify and verify the identity of the customer include-

- ✓ postal address;
- ✓ current physical or residential address;
- ✓ utility bill including among others an electricity or a
- ✓ water bill;
- ✓ occupation or employment details;
- ✓ source of income;
- ✓ nature and location of business activity;
- ✓ PIN

# Anti- Money Laundering Obligations of reporting Institutions

## Section 46 – Establish and Maintain Customer records

- A reporting institution shall establish and maintain;
  - ✓ Records of all transactions and customer accounts kept in the correct name of the account holder;
- The above records shall contain particulars sufficient to identify;
  - (a) the name, physical and postal address and occupation of each person conducting the transaction on whose behalf the transaction is being conducted
  - (b) the nature, type and date of the transaction
  - (c) the type and amount of currency involved

# Anti- Money Laundering Obligations of reporting Institutions

## Section 46 – Establish and Maintain Customer records

(d) the type and identifying number of any account with the reporting institution

(e) In case of a negotiable instrument other than currency, the name of the drawer, institution on which it was drawn, payee, amount and date of the instrument

The above records shall be kept for a period of at least 7 years or such longer period as the centre may require.



# Anti- Money Laundering Obligations of reporting Institutions

## Section 47A–Obligation to register with FRC

- ✓ all reporting institutions shall register with the Centre within such period and manner as the Centre may prescribe.
- ✓ registration to be accompanied by such particulars as the Centre may require.
- ✓ the Centre shall keep and maintain a register of every reporting institution.
- ✓ a reporting institution shall notify the Centre, in writing, of any change in particulars within 90 days.
- ✓ a reporting institution who fails to register with the Centre commits an offence

## POCAMLA Regulations 2013 – Key provisions

### Regulation 6 – Risk Assessment

- Every reporting institution shall undertake a Money Laundering Risk Assessment to enable it identify, assess, monitor, manage and mitigate the risks associated with money laundering.
- In undertaking the risk assessment, a reporting institution shall develop and implement systems that will enable it identify and assess money laundering risks consistent with the nature and size of the institution and the outcome of such assessment shall be documented.
- On the basis of the results of the assessment, a reporting institution shall develop and implement Board approved policies, controls and procedures that will enable it to effectively manage and mitigate the identified risks.

## POCAMLA Regulations 2013 – Key provisions

### Regulation 6 – Risk Assessment contd...

- Every reporting institution shall put in place procedures and mechanisms for monitoring implementation of the controls and enhance them, where necessary.
- A reporting institution shall update its risk assessment policies or programs regularly but at least once every two years.

## POCAMLA Regulations 2013 – Key provisions

### Regulation 7 – New Technologies

- A reporting institution shall take reasonable measures to prevent the use of new technologies for money laundering purposes and shall conduct and document a money laundering risk assessment—
  - (a) prior to the introduction of a new product, new business practice or new technology for both new and pre-existing products so as to assess money laundering risks in relation to—
    - (i) a new product and a new business practice, including a new delivery channel; and
    - (ii) new or developing technologies for both new and pre-existing products.

## POCAMLA Regulations 2013 – Key provisions

### Regulation 10 – Money Laundering Reporting Officer (MLRO)

- A reporting institution shall appoint a MLRO who shall be at management level and possess relevant and necessary competence, authority and independence.
- All staff in a reporting institution shall monitor and report to the MLRO any suspicious activity on money laundering.
- The MLRO shall report to the Centre, any transaction or activity that he has reason to believe is suspicious in the form prescribed in the Schedule.

## POCAMLA Regulations 2013 – Key provisions

### Regulation 20 – Life insurance Related Business

- In case of life and other investment related insurance, in addition to the measures on due diligence required for customer and beneficial owner, a reporting institution should conduct due diligence on beneficiaries of the policies-
  - ✓ as soon as they are identified;
  - ✓ for a beneficiary that is identified as specifically named natural or legal persons or legal arrangements, taking the name of the person;
  - ✓ for the beneficiary that is a legal arrangement or designated by characteristics or by category such as spouse or children.
  - ✓ the information to be maintained as required by law.

## POCAMLRA Regulations 2013 – Key provisions

### Regulation 22 – Politically Exposed Persons

- A reporting institution will be required to take the following measures where a customer or beneficial owner is a politically exposed person;
- ✓ obtain approval from senior management to transact or establish the relationship with that person;
- ✓ establish the source of wealth and the funds involved in the proposed business relationship or transactions
- ✓ obtain information on the immediate family members or close associates of the person conducting the transaction
- ✓ determine the purpose of the transaction or account and the expected volume and nature of account activity
- ✓ review public sources of information on the politically exposed person; and
- ✓ conduct enhanced ongoing monitoring of the relationship

## **THE REVISED AML/CFT GUIDELINE –KEY PROVISIONS**

- The Authority has formulated a revised AML/CFT guidelines based on the provisions of the above legislations;
- Guidelines customizes the provisions of the laws and regulations made under them to specific issues relevant to the Industry.
- The Authority issued the first AML guideline in June 2011
- At the time of issuing the guideline, some laws and regulations had not been passed;
  - ⇒ Prevention of Terrorism Act 2012
  - ⇒ POCAMLA regulations 2013
  - ⇒ POTA regulations 2013
- Additional FATF requirements als came into being;
  - ✓ risk-based approach to ML/TF risks,
  - ✓ risks caused by new technologies and non- face to face transactions,
  - ✓ reliance on intermediaries for CDD etc.



## THE REVISED AML/CFT GUIDELINE –KEY PROVISIONS

### 1) Role of the Insurance Regulatory Authority

The Authority and its staff shall, in accordance with section 36 of the Act

- Report to the Centre any suspicious transaction that the supervisory body or its staff may encounter within the normal course of its duties.
- Handle the Designations and Sanctions list and circulate the same to the reporting institutions (insurance companies) immediately upon receipt.

## THE REVISED AML/CFT GUIDELINE –KEY PROVISIONS

### 2) The Responsibilities of the Board and Management

- Establish policies and procedures to ensure the effective prevention, detection, reporting and control of possible ML & TF activities
- Review the policies and procedures once every two years and from time to time
- Communicate the policies and procedures to staff
- Monitoring of compliance – Internal audit and compliance functions
- Register with the FRC and comply with the annual reporting requirement

## THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS

- Report to the Centre any cash transactions exceeding US\$ 10,000 or its equivalent in any other currency
- Appoint a Money Laundering Reporting Officer according to the requirements stipulated in Regulation 10 of The Proceeds of Crime and Anti Money Laundering Regulations, 2013
- Develop a group policy on anti-money laundering and combating financing of terrorism and extend this to all its branches and subsidiaries where applicable outside Kenya

## THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS

### 3) Risk Based Approach

- Customer risk assessment
  - Characteristics of low risk customers
  - Characteristics of high risk customers
- Appropriate risk rating should be assigned to customers
- Effective action to mitigate ML & TF risks

## THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS

- ❑ In relation to country risk, customers with residence in or connection with high risk jurisdictions e.g.;
- Those that have been identified by the FATF as jurisdictions with strategic AML deficiencies;
- Countries subject to sanctions, embargos or similar measures issued by, for example, the UN,
- Countries which are vulnerable to corruption; and
- Those countries that are believed to have strong links to terrorist activities
- Sources of data - UN, the IMF, the World Bank, the FATF, among others and the insurance institution's own experience

## THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS

### 4) Customer acceptance

- Customer acceptance policies and procedures
- Create and maintain a risk profile of each customer
- Details of customers and nature of business
- Corporate customers
- Means and types of payment

## THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS

### 5) Legitimacy of Source of funds

- Insurance institutions shall put in place measures to establish legitimacy of source of funds
- Documentary evidence shall be provided and proper records maintained
- Policies in to set the maximum cash transaction limits that customers can undertake

## THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS

### 6) Customer due diligence

➤ Due diligence to individual/natural customers - evidence of identity

➤ Due diligence to corporate customers

Low risk/high risk corporate customers

➤ Unincorporated business

➤ Trust accounts

➤ On going due diligence on existing customers/beneficiaries

➤ Non face to face transactions



## THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS

### 7) New Technologies

- Reasonable measures to prevent the use of new technologies for money laundering and terrorism financing activities
- Money laundering risk assessment
  - new products
  - new business practice
  - new technology
- Document risk assessment and should be availed on request

## THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS

### 8) Life Insurance Related Business

- carry out extra CDD on beneficiaries as soon as the beneficiary or beneficiaries are identified as a ;
- specifically named natural or legal persons or legal arrangements, taking the name of the person
- obtaining sufficient information concerning the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary at the time of the pay out.

## THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS

### 9) Carrying on Due Diligence by intermediaries

- reliance on insurance intermediaries to perform customer due diligence procedures
- the ultimate responsibility for knowing the customer or beneficiary always remains with the insurer
- satisfactory evidence of the identity and legal existence of the persons applying to do business with it
- all requirements imposed by law relating to records and documentation are met.
- all customer records shall remain up to date, relevant and easily accessible

## **THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS**

- The insurance intermediary will submit such information to the insurer upon request and without delay
- The insurance intermediary shall not engage in a business relationship with a client who fails to provide evidence of their existence
- Insurance intermediaries shall adopt a risk based approach where they employ enhanced customer due diligence for high risk category of customers
- Option to undertake and complete their own verification of the customer and beneficial owner if they have any doubts about the ability of the insurance intermediary to undertake appropriate due diligence

## THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS

### 10) Tipping Off

- Information which is suspicious or indicates possible money laundering or terrorism financing activity shall not be disclosed to unauthorised persons
- Such information shall be reported to the FRC as required.

### 11) Record Keeping

- Maintenance of customer records for at least 7 years
- Types of records to be maintained
- Records should be up to date and relevant

## **THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS**

### **12) Recognition and reporting of suspicious transactions**

- Mechanisms of detection and reporting of suspicious transactions to FRC
- Register of reported suspicious transactions
- Transactions which are suspect to be related to money laundering and terrorism financing activities

### **13) Staff screening and training**

- Fit and proper requirements for staff in key positions
- Maintenance of records
- Training of directors, management and staff

## THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS

### 14) Combating Financing of Terrorism

- maintain a database of names and particulars of listed persons in the UN sanctions list and such lists as may be issued
- information contained in the database is updated and relevant, and made easily accessible to its employees at the head office, branches or subsidiary
- conduct regular checks on the names of new customers, as well as regular checks on the names of existing customers and potential customers, against the names in the database

## THE REVISED AML-CFT GUIDELINE –KEY PROVISIONS

### 15) Penalty – Offences

Contravention of POCAMLA Regulations

- Fine not exceeding Kes.5 million
- Imprisonment – term not exceeding 3 years
- Both

Contravention of POTA Regulations

- Fine not exceeding Kes.3 million
- Imprisonment –term not exceeding 7 years
- Dealing with, facilitate any transaction, provide financial services or any other service to property owned/controlled by terrorist groups, term not exceeding 20 years.

### 16) Submission of Quarterly Return

Purpose – monitoring of compliance



## Conclusion

- It is the responsibility of all reporting institutions to develop functional systems that will help fulfilling obligations set by law. There is need to comply with the requirements of the law; the cost of non-compliance is very high.
- Kenya has suffered terrorists attacks before and is currently grappling the fight against corruption. The proceeds from corruption can easily find its way into the financial system through the insurance sector.
- Kenya is set to conduct a National Risk Assessment (NRA) and this would require each sector to demonstrate knowledge of AML/CFT risks. This would require prior internal risk assessment by reporting institutions

# Thank you

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