

LAW SOCIETY OF KENYA



GUIDELINES FOR

THE KENYA LEGAL PROFESSION ON

ANTI-MONEY LAUNDERING, COUNTERING

THE FINANCING OF TERRORISM &

PROLIFERATION FINANCING

Issued pursuant to Section 4A(2)(b) of the Law Society of Kenya Act, Cap. 18
Approved by the Council of the Law Society of Kenya on 13th October 2025.



LAW SOCIETY OF KENYA



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FOREWORD



Kenya's inclusion in the Financial Action Task Force (FATF) "grey list" marks a defining moment for our nation. It is both a warning and an opportunity, a reminder that the integrity of our financial systems must be strengthened, and that every sector, including the legal profession, must play its rightful role in restoring Kenya's credibility and global standing.

As advocates and officers of the court, we stand at the intersection of law, finance, and trust. Our work, whether in conveyancing, corporate structuring, or managing client funds places us in a unique position to either safeguard or inadvertently enable the misuse of legal and financial systems. We cannot afford to remain passive observers in the fight against money laundering, terrorism financing and proliferation financing. We have a collective responsibility to proactively take part in Kenya's recovery and reform journey.

Recent legislative reforms have now formally placed this responsibility on our shoulders. Section 2 of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), as revised in 2025, now explicitly recognizes advocates and law firms as reporting agents when they undertake certain activities on behalf of clients, including managing client funds, buying and selling real estate, or forming and managing companies and trusts.

The Law Society of Kenya (Amendment) Act, 2023 introduced Section 4A which designates the Law Society of Kenya (LSK) as a Self-Regulatory Body (SRB) for purposes of Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) within the legal profession. Under Section 4A (2) (d), the Society is empowered to issue guidelines, rules, and directions to assist members in complying with the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) and related laws.

These amendments enhance collaboration between the Financial Reporting Centre (FRC) and professional bodies, while introducing administrative sanctions for non-compliance. Ultimately, these reforms reshape the landscape of legal practice in Kenya. They require every advocate to implement internal AML/CFT/CPF policies, conduct client due diligence, maintain proper records, and report suspicious activity. Compliance is no longer an abstract concept, but a statutory obligation and measure of our collective integrity as a profession.

In recognition of this shift, the Law Society of Kenya, in close collaboration with the Financial Reporting Centre and other stakeholders and experts, has developed these Guidelines for the Legal Profession on Anti-Money Laundering, Countering the Financing of Terrorism, and Proliferation Financing (AML/CFT/CPF). These Guidelines summarize and simplify the complex legislative framework into practical, actionable steps that every advocate, whether in private practice, corporate advisory, or public service can adopt. We urge all members, particularly those engaging in transactions listed under Section 48 of POCAMLA to implement these Guidelines within their practice. By adhering to these standards, we not only protect our clients and our profession but also play a pivotal role in advancing Kenya's exit from the FATF grey list.

The LSK Secretariat is equally investing in technological tools and compliance systems to support members in meeting their obligations efficiently. These innovations will enable advocates to conduct due diligence, maintain records, and file reports seamlessly, thereby embedding compliance within the everyday workflow of legal practice. The Law Society of Kenya remains committed to walking this journey with all members, and will continue to provide capacity-building, training, and continuous professional development programs to equip all members with the knowledge and skills needed to fulfill their AML/CFT obligations effectively.

Let us embrace these Guidelines with commitment and pride and take them as an opportunity to strengthen the integrity of our profession, contribute to national compliance, and reaffirm our shared commitment to the rule of law.



FAITH ODHIAMBO
PRESIDENT
LAW SOCIETY OF KENYA
13TH OCTOBER 2025



ACKNOWLEDGEMENTS



The Law Society of Kenya (LSK) recognises the critical importance of combating Money Laundering (ML), Terrorism Financing (TF), and Proliferation Financing (PF) within the legal sector. As key gatekeepers in the administration of justice, advocates play a central role in upholding integrity, transparency, and accountability in financial and legal transactions. The development of these AML/CFT Guidelines for Advocates therefore marks a significant milestone in strengthening professional compliance, aligning legal practice with national and international standards, and safeguarding the reputation of the profession.

These guidelines are the product of extensive research, consultation, and collaboration among diverse stakeholders within and beyond the legal fraternity. The LSK expresses its deepest appreciation to all members who reviewed the draft guidelines and provided valuable feedback and comments during the consultative and validation stages. Your insights and recommendations have ensured that the final document is practical, comprehensive, and reflective of the realities of legal practice in Kenya.

We extend our heartfelt gratitude to the Council of the Law Society of Kenya, ably led by Ms. Faith Odhiambo, for their visionary leadership, stewardship, and commitment in ensuring the successful development of these guidelines. We also express sincere appreciation to Ms. Florence Muturi, Chief Executive Officer of the Law Society of Kenya, for her unwavering support and for expediting the processes that led to the timely completion of this document.

Special thanks go to the LSK-AML/CFT Ad-Hoc Committee members for their active participation, responsiveness, and technical expertise whenever called upon. Your insights, advice, and commitment to strengthening compliance within the legal sector have been invaluable in shaping these guidelines into a practical and effective tool for the profession.

We further commend the LSK CEO Ms. Florence Muturi, and her secretariat team Ms. Njeri Mutitu, Ms. Loice Karanja, Mr. Bonface Were, Ms. Agnetta Rodi, and Mr. Cosmas Ndetei, for their tireless coordination, compilation of submissions, and engagement with the various stakeholders who contributed to the success of this process. We acknowledge with gratitude the development partners and financial sponsors whose financial and technical support made the consultative process and publication of these guidelines possible.

Our appreciation also extends to Ms. Atuweni tupochile Agbermodji Mr. Alex Ferguson and Ms. Carine Charlette for their commitment in incorporating LSK members' feedback into the draft guidelines, ensuring that the final version reflects both professional realities and regulatory expectations.

We are equally grateful to the Office of the Director of Public Prosecutions (ODPP) for their valuable consultation on specific legal issues, and to the Financial Reporting Centre (FRC) for their continued guidance and technical input throughout the process.

Finally, we thank all stakeholders, LSK AML CFT committee members, institutions, and advocates who participated in the consultations and validation forums. Your contributions have been instrumental in shaping a robust and practical framework that will guide advocates in fulfilling their AML/CFT obligations and promoting integrity within the legal profession.



HEZEKIAH ASESO OMOLLO
COUNCIL MEMBER AND CONVENER OF THE AML/CFT COMMITTEE



CEO'S REMARKS



I acknowledge the tremendous progress the Society has made in implementing Anti-Money Laundering, Countering the Financing of Terrorism and Countering Proliferation Financing (AML/CFT/CPF) obligations, as a Self-Regulatory Body (SRB). It is noteworthy that this model, is a first of its kind. To this end, we endeavor to see its success to completion. This journey has not been without challenges from limited resources to a general lack of deeper understanding of AML/CFT requirements within the legal profession.

Our collaboration with the Financial Reporting Centre (FRC), which began in earnest in December 2023, has been instrumental in building the Society's capacity and strengthening our framework for compliance. I wish to particularly thank the Council of the Law Society of Kenya for their continued support and leadership in steering this important agenda. Further, I sincerely commend and appreciate officers of the LSK Secretariat, for their tireless and unwavering dedication, since the conceptualization of the SRB idea to the actual implementation.

While we recognize that AML/CFT is a very new area and an added responsibility, to our members, we are encouraged by the growing interest and participation in our sensitization workshops, seminars and webinars. Through continuous engagement, training and partnership with stakeholders, we are confident that our collective efforts will yield a more compliant, transparent and accountable legal sector.

These AML/CFT Guidelines for Advocates mark a significant milestone in our compliance journey. They provide clear and practical direction to assist members in meeting their obligations under the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) and related regulations. It is our hope that every advocate will find this document a valuable resource in promoting ethical practice, safeguarding the integrity of the profession and contributing meaningfully to the national and global fight against Illicit financial flows.

A handwritten signature in blue ink, appearing to read 'F. W. MUTURI'.

FLORENCE W. MUTURI
SECRETARY/CEO
LAW SOCIETY OF KENYA

ACRONYMS

AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism
CDD	Customer Due Diligence
DNFBP	Designated Non-Financial Businesses and Professions
EDD	Enhanced Due Diligence
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force
FRC	Financial Reporting Centre
KYC	Know Your Customer
MLRO	Money Laundering Reporting Officer
LSK	Law Society of Kenya
LSKA	Law Society of Kenya Act – Rev.2023 (Cap.18)
PEP	Politically Exposed Person
PF	Proliferation Financing
POCAMLA	The Proceeds of Crime and Anti-Money Laundering Act, 2009 Rev.2025
RBA	Risk Based Approach
SAR	Suspicious Activity Report
SRB	Self-Regulatory Body
STR	Suspicious Transaction Report
TF	Terrorism Financing
WMD	Weapons of Mass Destruction

DEFINITION OF TERMS

Anti-Money Laundering (AML)	Refers to the detection and prevention of money laundering activity.
Beneficial owner	A natural person who ultimately owns or controls a legal person or legal arrangements, or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement.
Competent Authority	An authority other than a self-regulatory body with designated responsibilities for combating money laundering, terrorism financing and proliferation financing.
Client	Shall have the meaning assigned to it under the Advocates Act and the Law Society Code of Conduct, or a person or entity seeking legal services, including activities listed under section 48 of the Proceeds of Crime and Anti-money Laundering Act, 2009 (POCMLA).
Client Account and Client Money	Shall have the meaning assigned to them under the Advocates (Accounts) Rules 1966.
Countering the Financing of Terrorism	Refers to the detection and prevention of terrorist financing activity now expanded under the AML/CFT Amendment Act 2023 to include specific provisions against proliferation financing (PF) alongside terrorism financing (TF), reflecting the broader scope mandated by the updated POCMLA.
Credible Sources	Refers to information that is produced by well-known bodies such as FATF, ESAAMLG and other FATF-style regional bodies that generally are regarded as reputable and that make such information publicly and widely available.
Designated Non- Financial Businesses and Profession (DNFBP)	Means: <ul style="list-style-type: none"> (a) casinos (including internet casinos); (b) real estate agencies; (c) dealers in precious metals; (d) dealers in precious stones; (e) accountants who are sole practitioners, partners or employees within professional firms; (f) non-governmental organizations; (g) trust and company service providers; (h) advocates, notaries and other independent legal professionals who are sole practitioners, partners or employees within professional firms; (i) such other business or profession in which the risk of money laundering, financing of terrorism and proliferation financing exists as the Cabinet Secretary may, on the advice of the Centre, declare.
Designated Person or Entity	A person or entity designated pursuant to POTA or United Nations Security Council Resolutions 1267 (1999) and its successor resolutions, 1718 (2006) and any future successor resolutions, 2231 (2015) and any future successor resolutions, and any future Security Council resolutions which impose targeted financial sanctions in the context of the financing of proliferation of weapons of mass destruction.

Designation¹	The term designation refers to the identification of a person, individual or entity that is subject to targeted financial sanctions pursuant to: The term designation refers to the identification of a person, individual or entity that is subject to targeted financial sanctions pursuant to: (a) United Nations Security Council resolution 1267 (1999) and its successor resolutions; (b) Security Council resolution 1373 (2001), including the determination that the relevant sanctions will be applied to the person or entity and the public communication of that determination; (c) Security Council resolution 1718 (2006) and any future successor resolutions; (d) Security Council resolution 2231 (2015) and any future successor resolutions; and (e) Any future Security Council resolutions which impose targeted financial sanctions in the context of the financing of proliferation of weapons of mass destruction.
Domestic Sanction List	A list compiled by the Counter-Financing of Terrorism Inter Ministerial Committee under Section 3 of the Prevention of Terrorism Act, 2012.
Financial Action Task Force (FATF) Recommendations	Refers to guidelines issued by the Financial Action Task Force, which criminalize the offence of money laundering and terrorist financing and provide for the implementation of various measures for the prevention of money laundering and terrorist financing, which are applicable globally.
Financial Group	A group that consists of a parent company or any other type of legal person exercising control and coordinating functions over the rest of the group, together with branches or subsidiaries subject to AML/CFT policies and procedures at the group level”.
Freeze	Prevent or restrain specific property or funds from being used, transferred, transacted, converted, altered, concealed, moved or disposed of without affecting the ownership thereof.
Funds	Assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets.
High-Risk Client	Has the meaning assigned to it under Section 17 herein
High Risk Jurisdiction	Those jurisdictions are identified by FATF as such and listed on the Financial Reporting Centre (FRC) Website. https://www.frc.go.ke/
Illicit Financial Flows	Means the movement of money that is sourced from the proceeds of crime across borders.
Know Your Customer (KYC)	Refers to the process of obtaining full particulars of a client's identity and having a sound knowledge of the purpose for which the client is seeking to establish a business relationship with a legal firm.
Legal Person	An entity other than a natural person that can establish a permanent business relationship with the law firm or otherwise own property.
Legal Profession	Refers to advocates, notaries and other independent legal professionals.

¹ As far as Security Council resolution 2231 (2015) and any future successor resolutions are concerned, references to "designations" apply equally to "listing"

Money Laundering	An act that constitutes an offence under sections 3, 4 and 7 of the Proceeds of Crime and Anti-Money Laundering Act Cap 59A.
Money Laundering Offences	Sections 3, 4, 7 & 8 of the Proceeds of Crime and Anti-Money Laundering Act Cap 59A.
Politically Exposed Person (PEP)	Means a person who has or was entrusted with a prominent public function in Kenya or another jurisdiction, including: (a) members of the Cabinet; (b) senior executives of state-owned corporations; (c) important political party officials; (d) senior military officials and other senior members of the disciplined forces; (e) members of the Judiciary; (f) State Officers; (g) senior Public Officers; (h) senior Officials of International Organizations; (i) Heads of State or Government; (j) any immediate family member or close business associate of a person referred to under this sub-regulation and any other category of persons as the Centre may determine.
Proliferation Financing (PF) Obligations.	An act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual-use goods used for nonlegitimate purposes), in contravention of national laws or, where applicable, international
Property	Assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable and legal documents or instruments evidencing title to or interest in such assets and including funds
Predicate Offences	Criminal acts that generate proceeds or benefits.
Proceeds of Crime	Proceeds refer to any property derived from or obtained, directly or indirectly, through committing an offence.
Reporting Institution (RI)	Section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMA) defines a reporting institution encompassing financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs). Legal practitioners are categorised as DNFBPs when they engage in specific activities on behalf of their clients, including: <ul style="list-style-type: none">• Buying and selling of real estate;• Managing client funds, securities, or other assets;• Managing bank, savings, or securities accounts;• Organizing contributions for the creation, operation, or management of companies;• Creating, operating, or managing legal entities or arrangements, and buying and selling business entities.

Risk-Based Approach (RBA)	A Risk-Based Approach (RBA) is a framework used to identify, assess, and prioritize risks, such as money laundering, terrorist financing, or proliferation financing, and to allocate resources and implement measures proportionate to the identified risks.
Sanctions List	List of designated individuals and entities under United Nations Security Council Resolutions 1267 (1999) and its successor resolutions, 1718 (2006) and any future successor resolutions, 2231 (2015) and any future successor resolutions.
Self-Regulatory Body (SRB)	An SRB is a body that represents a profession (e.g., lawyers, notaries, other independent legal professionals, or accountants) and comprises members from the profession. It regulates the persons qualified to enter and practice in the profession and performs certain supervisory or monitoring-type functions. Such bodies should enforce rules to ensure those practicing the profession maintain high ethical and moral standards. In this case, SRB refers only to the Law Society of Kenya.
Shell bank	Means a bank that has no physical presence in the country in which it is incorporated and licensed and is unaffiliated with a regulated financial group subject to effective consolidated supervision. Physical presence means having a meaningful mind and management located within a country. The existence simply of a local agent or low-level staff does not constitute physical presence.
Shell Companies	An incorporated company with no independent operations, significant assets, ongoing business activities, or employees. They are often used as conduits or holding companies, and they typically lack a physical presence in the public domain. They may also conceal beneficial ownership or enhance the perception of legitimacy.
Supervisory Body	Refers to the regulators of reporting institutions under the Act, e.g. the Central Bank of Kenya, Insurance Regulatory Authority, Capital Markets Authority.
The Code	This means the Law Society of Kenya (LSK) Code of Standards of Professional Practice and Ethical Conduct 2017.
Targeted Financial Sanctions	Asset freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities.
The Centre	Means the Financial Reporting Center established under section 21 of the Proceeds of Crime and Anti-money Laundering Act, Cap 59A.
Terrorist Financing	An act that constitutes an offence under section 5 of the Prevention of Terrorism Act Cap 59B.

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PART I PRELIMINARY PROVISIONS

1. INTRODUCTION

Globally, the legal profession is increasingly recognised as a sector that is vulnerable to exploitation by criminals. This is due to the profession's role in structuring complex financial transactions, facilitating corporate arrangements, and assisting in the movement of property. As a result, there is an elevated risk of legal professionals being unknowingly or knowingly involved in criminal acts. This emphasises the need for legal professionals to have strong risk management and due diligence strategies in place to identify and mitigate such risks.

2. WHY THE LEGAL PROFESSION?

Legal professionals play a crucial role in the Kenyan economy by facilitating key transactions such as business deals, property transfers, and corporate structures. However, this vital role also places them at risk of unknowingly facilitating financial crimes, including money laundering, and terrorism financing.

Money laundering and terrorism financing, pose serious threats to society. These activities deprive the economy of legitimate revenue, endanger lives, and contribute to the funding of criminal organisations. Legal professionals, therefore, have an essential responsibility to ensure that their services are not used to further illegal activities.

The purpose of this Guidance is to help Kenyan legal professionals understand their obligations under their professional regulations and Kenyan law, ensuring that they are well-equipped to prevent money laundering and terrorism financing.

This Guidance aligns with global standards, particularly with the Financial Action Task Force (FATF) recommendations, which emphasizes the importance of the legal sector's role in AML/CFT measures.



PART II

LEGAL AND REGULATORY FRAMEWORK

3. LEGAL BASIS

Key Kenyan law and regulations that inform these guidelines include:

- Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) – Rev. 2025 (Cap. 59A)
- Law Society of Kenya Act – Rev. 2023 (Cap. 18)
- Proceeds of Crime and Anti-Money Laundering Regulations, 2013 (as amended 2023)
- Prevention of Terrorism Act, 2012 (POTA)
- Prevention of Terrorism Regulations, 2024
- Financial Reporting Centre (FRC) Guidelines and Sectoral Advisories
- United Nations Convention against Transnational Organized Crime (2000)
- United Nations Convention against Corruption (UNCAC, 2003)
- International Convention for the Suppression of the Financing of Terrorism (1999)
- United Nations Security Council Resolutions (UNSCRs)

4. APPLICATION

4.1 **This Guidance** is intended for all legal practitioners in Kenya, including independent legal professionals and staff within law firms and corporate or public sector legal departments, who are responsible for ensuring compliance with AML, CFT, and PF regulations. The above will be referred to as the legal profession throughout this document.

4.2 The following institutions will implement the guidelines:

- The LSK, as the designated SRB and regulator of the legal profession for Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT)
- The Advocates Disciplinary Tribunal exercising its disciplinary jurisdiction over Advocates under the provisions of section 55 of the Advocates Act, Cap 16
- The Financial Reporting Centre (FRC)

- The Chief Justice or a judge of the High Court or a court of equal status exercising disciplinary powers over Advocates under section 56 of the Advocates Act, and
- as provided under Section 5 of the LSK Code of Standards of Professional Practice and Ethical Conduct (SOPPEC), 2017.

5. LSK SUPERVISORY ROLE

5.1 Under the amended AML/CFT Laws, LSK will undertake additional supervisory and enforcement roles. These include the power to:

- Conduct onsite inspections at law firms;
- Compel the production of any document or information the Society may require for discharging its supervisory mandate under the POCAMLA;
- Enforce compliance by imposing administrative monetary or civil sanctions against non-compliant members;
- Issue regulations, guidelines, directions, rules or instructions for the legal profession's AML/CFT practices.

5.2 The LSK will also:

- Provide support and guidelines to its members in preparing their internal policies and procedures using these guidelines as a framework suitable for their practice.
- Provide additional guidelines to members to assist them in complying with these guidelines and the broader AML legislation.
- Develop and disseminate tailored guidelines and internal policy templates that members can adapt to their practice needs.
- Provide ongoing education and training programs specifically designed to address the nuances of compliance with anti-money laundering, combating the financing of terrorism, and related legal obligations.
- Collaborate closely with national and international regulatory bodies to ensure that all legal professionals in Kenya are aware of their responsibilities and have the tools and knowledge necessary to fulfil their AML/CFT/PF obligations effectively.
- Create and maintain a dedicated portal for continuous professional development and resources to help members understand and implement the necessary compliance measures effectively.
- Continuously review and update the guidelines and training materials to reflect the evolving legal landscape and best practices in legal service provision. Furthermore, LSK is committed to engaging with its members through forums, workshops, and consultations to gather feedback and ensure relevant and practical support.



PART III

KEY AML/CFT/CPF CONCEPTS

6. WHAT IS MONEY LAUNDERING?

6.1 POCAMLA defines money laundering as an offence under any of the provisions of sections 3, 4 and 7:

Section 3 POCAMLA – Money Laundering

A person who knows or who ought reasonably to have known that property is or forms part of the proceeds of crime and:-

- a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether that agreement, arrangement or transaction is legally enforceable or not; or
- b) performs any other act in connection with such property, whether it is performed independently or with any other person, whose effect is to:-
 - i) conceal or disguise the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or
 - ii) enable or assist any person who has committed or commits an offence, whether in Kenya or elsewhere to avoid prosecution; or
 - iii) remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence, commits an offence

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

A person who:-

- a) acquires;
- b) uses; or
- c) has possession of, property and who, at the time of acquisition, use or possession of such property, knows or ought reasonably to have known that it is or forms part of the proceeds of a crime committed by him or by another person, commits an offence.

Section 7 POCAMLA - Financial promotion of an offence

A person who, knowingly transports, transmits, transfers or receives or attempts to transport, transmit, transfer or receive a monetary instrument or anything of value to another person, with intent to commit an offence, that person commits an offence.

6.2 **Money laundering** is making the proceeds of crime look like they have come from a legitimate source. It does not have to involve money; the money laundering offences contained in sections 3 and 4 of POCAMLA refer to property that is or forms part of the proceeds of crime. The process can involve criminals engaging in acts designed to conceal or disguise the true origin of criminally derived proceeds so that the unlawful proceeds appear to have been derived from legitimate origins or constitute legitimate assets.

6.3 **The criminal acts** that generate the proceeds of crime are called predicate offences. Examples are corruption, bribery, drug trafficking, human trafficking, terrorist financing, wildlife poaching, illegal arms sales, counterfeiting, extortion and prostitution rings. Kenya has adopted an all-crimes approach in defining the predicate offences for money laundering. Additionally, the dual criminality requirement found in section 127 of POCAMLA provides that earnings or assets from foreign crimes in Kenya would be considered proceeds of crime as long as the criminal conduct occurring in the foreign state constitutes a crime under Kenyan law.

6.4 **Money laundering** enables criminals to enjoy the financial profits of such crimes without revealing their source.

6.5 **A common money laundering scheme** involves three processes: placement, layering, and integration; however, money laundering can occur without involving any of these processes, e.g., possession of criminal property (section 4 of POCAMLA).

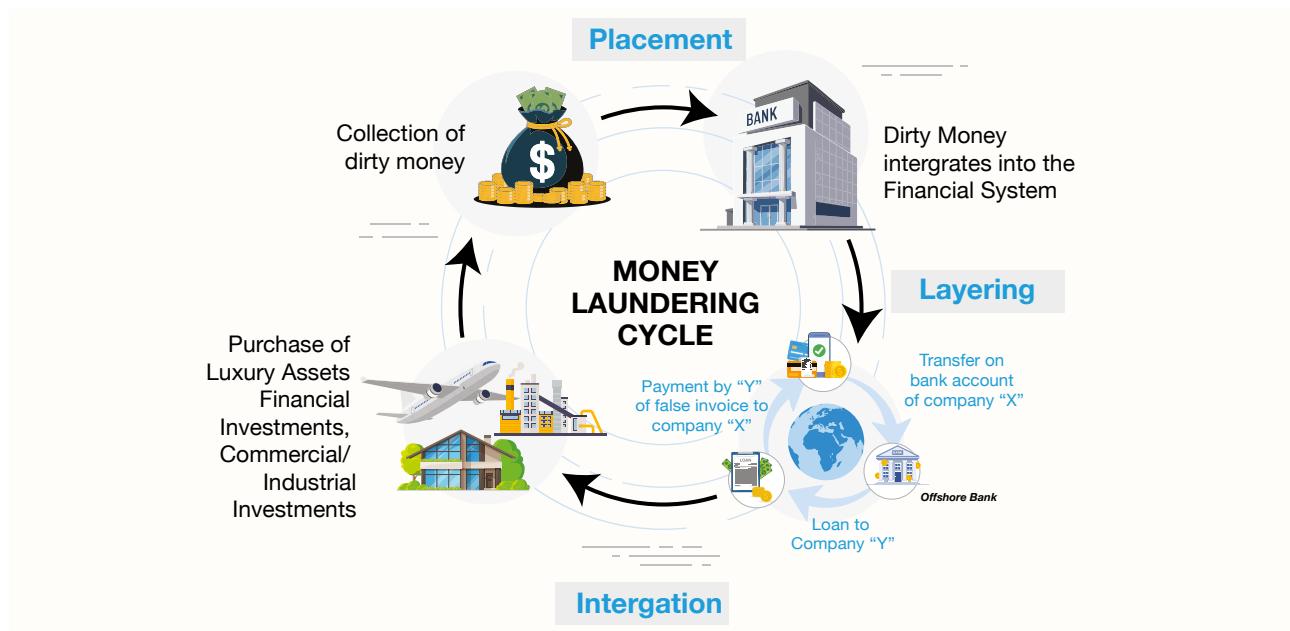


Figure 1: The Cycle of Money Laundering

7. WHAT IS THE FINANCING OF TERRORISM?

7.1 Section 5 of the Prevention of Terrorism Act, 2012 defines terrorist financing as a person who, directly or indirectly, collects, attempts to collect, provides, attempts to provide or invites a person to provide or make available any property, funds or a service, intending, knowing or having reasonable grounds to believe that such property, funds or service shall be used:-

- a) for the commission of, or facilitating the commission of a terrorist act or any other act which constitutes an offence within the scope of, and as defined in any of the treaties listed in the annex to the 1999 International Convention for the Suppression of the Financing of Terrorism;
- b) by a terrorist group for any purpose;
- c) by any natural person, for any purpose, who—
 - i. commits, or attempts to commit, by any means, directly or indirectly, unlawfully and willfully, acts within the scope of paragraph (a);
 - ii. participates as an accomplice in acts within the scope of paragraph a);
 - iii. organizes or directs others to commit acts within the scope of paragraph a); or
 - iv. contributes to the commission of acts within the scope of paragraph a) by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the commission of acts within the scope of paragraph a), or with the knowledge of the intention of the group to commit acts within the scope of paragraph a)

7.2 Terrorist financing refers to the means and methods used by terrorist groups and organisations to fund their activities. It involves providing financial support to terrorists to enable them to carry out terrorist acts or to their benefit.

7.3 The funds may come from legitimate sources such as business profits, salaries, charitable organisations, and criminal activities. Terrorist financing has four stages: raising, moving, storing, and spending.

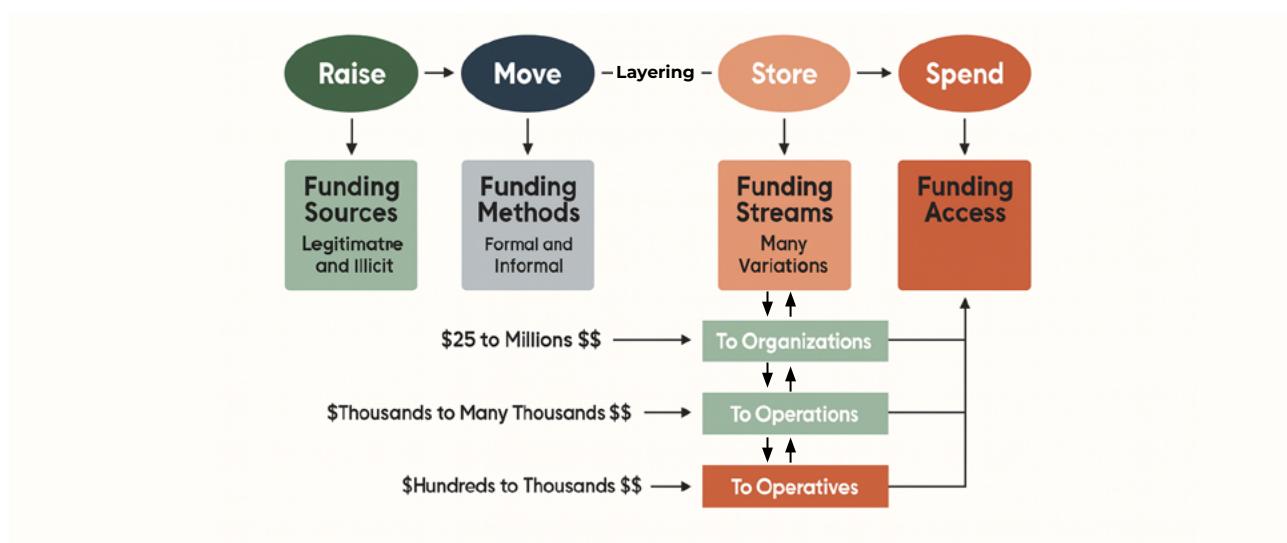


Figure 2: Funding: Sources / Methods / Access

8. WHAT IS PROLIFERATION FINANCING?

Section 4B of the Prevention of Terrorism Act 2012 defines financing of a proliferation act as a person who by any means, within or outside Kenya, directly or indirectly, provides financial support or solicits or collects funds intending, knowing or having reasonable grounds to believe that such funds are to be used in whole or part, to carry out a proliferation act regardless of whether such funds or part thereof were actually used to commit the act, commits an offence and is liable, upon conviction, to imprisonment for a term of imprisonment not exceeding twenty years or to a fine not exceeding twenty million shillings or to both such fine and such imprisonment.

9. LEGAL SERVICES COVERED BY THESE GUIDELINES

9.1 The services covered by the Guidelines are in section 48(a) and (b) of POCAMLA. For the legal profession, it includes:

- buying and selling of real estate;
- managing of client money, securities, or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation, or management of companies; or
- creation, operation or management of buying and selling of business entities or legal arrangements

9.2 Section 48(b) applies if the legal professional is a trust or company service provider which, as a business, provides any of the following services to third parties:

- acting as a formation agent of legal persons;
- acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as, or arranging for another person to act as, trustee of an express trust;
- acting as or arranging for another person to act as, a nominee shareholder for another person.

9.3 Legal professionals' services mentioned above may make them susceptible to money laundering, terrorist financing, or proliferation financing activities. For example:

- Conveyancing/buying or selling property - Criminals may use property transfers to layer or integrate proceeds of crime into the legitimate economy, particularly in real estate. Legal professionals may knowingly or unknowingly assist criminals in investing ill-gotten proceeds in real estate or luxury goods
- Advisory on formation and management of companies and trusts - Criminals may utilise corporate vehicles or complex legal arrangements such as trusts to disguise their links with the proceeds of a crime or transfer and hide illegal proceeds to make it difficult for law enforcement to trace the proceeds while trying to retain control over the assets. In addition, criminals may seek the legal profession's advice concerning managing companies, trusts and initial corporations, including concealing beneficial ownership information and using shell and shelf companies. Therefore, providing services for forming and managing companies and trusts is vulnerable to abuse.



PART IV INSTITUTIONAL AND PROFESSIONAL OBLIGATIONS

10. VULNERABILITIES OF THE LEGAL PROFESSION TO ML/TF COUNTERING PROLIFERATION FINANCING (CPF) OBLIGATIONS

10.1 Legal services' unique nature and position may expose legal professionals to money laundering, terrorist financing or proliferation financing activities.

10.2 Recognising the risk, the POCAMLA and POTA Act and subsequent Regulations were amended to:

- Designate legal professionals as reporting institutions.
- Criminalise the offence of money laundering, financing of terrorism and proliferation financing.
- Incorporate due diligence and suspicious activity reporting for reporting institutions.

10.3 As an active partner in the fight against ML/TF/PF, legal professionals are required to:

- Fully comply with AML/CFT regulations.
- Have the knowledge and tools to navigate and mitigate the risks of being complicit (knowingly or unknowingly) in criminality.
- Actively seek to minimise risks that criminals and organised criminal networks exploit the profession.
- Know Your clients, undertake adequate due diligence, and understand their regulatory obligations.
- Report any suspicious transactions (attempted and or actual) to the LSK.
- Consider declining the brief or instruction when there is a prosecution risk for a money laundering offence or insufficient information to enable legal professionals to represent the client effectively.

10.4 Given the onus placed on legal professionals, the consequences of knowingly or unknowingly participating in ML/TF/PF are serious and onerous. They can ultimately result in convictions, penalties, investigations, suspensions, etc.

11. APPOINTMENT OF MONEY LAUNDERING REPORTING OFFICER (MLRO)

11.1 Legal professionals are required to appoint a Money Laundering Reporting Officer (MLRO).

11.2 An MLRO, also referred to as the money laundering compliance officer, is a member of the firm appointed by the board of management/board of partners to take the lead on all AML/CFT/CPF-related matters, including training, awareness, reporting, etc. A person appointed as the MLRO shall be at the management level and possess the necessary competence, authority, and independence. In the case of a sole proprietorship, the partner shall be considered the MLRO. An Internal Auditor or Chief Executive of a law firm shall not qualify for appointment as MLRO, except where they are a sole practitioner.

11.3 Once an MLRO has been appointed, the firm shall submit to the LSK and the FRC the names and particulars of the person appointed within fourteen (14) days of the MLRO's appointment, removal, or resignation.

11.4 The MLRO shall have the following responsibilities:

- Be the focal point between the law firm and LSK on all AML/CFT/CPF matters;
- Monitor and report to LSK and/or FRC any suspicious activity or transaction related to money laundering, terrorist financing, or proliferation financing (ML/TF/PF). All reports shall be made within two days (2) of forming suspicion;
- Be informed of all suspicious activities identified and act on suspicious disclosures received from employees as soon as is practical;
- Create awareness and sensitisation on global, regional and national AML/CFT/CPF policies and measures;
- Ensure the employees of the firm understand the ML/TF/PF risk profile of the firm as well as their AML/CFT/CPF obligations and internal controls;
- In liaison with the firm's human resource department, ensure employees are screened for integrity, suitability, fitness, and probity before being hired;
- Register with LSK/FRC to enable suspicious transaction and activity reporting and access critical communication and training relevant to the MLRO function.

12. IMPLEMENTATION OF AML/CFT/PF SYSTEMS, CONTROLS AND PROCESSES

12.1 To comply with AML/CFT/CPF requirements, legal professionals are required to:

- Put in place adequate AML/CFT/CPF internal control measures
- Ensure implementation of all AML/CFT/CPF policies
- Ensure ongoing AML/CFT/CPF training for all staff

12.2 These internal control measures and policies should align with current obligations and the risk exposure identified, commensurate with the level and nature of activities. The systems, controls and processes should allow the legal professional to safeguard against possible money laundering or terrorism financing activity. This framework should be auditable.

13. AML/CFT EDUCATION AND CONTINUING PROFESSIONAL DEVELOPMENT

13.1 Advocates should undertake continuing legal education to remain eligible to hold a practicing certificate.

Money laundering awareness is available as a standalone topic for CPD. It is also incorporated in CPD and undertaken in Ethics, Real Property, Financial Services, Estate Law, and many other areas. Advocates must attend at least one (1) CPD session on AML/CFT awareness per year and thereafter update themselves on any new developments in the law. Advocates can also take professional courses in Anti-money Laundering, such as the Certified Anti-Money Laundering Practitioners certification (CAMS), where applicable, e.g. for in-house lawyers who are Compliance Officers of Banks and other Reporting Institutions.

13.2 Legal professionals should also provide basic AML training to their staff where appropriate, e.g. on the definition and stages of money laundering and terrorist financing and measures for detecting and preventing money laundering and terrorist financing activity such as Client due diligence measures, suspicious activity monitoring and identification of possible red flags.

14. RECORD KEEPING

14.1 Sections 90 and 91 of The Law Society of Kenya Code of Standards of Professional Practice and Ethical Conduct 2017 (the Code) provide that the legal profession must maintain client records, including files and other client documents and requires the Advocate to establish and operate a secure filing and archiving system to ensure that it is easy to retrieve relevant information without delay and to ensure that the records do not get lost or misplaced or fall into the hands of unauthorised persons.

14.2 There is no statutory provision for the period for which legal professionals must maintain client records before destroying them; hence, in the absence of such a statutory period, legal professionals should observe prudent best practices as outlined in relevant legislation.

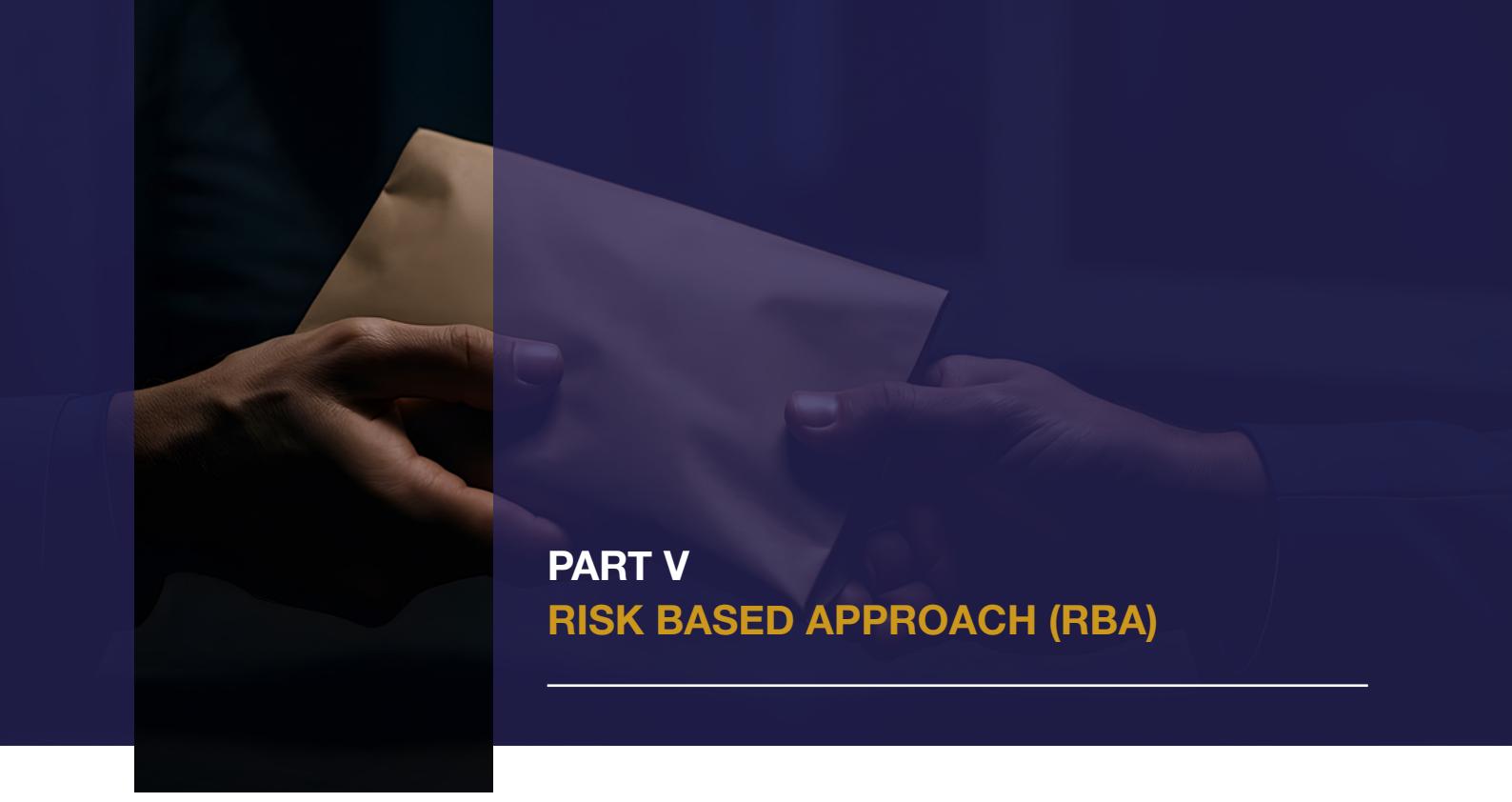
14.3 For these guidelines, legal professionals should adopt the period outlined in regulation 36 of the POCAMLA Regulations, which provides for the maintenance and keeping of records of all transactions for a minimum period of seven years from the date the relevant business or transaction was completed or following the termination of an account or business relationship.

14.4 All records obtained through client due diligence measures such as copies or records of official documents like passports, identification cards or similar documents, account files and business correspondence, including the results of any analysis undertaken such as inquiries to establish the background and purpose of complex, unusual, large transactions should also be maintained for 7 years.

14.5 Legal professionals should review existing records to ensure that all documents collected during the due diligence process are up-to-date and relevant, particularly for high-risk clients.

14.6 Retention may be through original documents or in any electronic form accepted as evidence under the Evidence Act, Chapter 80, Laws of Kenya.

14.7 Legal professionals are advised to take account of the rules arising under the law on statutory limitations for filing proceedings, on maintaining certain records, for instance, tax records, and on the administration of estates, among other considerations, before deciding to destroy records before the expiry of the recommended 7-year period. If the Advocate chooses to destroy the records, reasonable efforts should be made to inform the client, personal representatives, or successors to come and take the files before they are destroyed.



PART V

RISK BASED APPROACH (RBA)

15. RISK-BASED APPROACH

15.1 In line with the FATF Guidelines Note for Legal Professionals 2019, legal professionals are required to apply a risk-based approach to the identification methods and verification levels used for all relevant clients; the greater the risk, the higher the level of verification and the more secure the verification measures should be.

15.2 Legal professionals in Kenya are also expected to apply a risk-based approach and implement appropriate measures and controls to mitigate the potential money laundering and terrorist financing risks concerning clients determined to be higher risk due to the legal professional's or firm's risk-based approach. Such measures would involve:

- Increased levels of customer due diligence (CDD) or enhanced due diligence (EDD) for higher-risk situations, now including the ability for reporting institutions to independently adopt countermeasures over and above standard CDD procedures when dealing with high-risk countries, as per Section 45(A)(2) of POCAMLA.
- Periodic review of the services offered by the legal professional and/or firm to determine whether the risk of money laundering and terrorist financing occurring has increased, reflecting the new statutory requirements for a risk-based supervisory framework.
- Review client relationships from time to time to determine whether the risk of money laundering and terrorist financing has increased, emphasizing the 'materiality and risk' of the client relationship per the increased scope of reporting institutions' due diligence requirements.

15.3 The risk categories and risk-based approach are detailed in Appendix I. These also include considerations for reporting institutions to perform continuous risk assessments in light of the enhanced obligations on due diligence and risk management for clients from high-risk jurisdictions.



PART VI

CUSTOMER DUE DILIGENCE (CDD) AND RELATED MEASURES

16. CUSTOMER DUE DILIGENCE

16.1 Under Section 45(1) of POCAMLA, legal professionals are required to identify and verify:

- any applicant seeking to enter into a business relationship with legal professionals or to carry out a transaction or series of transactions with the applicant; or
- A customer, whether permanent or occasional, by taking reasonable measures to establish that person's true identity, by requiring the applicant or customer to produce an official record reasonably capable of establishing the true identity of the applicant or customer.

16.2 CDD is required:

- at the commencement of the Advocate Client relationship. (These measures entail verifying the client's identity, including enhanced due diligence (EDD) on Politically Exposed Persons (PEPs) and other high-risk clients as defined herein in section 13.1); and
- on existing clients based on materiality and risk. Legal professionals should take into account whether customer due diligence measures have been previously undertaken and the adequacy of the data obtained.

16.3 A client profile should be established over time based on the client's needs and the nature of services provided.

16.4 Under POCAMLA, clients should be categorised according to segments (Individuals, Corporate, Partnerships, etc.) and the nature of services provided. Due diligence should be carried out on the clients based on their categorisation. The Client Categories are as follows:

16.4.1 Individual/Natural Client - Legal professionals should institute effective procedures for obtaining satisfactory evidence of the identity of individual clients or beneficiaries, including obtaining information about:

- Full name or name(s), which should be the same as the client's identity card, passport, driver's license, or other form of identification accepted in Kenya.
- Copy of an identity card, passport or birth certificate or driving license or any other official means of identification,

- Current permanent address,
- Date of birth, Nationality
- Occupation/business
- Nature and purpose of service required
- Source of funds for the transaction
- Personal Identification Number (PIN), where applicable, depending on the nature of the transaction
- Telephone number

a) The relevant copies of the documents submitted supporting the above information shall be taken after the original copies thereof are verified.

b) If there is doubt about whether an identification document is genuine, verification may be made from reliable sources in the custody of such information, such as the Integrated Population Register Service under the National Registration Bureau.

c) Legal professionals should always maintain their clients' current residential address during the service tenure.

d) Legal professionals should also identify the source of funds of their clients or beneficiaries if the clients or beneficiaries are assessed to be high-risk based on the factors set out in section 13.1 herein.

16.4.2 Corporate Clients/Legal Persons - The following documents or information should be obtained with respect of corporate clients or beneficiaries, depending on the nature of the transaction:

- Certificate of registration or incorporation;
- Memorandum and Articles of Association (where necessary, having regard to the risk of the particular client);
- Board Resolution or Letter of authority appointing the law firm and authorising the persons dealing with the law firm to act on behalf of the body corporate as well as the identification information of those persons (this will be necessary for property purchases and other high-value transactions or companies considered to be high risk within the definition of these guidelines)
- Nature and purpose of service required;
- Source of funds for the transaction;
- A copy of the latest annual returns submitted in respect of the body corporate under the law under which it is established (this will depend on the nature of the service provided);
- Where a listed company is effectively controlled by an individual or a small group of individuals, the beneficial ownership of such a company should be verified against the identity of such individual(s);
- The Personal Identification Number (PIN) for the company/directors, where applicable, depending on the nature of the transaction and risk rating of the client.

a) Legal professionals should exercise special care in initiating business transactions with companies that have nominee shareholders. Satisfactory evidence of the identity of the beneficial owners of such companies should be obtained.

b) A company may be considered to be of low risk if it is:

- listed in any stock exchange in East Africa
- owned by the Government of Kenya
- regulated by a supervisory body as defined in the Act

16.4.3 Unincorporated Businesses - In the case of partnerships and other unincorporated businesses whose partners are not known to the legal firm, satisfactory evidence should be obtained as to the identity of at least two partners and all authorised signatories designated to sign contracts and other documents on behalf of the client.

16.4.4 Trusts and other Legal Arrangements - Where trusts or similar arrangements are used, particular care should be taken to understand the substance and form of the entity. Where the client is a trust, e.g. under a will, the legal firm should verify the identity of the trustees or executors in the case of a will and of any other person exercising effective control over the trust property, the settlors and the beneficiaries. The legal profession should also identify the Trust's beneficial owner(s). Verification of the beneficiaries should be carried out before any payments are made to them. The following information should be requested to conduct effective CDD on clients who are in legal arrangements:

- trust deed;
- evidence of registration or incorporation, such as a Certificate of Incorporation or registration
- formative documents such as partnership agreements, memorandum and articles of association;
- official returns showing the registered office and, if different, the principal place of business;
- full name and details of the management company of the trust or legal arrangement, if any;
- names of the relevant persons having senior management positions in the legal person or trustees of the legal arrangement;
- full names of the trustee, beneficiaries or any other natural person exercising ultimate effective control over the trust;
- full name of the founder of the trust;
- any other documentation from a reliable, independent source proving the client's name, form and current existence.

16.5 **Under Section 89 of the Code, Advocates must implement systems and measures to comply with the Act and safeguard against using the client account for money laundering or other illegal transactions. This requirement extends to all legal services provided by an Advocate. Such measures include:**

- a) Ascertaining the identity and authority of the persons transferring funds into the Advocate's account and the legitimacy and purpose of the funds transfer (Know Your Client);
- b) Maintaining complete records of funds received from clients and third parties;
- c) Where there is reason to do so, making reasonable inquiries of the client and third parties as to the source or origin of the funds;
- d) Declining instructions where there is reasonable cause for concern that acting on the client's instructions will lead to possible contravention of the law against money laundering.

17 ENHANCED DUE DILIGENCE - HIGH-RISK CLIENTS

17.1 **EDD** should be conducted for high-risk clients or beneficiaries. Examples of high-risk clients or beneficiaries are:

- clients carrying out frequent non-face-to-face transactions;
- clients carrying out frequent high-value/high-volume transactions in cash;
- clients from high-risk and non-cooperative jurisdictions identified by FATF and listed on the FRC website, with an updated focus on jurisdictions as specified by the FRC under the new provisions for international cooperation and collaboration (section 36B of POCAMLA);
- clients who are considered high-risk domestic PEPs 3 , all foreign PEPs and Clients not falling under any exceptions.

17.2 For high-risk clients, the following additional measures should be applied to enhance due diligence:

- Obtaining comprehensive client profile information, e.g. purpose and reasons for seeking the legal services, business or employment background and source of funds;
- Enhanced due diligence through the obtaining of identity information where a transaction exceeds the value of US\$15,000 or its equivalent in any other currency;
- Assigning a designated staff to serve the client who bears the responsibility for client due diligence and ongoing monitoring to identify any unusual or suspicious transactions on a timely basis;
- Requisition of additional documents to complement those which are otherwise required;
- Verification by appropriate authorities and professionals of documents presented;
- Engagement in increased information sharing and collaboration with supervisory bodies and law enforcement, particularly concerning clients connected with jurisdictions under enhanced scrutiny by international counterparts as part of the new cooperative measures;
- Take reasonable measures to establish the source of wealth and funds of the client and the beneficial owner;
- Conduct enhanced ongoing monitoring of the business relationship.

18 DUE DILIGENCE FOR WALK-IN CLIENTS

18.1 A prospective client may contact an Advocate in an unsolicited manner or without common or customary methods of introduction or referrals, which may increase the risk. Where a prospective client has instructed legal professionals to undertake a single transaction- based service (as opposed to an ongoing advisory relationship) and one or more other risk factors are present, a significant factor to consider is whether the client and proposed work would be unusual, risky or suspicious for legal professionals, given legal professional's areas of expertise and competence.

18.2 Depending on the nature of services requested and whether the transaction will be long-term or short-term, legal professionals should carry out risk-based due diligence on the client as stipulated in this section, e.g. for one-off/short-term transactions such as the drafting and or commissioning of affidavits or simple agreements for sale; legal professionals should ask for the client and other third-party identity documentation to verify their identity as given in the document. Complete due diligence should be carried out to onboard the client for more complex, long-term transactions, such as conveyancing transactions involving substantial sums of money.

18.3 Where appropriate, legal professionals should also consider requesting references for walk-in clients depending on the nature and complexity of the transaction.

19 DUE DILIGENCE FOR NON-FACE-TO-FACE TRANSACTIONS

19.1 **Where possible**, legal professionals should conduct face-to-face interviews with the client to conduct due diligence, particularly for high-risk clients. However, due to the prevalence of electronic communication between legal professionals and clients in delivering legal services, non-face-to-face interaction should not be considered a high-risk factor. It will depend on the nature of the service, e.g. non-face-to-face; cross-border work for an existing client is not necessarily high-risk work for certain firms.

19.2 **Where a face-to-face interview** is not conducted, for example, where the transactions are conducted via the Internet, mobile money, or other electronic form of payment, advocates should apply equally effective client identification procedures and ongoing monitoring standards for face-to-face clients.

19.3 **Legal professionals** should carry out the following specific measures to mitigate the risk posed by clients conducting non-face-to-face transactions:

- Certification of identity documents presented, requisition of additional documents to complement those required for face-to-face clients, such as identity details for third parties involved in a transaction, indemnities, bank references, and Swift Transfer Remittance advice with precise details of the sender and remitting bank that the advocates' bankers, etc can independently verify;
- Completion of online questionnaires for new applications that require a wide range of information capable of independent verification, such as confirmation with a government department or other relevant authority,
- Independent contact with the client by the law firm or legal professional,
- Requiring the payment of any amounts through an account in the client's name with a bank,
- More frequent updates of the information on clients of non-face-to-face transactions,
- In extreme cases, the legal brief may be refused without face-to-face contact or the information furnished for high-risk clients cannot be verified.

20 ON-GOING DUE DILIGENCE ON EXISTING CLIENTS

20.1 **In addition to CDD**, a key measure for preventing and detecting money laundering activity is monitoring client transactions to detect suspicious activity that may be connected to money laundering, illicit financial flows, or terrorist financing. Therefore, it is essential to put in place appropriate measures to detect money laundering activity in the Advocates dealings with clients.

20.2 **All ongoing** transactions in a client account or arising from a legal service provided should be monitored to ensure that they are consistent with the client's known business and risk profile.

20.3 **Particular attention** should be paid to cases where the client conducts himself suspiciously or unusually, or the circumstances of the transaction merit further enquiry by the legal professional, e.g., due to inconsistency with the client's known business profile.

20.4 **Appendix II** provides examples of suspicious activity in an Advocate/Client relationship. It sets out examples of unusual or suspicious transactions after the establishment of business relationships that will require enhanced due diligence. The new legislative changes also mandate heightened scrutiny and cooperation with international supervisory bodies to tackle ML/TF/PF effectively.

20.5 **In all cases** where there is reason to do so, legal professionals should make appropriate inquiries of the client and third parties as to the source or origin of the funds; legal professionals can also make enquiries of the bank or financial institution where the account is domiciled, to confirm the source of funds, e.g. by enquiring for further information from the remitting bank.

20.6 **Advocates** can also monitor transactions in a client account by reviewing the bank statements regularly or subscribing to Mobile banking and internet alerts. They can also arrange with the relevant bank to alert the firm of any suspicious activity on the account.

20.7 **Legal professionals** should consider declining instructions where there is reasonable cause for concern that acting on the client's instructions will lead to a possible contravention of the law against money laundering, e.g. where legal professionals are unable to obtain sufficient information regarding the identity of a client or ultimate beneficiary or the source of funds for a particular transaction, or where legal professionals know or suspects that a transaction relates to money laundering, terrorist financing or other unlawful activity; or transactions which have no apparent business or lawful purpose; or seeks to avoid a report being made to FRC (e.g. cash transactions just under the reporting threshold), or business that may be connected to tax evasion.

21 DUE DILIGENCE FOR LEGAL PERSONS AND OR LEGAL ARRANGEMENTS

21.1 **Beneficial ownership** presents several AML/CFT risks due to its potential for obscuring the true control and financial interests behind legal persons and/or legal arrangements. The risks associated with beneficial ownership involve:

- Complexity in ownership Structures - Complex or layered corporate structures can obscure the identity of beneficial owners, making it difficult to trace illicit funds or detect criminal control;
- Use of nominees and fronts - Criminals may use nominee directors or shareholders to hide their involvement, creating a façade of legitimacy while retaining actual control;
- Asset concealment - Ownership of high-value assets (e.g. real estate, yachts, jets) through shell companies or trusts can mask the true owner, impeding asset recovery and sanctions enforcement;
- Individuals may exert significant influence or control over entities without formal ownership, complicating identification under AML/CFT frameworks.

21.2 **In the case of legal persons**, a beneficial owner includes a natural person who, whether individually or jointly, directly or indirectly holds at least 10% of the issued shares of the company, directly or indirectly exercises at least 10% of the voting rights in the company, directly or indirectly has a right to appoint or remove a director of the company, or directly or indirectly exercises significant influence or control over the company.

21.3 For legal arrangements, a beneficial owner can be:

- The settlor (the person donating the assets);
- The trustee(s) (the custodian of the assets);
- The protector or enforcer (an intermediary between the settlor and trustee), if any;
- The beneficiaries to the trust or classes of beneficiaries; and/or
- Any other person exercising effective control or influence over the Trust or any other person as guided by the Companies Act (Beneficial Ownership) Regulations.

21.4 For limited liability partnerships, a beneficial owner is an individual who controls a partnership and has the right to exercise (or actually exercise) significant influence over the running of the partnership's activities, including the appointment and removal of a partner, making investment decisions, and dissolving or converting the partnership, among other things.

22 RELIANCE ON THIRD PARTIES TO CARRY OUT CDD

Legal Professionals may rely on other parties to complete all or part of CDD measures. However, the ultimate responsibility for CDD remains with the institution relying on the third party.



PART VII

SPECIFIC COMPLIANCE AREAS IN LEGAL PRACTICE

23 OBLIGATION RELATING TO THE CLIENT ACCOUNT SERVICES

23.1 Clients may attempt to misuse or abuse the client account for money laundering. The following measures should be undertaken to prevent money laundering through client accounts and manage client risk:

- Conduct comprehensive CDD on the client before accepting money into the client account. This includes understanding the transaction and the purpose for which the legal service is required;
- Restrict the use of the client account for a legal service offered by the law firm to the client for a particular transaction, such as a conveyancing or commercial transaction;
- Ensure that information about all payments into the client account is cross- checked;
- Where possible, maintain more than one client account to facilitate segregation of client funds, e.g. based on the nature of service and client category;
- Avoid disclosure of client account details as far as possible, and clients should also be discouraged from passing the account details on to third parties;
- Clients should only use the client account for agreed purposes, and payments should be restricted to electronic transfer of funds, from a reputable bank or by mobile money transfer from the client's personal mobile money account, details of which should be taken;
- Where there is a need to provide the client account details, the client should be requested to confirm the source of funds, e.g., whether the source account is in the client's name or domiciled in a local bank or another country.

23.2 Legal professionals may also seek further information regarding the transaction, e.g., request that their bankers obtain additional information from the remitting bank. If in doubt, legal professionals should consider whether to accept funds from sources that cannot be ascertained.

24 CHECKING LEGITIMACY OF SOURCE OF FUNDS

24.1 **Legal professionals** should satisfy themselves as to the legitimacy of the sources of the funds received in the client account to prevent the account from being used to facilitate money laundering and illicit funds flows.

24.2 **Under Section 81** of the LSK Code, the Advocate is deemed a trustee of the client's funds and other property in their possession or under his control. The Advocate, therefore, has a fiduciary responsibility towards his/her client. Additionally, the Advocates (Accounts) Rules, the Advocates (Accountants Certificates) Rules, and the Advocates (Deposit Interest) Rules impose on the Advocate statutory responsibilities regarding the client's funds and other property in the Advocate's possession. In this regard, an advocate or a law firm must be particularly cognizant of the funds that move through the firm's trust account or client account.

24.3 **Legal professionals** should put in place measures to establish the legitimacy of the source of funds coming into a client account to minimise the risk of money laundering and/or the funds being proceeds of crime derived from criminal activity such as corruption, drug trafficking, misappropriation of public funds, etc. Such measures will include but not be limited to:

- Obtain documentary evidence from the client on the source of funds, e.g., agreement for sale in property purchase and other commercial transactions, remittance advice from reputable banks, etc., and proper records of such transactions must be maintained;
- Setting maximum limits for cash transactions that clients can undertake to restrict direct cash payments into the account as these may be part of a money laundering scheme; e.g., the firm can establish a policy of never accepting cash payments above a specific limit either at the office or into the client account;
- Clients attempting to circumvent such a policy by depositing cash directly into the client account should not be allowed access to the funds until the source of funds has been confirmed satisfactorily through documentation, failing which the law firm may consider making a suspicious activity report to the relevant authority;
- Accounts staff should monitor whether funds received from clients are from credible sources. This can be done by regularly reviewing the bank statements for the account or through a subscription to Mobile banking and internet alerts. Arrangements can also be made with the relevant bank to alert the firm of any suspicious activity on the account;
- Ensure appropriate checks are made and that the rationale for and size of a transaction and any payments into the client accounts by third parties are clearly understood before any third-party payments are accepted into the client account.

24.4 **Where money** is accepted into the client account in respect of a transaction or from a client on account and the transaction is aborted, legal professionals should carefully consider the level of risk assessment and CDD conducted at the outset, the legitimacy of the transaction and the parties to it, and the circumstances of the aborted transaction. Funds should only be returned to the original sender of those funds and not to any other designated person. Where the circumstances give rise to suspicion, a suspicious activity report should be filed.

24.5 **Advocates should** exercise caution to avoid situations where legal professionals essentially provide banking services for their clients instead of merely holding client money for a legitimate transaction.

24.6 **Advocates should** ensure they only open client accounts with reputable institutions licensed by the Central Bank and reporting institutions under the Act.

24.7 **Where funds** are remitted through a financial institution, advocates should inquire about the CDD performed by such institution on the client, the remitting party, and the source of funds.

24.8 **Advocates may** also refer to the examples of prudent best practices in Appendix II when dealing with suspicious client account transactions.

25 CONVEYANCING, REAL ESTATE AND OTHER COMMERCIAL TRANSACTIONS

25.1 **Legal professionals** play a vital role in conveyancing and real estate transactions and can be easily exposed to money laundering risks through these transactions. The purchase of real property is a preferred mode of laundering used by criminals as the transactions typically involve the payment of substantial sums of money; hence, proceeds of crime can be easily laundered thereby, and the property purchased may then be registered in the names of nominees; hence concealing the identity of the criminal.

25.2 **Legal professionals** should put in place the following measures to safeguard against the risk of money laundering in conveyancing transactions:

- Compliance with the various client due diligence requirements;
- Compliance with the due diligence requirements under the Land Act 2012 and Land Registration Act 2012 and other conveyancing and commercial legislation which stipulate the various requirements;
- For conveyancing transactions, such as submitting copies of the parties' National IDs, photographs, and PIN certificates to the transaction, and Original Title documents with full registration particulars;
- Advocates should also conduct due diligence on the property involved, verify its beneficial ownership, identify any encumbrances that may restrict its disposal, and establish the source of funds for the transaction;
- As in all cases, advocates must evaluate the risks to determine the extent of CDD required.

26 FORMATION AND MANAGEMENT OF COMPANIES, TRUSTS AND CHARITIES

26.1 **Company and** trust structures may be exploited by criminals who wish to retain control over criminally derived assets while impeding law enforcement agencies from tracing their origin and ownership.

26.2 **Legal professionals** should ensure they carry out the required CDD procedures before the completion of the transaction as follows:

26.2.1 Perform thorough CDD checks on the client, including the proposed shareholders, directors and other parties involved, to ensure that the proposed entity is not a shell company, which is prohibited under the Act and Regulations;

26.2.2 Ensure all authorizations and approvals have been received from the Companies Registry and relevant authorities for the type of business/entity, and relevant Business Licensing documents have been submitted as required by the Companies Act to facilitate due diligence and subsequent registration of the company;

26.2.3 Compliance with the detailed procedures under Part II of the Companies Act Cap 461 sections 5-19 regarding the formation of companies, the particulars to be included in a memorandum and articles of a company, and the eligibility of directors and shareholders of a company. The section also prescribes the documents that should accompany an application for company registration as part of the due diligence requirements.

- 26.2.4 Advocates who are company secretaries should also ensure compliance with the company regulations dealing with the management of a company, the conduct of a company's business, filing of returns and the holding of Annual General Meetings, annual reports, sale/transfer of shares, etc, to safeguard against the commission of predicate offences such as corruption, tax evasion, and falsifying of information in Annual reports and other corporate documents.
- 26.2.5 Be cognisant of the requirements under the POCAMLA Regulations Part IV (Regs 12-31) dealing with CDD, the requirements for legal entities, partnerships, and trusts, the prohibition against dealings with shell companies/banks, and the need to establish the ultimate beneficiaries of a transaction (e.g., shareholders in the case of a company).
- 26.2.6 For cross-border registrations, advocates should be aware of higher-risk jurisdictions as prescribed under the FATF guidelines where ownership may be concealed
- 26.2.7 Requests for the advocate to act as a nominee shareholder or director of the proposed entity should be evaluated carefully to ensure the advocate is not at risk of participating in the commission of a Money Laundering Offence

27 PROVISION OF INTERMEDIARY AND LEGAL ADVISORY SERVICES

- 27.1 **Legal professionals** may be exposed to the risk of money laundering when they provide intermediary and advisory services in various transactions, which may lead to a predicate or money laundering offence being committed, e.g. tax evasion or land fraud.
- 27.2 **In all such cases**, legal professionals should seek to understand all aspects of the transaction and evaluate the request for the particular service carefully, having due regard to the nature and type of the transaction, the possibility that the transaction could be used to facilitate money laundering or terrorist financing, the purpose of the request, and any possible breach of applicable law that may arise therefrom.

28 CRIMINAL AND CIVIL LITIGATION BRIEFS

- 28.1 **Overriding Principle 3** in Part II of the Code of Conduct states that the legal professional's first duty is to the law and due process. As such, Advocates must not subvert or connive in the subversion of the law or due process in his/her service of the client's interests.
- 28.2 **Advocates representing** clients in criminal and civil matters involving suspected money laundering activity should be conversant with the AML law and the applicable law to advise/represent their clients effectively.
- 28.3 **In representing their clients**, Advocates must ensure that they do not knowingly or unknowingly assist in or facilitate the commission of an offence under POCAMLA, whether directly or indirectly by their clients or a third party.
- 28.4 **In addition** to carrying out the client due diligence measures indicated in these Guidelines, advocates should seek to understand all aspects of the brief and evaluate the request for the particular service carefully.
- 28.5 **If the circumstances** expose the advocate to the risk of prosecution for a money laundering offence or if there is insufficient information to enable the advocate to represent the client effectively, the advocate should consider declining the brief.



PART VIII

REPORTING OBLIGATIONS AND PROFESSIONAL CONDUCT

29 REPORTING SUSPICIOUS ACTIVITY

29.1 Section 44(1) and (3) of POCAMLA and Regulations 32-33 of the POCAMLA requires all reporting institutions to submit suspicious activity or transactions which could be linked to money laundering, terrorist financing or proliferation financing reports to the FRC within 48 HOURS of forming the suspicion.

29.2 Legal professionals must therefore report any suspicious transactions to FRC through LSK within 48 HOURS after forming the suspicion.

29.3 Legal professionals should monitor client accounts and transactions for suspicious activity and take action to request further information or decline to act on the matter. Legal professionals may also make preliminary enquiries of legal their clients or a third party to obtain additional information before making a suspicious activity report.

29.4 As per section 44 (3A) of POCAMLA Legal professionals are not obligated to report suspicious activity or transactions if the relevant information was obtained in circumstances where they are subject to legal professional privilege or professional secrecy.

29.5 The type of information which falls within section 44 (3A) of POCAMLA is information that is received or obtained by legal professionals from their client for two specific purposes:

- For ascertaining the legal position of their client; or
- For use in defending or representing the client in or in relation to judicial, administrative, arbitration or mediation proceedings.

29.6 LSK will establish appropriate channels for reporting the SARs it receives from the legal professionals. The FRC will determine how the reports should be filed. The LSK and the FRC will also establish mechanisms for exchanging information and cooperation concerning suspicious transaction reporting and supervision. This cooperative framework is intended to enhance the effectiveness of legal compliance and oversight, promoting a more robust regulatory environment for combating money laundering and terrorist financing.

30 EXCEPTION TO THE ADVOCATE CLIENT PRIVILEGE FOR SUSPICIOUS ACTIVITY REPORT

30.1 The advocate-client privilege, however, is limited to communications made for the purpose of obtaining or giving legal advice, or in relation to litigation that is pending, contemplated, or has commenced. This privilege does not extend to communications falling within the exceptions outlined under Sections 117 to 120 of the Law Society of Kenya Code of Standards of Professional Practice and Ethical Conduct, i.e:

- Where the communication is made in furtherance of an illegal purpose or commission of a crime or fraud.
- Where an Advocate is obliged to report the risk of committing a crime to the authorities.
- Where to insist on exercising the advocate-client privilege would be tantamount to assisting and abetting the unlawful conduct of their clients.
- Where the disclosure is necessary to safeguard against using the Advocate's client account for money laundering or other unlawful financial transactions.
- Where revealing the information is necessary to prevent the commission of a crime in which the client has used or is using the Advocate's services.
- Where there is an impending threat of a crime, such as a terrorist attack, being committed.
- To facilitate or justify the collection of legal fees or to defend the Advocate against any allegations of professional misconduct.

30.2 In these circumstances, the Advocate should exercise professional judgment in deciding whether disclosure is justified in the particular case; however, the Advocate must avoid facilitating or aiding and abetting the commission of a crime.

31 LARGE CASH TRANSACTIONS

31.1 Given the nature of transactions conducted through advocates' client accounts—which often involve substantial sums of money—advocates risk having these accounts flagged by banks for suspicious activity if they are unable to provide satisfactory documentation or evidence to substantiate the transactions and the sources of funds.

31.2 In this regard, Regulation 40 of POCAMLA provides that Reporting Institutions must report all cash transactions over USD 15,000 (or its equivalent in local currency) to FRC through LSK.

32 TIPPING OFF

32.1 Tipping off constitutes a criminal offence under Section 8 of (POCAMLA). Legal professionals must ensure that neither they nor their staff disclose to any unauthorized person information relating to a transaction that has been identified or reported as suspicious, or any information indicating possible money laundering or terrorism financing activity, including matters under investigation.

32.2 Legal professionals shall not be deemed to have committed a tipping-off offence where they did not know, or had no reasonable grounds to suspect, that a disclosure was likely to prejudice an investigation arising from a report made under the Act. Similarly, where a legal professional seeks to dissuade a client from engaging in illegal activity, such communication shall not constitute the offence of tipping off.

33 LEGAL FEES

Legal professionals must ensure that the source of funds used to pay legal fees is not derived from the proceeds of crime, as accepting such funds may expose them to the risk of prosecution for facilitating a money laundering offence. Where there is any doubt regarding the legitimacy of the source of funds, legal professionals should undertake the due diligence measures outlined above to verify and establish their lawful origin.

34 NEW TECHNOLOGIES

34.1 **Legal professionals** should take reasonable measures to prevent the misuse of mobile money platforms, virtual assets and related products, or the introduction of new operating systems or software for handling client transactional information, where such tools may facilitate the illegal concealment of client identity or information (for example, for tax evasion purposes), or may expose the legal firm to risks of cybercrime and other forms of systemic fraud.

34.2 **Legal professionals** should conduct a money laundering and cyber risk assessment prior to introducing any new legal service, office practice, or technology. This assessment should evaluate potential money laundering and terrorism financing risks associated with new service offerings, delivery mechanisms, or technological systems. The outcome of such assessments shall be documented and made available to the Financial Reporting Centre (FRC) or the Law Society of Kenya (LSK) upon request.



PART IX ENFORCEMENT AND SANCTIONS

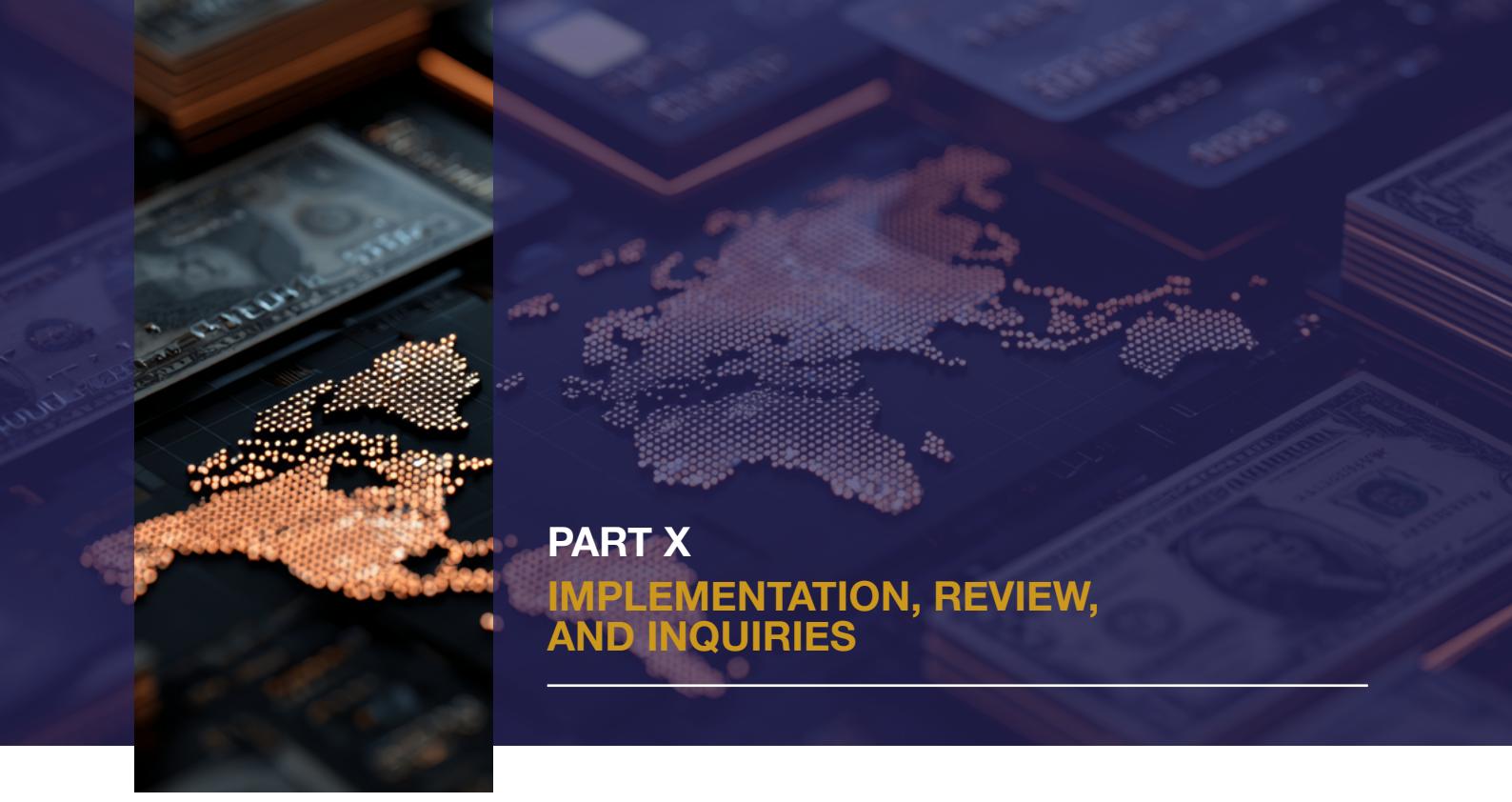
35 REMEDIAL MEASURES AND ADMINISTRATIVE SANCTIONS

The Law Society of Kenya, in its capacity as the Self-Regulatory Body under Section 2 and 4A(2)(b) of the Law Society of Kenya Act, may impose remedial measures and administrative sanctions against any advocate or firm that fails to comply with these Guidelines.

Sanctions may include:

- Written warnings or directives for corrective action;
- Mandatory compliance training;
- Administrative penalties or fines;
- Suspension of the practising certificate; or
- Referral to the Advocates Disciplinary Tribunal for further action.

The imposition of sanctions shall be proportionate, fair, and in accordance with due process.



PART X

IMPLEMENTATION, REVIEW, AND INQUIRIES

36 CONCLUSION

These Guidelines aim to equip the Kenyan legal professionals with the knowledge and practical tools to comply with AML/CFT laws and the regulatory framework for the legal profession. Advocates must adopt a proactive approach to combating financial crime while upholding ethical and legal obligations. By implementing these principles and practices, Kenyan legal professionals can contribute significantly to the national and global fight against money laundering, terrorism financing, and proliferation financing, ensuring a safer and more transparent financial system.

Legal practitioners are encouraged to:

- **Stay Informed:** Keep abreast of changes in AML/CFT regulations and emerging threats.
- **Implement Best Practices:** Continuously improve internal policies and procedures to enhance compliance.
- **Collaborate:** Work closely with regulatory bodies, law enforcement agencies, and other stakeholders to share information, where appropriate, and best practices.

37 EFFECTIVE DATE

Guidelines shall come into effect on the date of publication by the Law Society of Kenya.

All members of the Law Society of Kenya and legal entities regulated under these Guidelines are required to ensure compliance from the effective date.

38 AMENDEMENT OF THE GUIDELINES

These Guidelines may be reviewed and amended by the Law Society of Kenya from time to time to align with legislative amendments, FATF recommendations, or national AML/CFT/CPF policy changes. The LSK Council shall conduct consultations with key stakeholders, including the Financial Reporting Centre (FRC) and relevant competent authorities, before any substantive amendments are effected. Any amendment shall be communicated to members and published through official LSK channels.

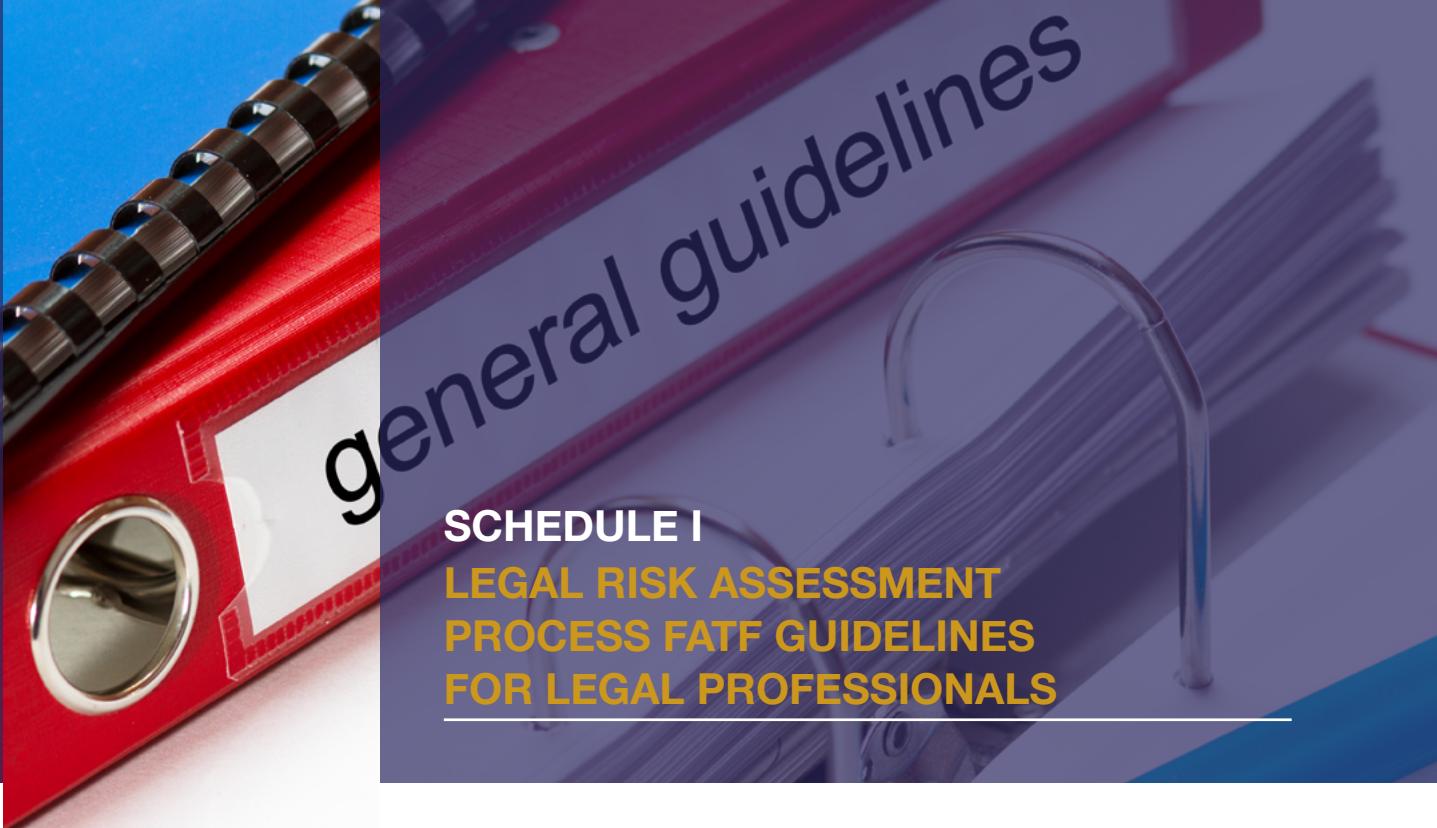
39 INQUIRIES

All enquiries relating to the interpretation, implementation, or application of these Guidelines shall be directed in writing to:

The Chief Executive Officer

Law Society of Kenya

P.O. Box 72219-00200, Nairobi, or email lsk@lsk.or.ke



RISK CATEGORIES

Legal professionals should assess money laundering and terrorism financing risks across various dimensions, including country/geographic risk, client risk, service risk, and delivery channel risk. The following guidance outlines common considerations under each category:

1. COUNTRY/GEOGRAPHIC RISK

Countries or jurisdictions may present higher or lower levels of money laundering or terrorism financing risk. Factors indicating higher risk include:

- Countries identified by credible sources as having porous borders or weak AML/CFT controls.
- Countries subject to international sanctions due to terrorism or proliferation activities.
- Countries with high levels of corruption, organized crime, or other serious criminal activity.

2. CLIENT RISK

This involves assessing the potential money laundering or terrorism financing risks posed by a client or category of clients. Legal professionals should determine whether a particular client presents a higher risk and the extent to which mitigating factors may apply. Examples of higher-risk client categories include:

- Politically Exposed Persons (PEPs): Individuals or beneficial owners of entities who hold or have held prominent public positions. These clients require enhanced due diligence, depending on their role, country of origin, and level of scrutiny.
- Clients conducting business or requesting services in unusual or unconventional circumstances.
- Clients whose ownership or control structures are opaque, such as those using nominee shareholders, bearer shares, or complex legal arrangements without legitimate reasons.
- Clients operating cash-intensive businesses that generate substantial amounts of cash.
- Charities or not-for-profit organizations not subject to monitoring or supervision by competent authorities.
- Clients using financial intermediaries or legal professionals in jurisdictions with inadequate AML/CFT regulation or supervision.
- Clients with criminal convictions for proceeds-generating offences who instruct the legal professional to undertake financial or property transactions.

- Clients with no fixed address or multiple addresses without a valid explanation.
- Clients who change settlement or execution instructions without a reasonable justification.
- The use of legal persons or arrangements without any clear legal, business, or economic rationale.

3. SERVICE RISK

Legal professionals should also consider the risks associated with the types of services offered. Different legal services present varying levels of exposure to money laundering or terrorism financing risks. Services that may present higher risks include:

- a) Real estate transactions, especially those involving large cash payments or complex ownership structures.
- b) Company formation or management services, particularly when beneficial ownership is unclear.
- c) Management of client funds or assets, including holding money in client accounts or acting as stakeholder.
- d) Trust and fiduciary services, particularly where clients seek anonymity or asset concealment.

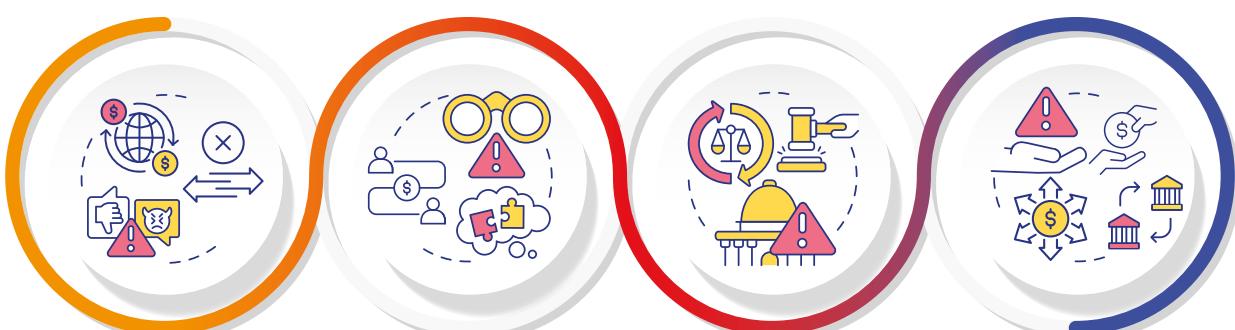
Reference should be made to Appendix II for further examples of services that may give rise to suspicious activity.

4. DELIVERY CHANNEL RISK

Delivery channel risk refers to the level of risk associated with how legal services are delivered or how client interactions occur. Legal professionals should assess whether the mode of delivery increases exposure to money laundering, terrorism financing, or cybercrime risks.

- Indicators of higher delivery channel risk include:
- Non-face-to-face relationships established through electronic means or digital platforms without adequate identity verification controls.
- Use of third-party intermediaries or agents to transmit client instructions or documentation.
- Cross-border instructions received through online or unverified sources.
- Virtual communication channels that do not allow for direct verification of identity (e.g., anonymous email accounts or encrypted platforms).
- Introduction of new digital tools, payment platforms, or virtual assets without corresponding cybersecurity and AML/CFT safeguards.

Legal professionals should adopt enhanced due diligence measures and secure verification processes when onboarding or transacting with clients through high-risk delivery channels.



Geographic Risk

Countries or jurisdictions may present higher or lower levels of money laundering or terrorism financing risk.

Client Risk

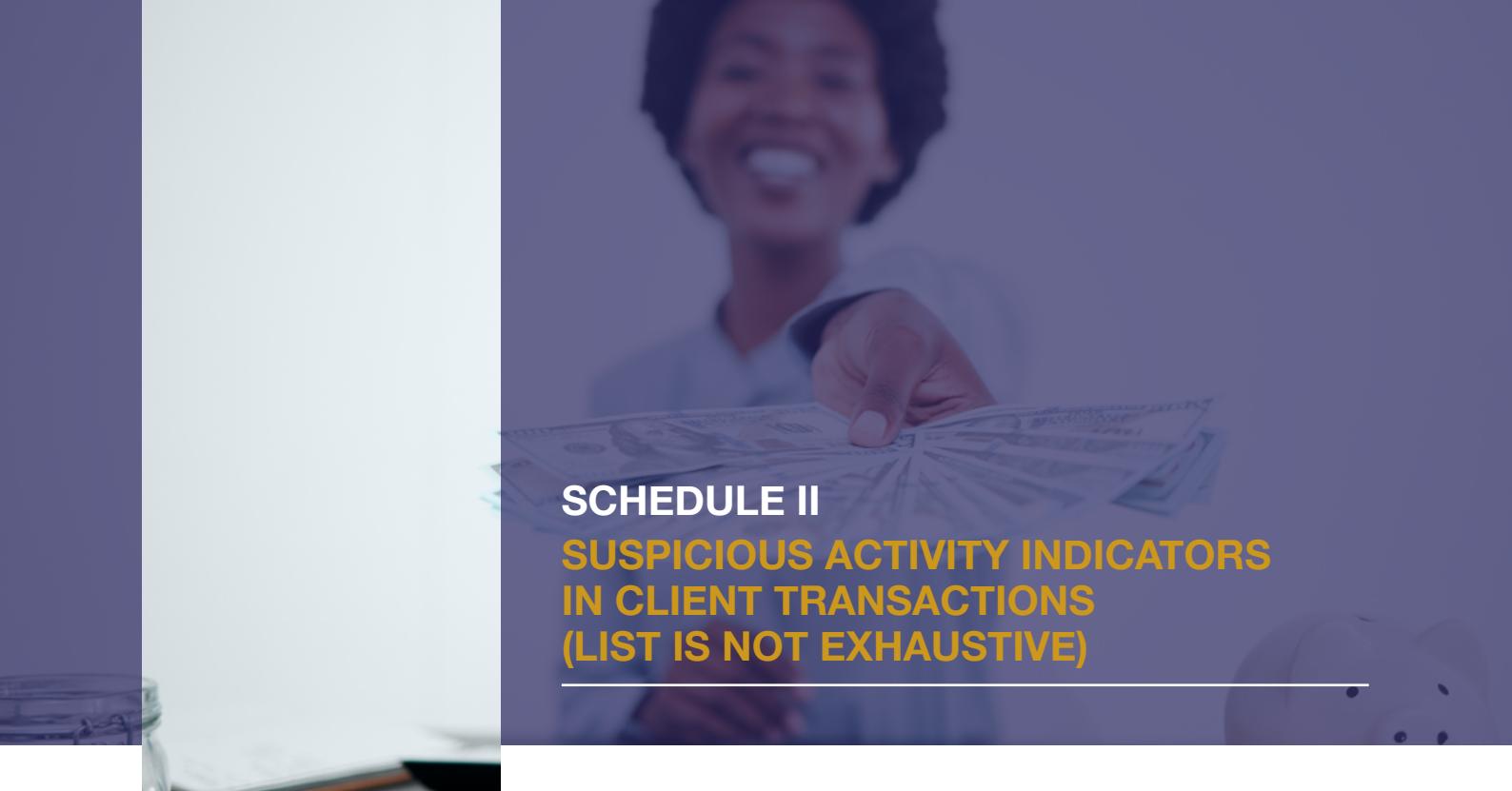
Assessing the potential money laundering or terrorism financing risks posed by a client or category of clients.

Delivery Channel Risk

The level of risk associated with how legal services are delivered or how client interactions occur.

Services/Products Risk

Risks associated with the types of services offered. Different legal services present varying levels of exposure to money laundering or terrorism financing risks.



SCHEDULE II

SUSPICIOUS ACTIVITY INDICATORS IN CLIENT TRANSACTIONS (LIST IS NOT EXHAUSTIVE)

The following indicators or “red flags” of suspected money laundering activities within an advocate-client relationship is provided for guidance purposes only and do not constitute an exhaustive list.

CATEGORY	RED FLAG INDICATORS	RECOMMENDED ACTION / LAWYER'S RESPONSE
Client Account-Related Red Flags	<ul style="list-style-type: none">• Significant unexplained deposits by or on behalf of the client into the client account, unusual in light of the client's profile.• Use of cash or requests for withdrawals of large amounts in cash.• Payments or electronic transfers to and from foreign parties into the client account.• Payment by banking instruments that allow anonymity of the transaction.• Lump-sum top-ups to investments or securities held by the legal firm on behalf of the client.• Requests for prepayment of benefits under investments held by the firm without reasonable explanation.	<ul style="list-style-type: none">• Conduct enhanced due diligence (EDD)• Seek clarification or documentation from client• Verify source of funds or beneficial ownership• Document queries and client responses• If suspicions persist, file a Suspicious Transaction Report (STR) with the FRC• Consider discontinuing engagement where appropriate

CATEGORY	RED FLAG INDICATORS	RECOMMENDED ACTION / LAWYER'S RESPONSE
Real Estate / Property Transaction Red Flags	<ul style="list-style-type: none"> • Proposal to purchase property and pay for it using substantial cash. • Transfer of real estate between parties in an unusually short period, with no apparent legitimate reason. • Proposal to purchase goods or property using a third-party cheque. • Client furnishes an address outside the local area (e.g., rural address) for a city-based property transaction. 	<ul style="list-style-type: none"> • Conduct enhanced due diligence (EDD) • Seek clarification or documentation from client • Verify source of funds or beneficial ownership • Document queries and client responses • If suspicions persist, file a Suspicious Transaction Report (STR) with the FRC • Consider discontinuing engagement where appropriate
Company / Commercial Transaction Red Flags	<ul style="list-style-type: none"> • Transactions relating to business outside the client's normal business pattern. • Business proposals for amounts considered beyond the client's apparent need. • Client wishes to register a company with names similar to established business entities. • Client attempts to use a false name or uses a different signature from what is on file. • Any transaction involving an undisclosed party. 	<ul style="list-style-type: none"> • Conduct enhanced due diligence (EDD) • Seek clarification or documentation from client • Verify source of funds or beneficial ownership • Document queries and client responses • If suspicions persist, file a Suspicious Transaction Report (STR) with the FRC • Consider discontinuing engagement where appropriate
Client Due Diligence (CDD) and Identification Red Flags	<ul style="list-style-type: none"> • Insufficient information about the client or beneficiary; reluctance to provide usual or additional information; minimal or fictitious information that is difficult to verify. • Delay in providing information to enable verification. • Source of funds is unclear or inconsistent with the client's apparent standing. • Change of address or place of residence of the client or beneficiary. • Changes in beneficiaries (e.g., under a will or settlement) to include non-family members or payments to others. 	<ul style="list-style-type: none"> • Conduct enhanced due diligence (EDD) • Seek clarification or documentation from client • Verify source of funds or beneficial ownership • Document queries and client responses • If suspicions persist, file a Suspicious Transaction Report (STR) with the FRC • Consider discontinuing engagement where appropriate

CATEGORY	RED FLAG INDICATORS	RECOMMENDED ACTION / LAWYER'S RESPONSE
Behavioral and Unusual Conduct Indicators	<ul style="list-style-type: none"> • High frequency of changes in instructions concerning a commercial, conveyancing, or other financial transaction. • Proposed transaction has no discernible purpose or the client is reluctant to justify it. • Client attempts to use cash to complete a transaction normally handled by cheques or electronic payments. • Client refuses or is unwilling to explain financial activity or provides untrue explanations. • Client accepts very unfavorable contract terms despite legal advice. 	<ul style="list-style-type: none"> • Conduct enhanced due diligence (EDD) • Seek clarification or documentation from client • Verify source of funds or beneficial ownership • Document queries and client responses • If suspicions persist, file a Suspicious Transaction Report (STR) with the FRC • Consider discontinuing engagement where appropriate



APPENDIX

APPENDIX Offences in relation to the POCAMLA, POTA and their Regulations include:

THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING ACT, 2009 (POCAMLA)		
Offence	Description	Penalty
Money Laundering Section 3	<p>A person who knows or who ought reasonably to have known that property is or forms part of the proceeds of crime and:</p> <ul style="list-style-type: none">a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether that agreement, arrangement or transaction is legally enforceable or not; orb) performs any other act in connection with such property, whether it is performed independently or with any other person, whose effect is to:c) conceal or disguise the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; ord) enable or assist any person who has committed or commits an offence, whether in Kenya or elsewhere to avoid prosecution; ore) remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence, commits an offence.	<p>Natural person Imprisonment of a term not exceeding 14 years or a fine not exceeding 5 million shillings, or the amount of the value of the property involved in the offence, whichever is the higher, or to both the fine and imprisonment; and</p> <p>Body corporate A fine not exceeding 25 million shillings, or the amount of the value of the property involved in the offence, whichever is the higher.</p>

Offence	Description	Penalty
Acquisition, Possession, or Use of Proceeds of Crime Section 4	A person who— a) acquires; b) uses; or c) has possession of, property and who, at the time of acquisition, use or possession of such property, knows or ought reasonably to have known that it is or forms part of the proceeds of a crime committed by him or by another person, commits an offence.	<p>Natural person Imprisonment of a term not exceeding 14 years or a fine not exceeding 5 million shillings, or the amount of the value of the property involved in the offence, whichever is the higher, or to both the fine and imprisonment; and</p> <p>Body corporate A fine not exceeding 25 million shillings, or the amount of the value of the property involved in the offence, whichever is the higher.</p>
Failure to Report Suspicion regarding Proceeds of Crime Section 5	A person who willfully fails to comply with an obligation contemplated in section 44(2) commits an offence	<p>Natural person Imprisonment of a term not exceeding 7 years or a fine not exceeding 2.5 million shillings, or to both</p> <p>Body corporate A fine not exceeding 10 million shillings, or the amount of the value of the property involved in the offence, whichever is the higher</p>
Financial Promotion of an Offence Section 7	A person who, knowingly transports, transmits, transfers or receives or attempts to transport, transmit, transfer or receive a monetary instrument or anything of value to another person, with intent to commit an offence, that person commits an offence.	<p>Natural person Imprisonment of a term not exceeding 14 years or a fine not exceeding 5 million, or the amount of the value of the property involved in the offence, whichever is the higher, or to both the fine and imprisonment; and</p> <p>Body corporate A fine not exceeding 25 million, or the amount of the value of the property involved in the offence, whichever is the higher.</p>
Tipping off Section 8	A person who— i. knows or ought reasonably to have known that a report under section 44 is being prepared or has been or is about to be sent to the Centre; and ii. discloses to another person information or other matters relating to a report made under paragraph (i), commits an offence	<p>Natural person Imprisonment of a term not exceeding 7 years or a fine not exceeding 2.5 million shillings, or to both</p> <p>Body corporate A fine not exceeding 10 million shillings, or the amount of the value of the property involved in the offence, whichever is the higher</p>
Misrepresentation Section 9	A person who knowingly makes a false, fictitious or fraudulent statement or representation, or makes, or provides, any false document, knowing the same to contain any false, fictitious or fraudulent statement or entry, to a reporting institution, or to a supervisory body or to the Centre, commits an offence.	<p>Natural person Imprisonment of a term not exceeding 2 years or a fine not exceeding 1 million shillings, or to both</p> <p>Body corporate A fine not exceeding 5 million shillings, amount of the value of the property involved in the offence, whichever is the higher</p>

Offence	Description	Penalty
Malicious Reporting Section 10	Any person who willfully gives any information to the Centre or an authorized officer knowing such information to be false commits an offence.	<p>Natural person Imprisonment of a term not exceeding 2 years or a fine not exceeding 1 million shillings, or to both</p> <p>Body corporate A fine not exceeding 5 million shillings, amount of the value of the property involved in the offence, whichever is the higher</p>
Non-Compliance Section 11 (1)	A reporting institution that fails to comply with any of the requirements of sections 44, 45 and 46, or of any regulations, commits an offence	<p>Natural person Imprisonment of a term not exceeding 7 years or a fine not exceeding 2.5 million shillings, or to both</p> <p>Body corporate A fine not exceeding 10 million shillings, or the amount of the value of the property involved in the offence, whichever is the higher</p>
Misuse of Information Section 13 (1)	<p>A person who knows or ought reasonably to have known—</p> <ul style="list-style-type: none"> a) that information has been disclosed under the provisions of Part II; or b) that an investigation is being, or may be, conducted as a result of such a disclosure, and directly or indirectly alerts, or brings information to the attention of another person who will or is likely to prejudice such an investigation, commits an offence 	<p>Natural person Imprisonment of a term not exceeding 7 years or a fine not exceeding 2.5 million shillings, or to both</p> <p>Body corporate A fine not exceeding 10 million shillings, or the amount of the value of the property involved in the offence, whichever is the higher</p>
Failure to comply with order of court Section 14	A person who intentionally refuses or fails to comply with an order of a court made under this Act, commits an offence.	<p>Natural person Imprisonment of a term not exceeding 2 years or a fine not exceeding 1 million shillings, or to both</p> <p>Body corporate A fine not exceeding 5 million shillings, amount of the value of the property involved in the offence, whichever is the higher</p>
Hindering a Person in Performance of Functions under this Act Section 15	A person who hinders a receiver, a police officer or any other person in the exercise, performance or carrying out of their powers, functions or duties under POCAMLA, commits an offence.	
The Proceeds of Crime and Anti-Money Laundering Regulations, 2023		
General Penalty for Contravention of the Regulations Regulation 48	Any person, reporting institution or supervisory body or self -regulatory body who contravenes the provisions of these Regulations commits an offence and shall, on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or both fine and imprisonment.	Imprisonment of a term not exceeding 3 years or a fine not exceeding 5 million shillings, or both

THE PREVENTION OF TERRORISM ACT, 2012		
Offence	Description	Penalty
Committing a Financing of proliferation act Section 4B	A person who by any means, within or outside Kenya, directly or indirectly, provides financial support or solicits or collects funds intending, knowing or having reasonable grounds to believe that such funds are to be used in whole or part, to carry out a proliferation act regardless of whether such funds or part thereof were actually used to commit the act, commits an offence	Imprisonment for a term of imprisonment not exceeding twenty years or to a fine not exceeding twenty million shillings or to both such fine and such imprisonment.
Collection or provision of property and services for commission of terrorist acts Section 5	A person who, directly or indirectly, collects, attempts to collect, provides, attempts to provide or invites a person to provide or make available any property, funds or a service intending, knowing or having reasonable grounds to believe that such property, funds or service shall be used: <ul style="list-style-type: none"> a) for the commission of, or facilitating the commission of a terrorist act or any other act which constitutes an offence within the scope of, and as defined in any of the treaties listed in the annex to the 1999 International Convention for the Suppression of the Financing of Terrorism; b) by a terrorist group for any purpose; c) by any natural person, for any purpose, who: <ul style="list-style-type: none"> i) commits, or attempts to commit, by any means, directly or indirectly, unlawfully and willfully, acts within the scope of paragraph a); ii) participates as an accomplice in acts within the scope of paragraph a); iii) organizes or directs others to commit acts within the scope of paragraph a); or iv) contributes to the commission of acts within the scope of paragraph a) by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the commission of acts within the scope of paragraph (a), or with the knowledge of the intention of the group to commit acts within the scope of paragraph a), commits an offence 	Imprisonment for a term not exceeding twenty years.
Dealing in property owned or controlled by terrorist groups Section 8	A person who knowingly: <ul style="list-style-type: none"> a) deals directly or indirectly, in any property that is owned or controlled by or on behalf of a terrorist group; b) enters into, or facilitates, directly or indirectly any transaction in respect of property referred to in paragraph (a); or c) provides financial or other services in respect of property referred to in paragraph (a) at the direction of a terrorist group, commits an offence and is liable, on conviction, to: 	Imprisonment for a term not exceeding twenty years.

Offence	Description	Penalty
Soliciting and giving of support to terrorist groups or for the commission of terrorist acts Section 9	A person who knowingly supports or solicits support for the commission of a terrorist act by any person or terrorist group commits an offence	Imprisonment for a term not exceeding twenty years.
Disclosure of information Section 19	A person who, knowing or having reasonable cause to suspect that an officer is conducting an investigation under this Act— (a) discloses to another person anything which is likely to prejudice the investigation; or (b) interferes with material which is relevant to the investigation, commits an offence	Imprisonment for a term not exceeding twenty years.
False statements Section 20	A person who, with intent to mislead an officer under this Act, makes a statement knowing the same to be false commits an offence	Imprisonment for a term not exceeding twenty years.
Aiding and abetting Section 30E	A person who aids or abets the commission of an offence under this Act commits an offence	Imprisonment for a term not exceeding twenty years.
Prohibition from making funds available Section 30G	<p>A Kenyan national or any other person or entity within Kenya shall not make available any funds or other assets, economic resources or financial or other related services—</p> <ul style="list-style-type: none"> a) directly or indirectly, wholly or jointly, for the benefit of designated persons and entities; b) for entities owned or controlled, directly or indirectly, by designated persons or entities; and c) for persons and entities acting on behalf of, or at the direction of, designated persons or entities, unless licensed, authorised or otherwise notified in accordance with the relevant United Nations Security Council resolution. <p>A person or entity who contravenes this section commits an offence</p>	<p>Natural Person Imprisonment for a term not exceeding twenty years</p> <p>Legal Person A fine not exceeding twenty million shillings</p>
Penalties for legal persons Section 30H (1)	A legal person who contravenes the provisions of sections 4, 10, 11, 12, 12B, 12C, 12D, 13, 14, 14A, 21, 24, 27, 28, 29 or 30D commits an offence	A fine not exceeding thirty million shillings.
Penalties for legal persons Section 30H (2)	A legal person who contravenes any other provisions not provided under subsection (1) commits an offence	A fine not exceeding twenty million shillings.
The Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) Regulations, 2023		
Penalty for Contravention of the Regulations Regulation 25	Except as provided for under these Regulations, a person who is found guilty of contravening the provisions of these Regulations for which no penalty is given, that person is liable to a fine not exceeding three million shillings or to imprisonment for a term not exceeding seven years.	A fine not exceeding 3 million shillings or to imprisonment for a term not exceeding 7 years.

Offence	Description	Penalty
Reporting obligations Regulation 8(4)	A person or reporting institution that fails to comply with sub-regulations (2) and (3) in relation to making a report on funds or other assets or action taken in compliance with the prohibition requirements of the relevant United Nations Security Council Resolutions and reporting transactions by designated persons, respectively.	<p>Natural person A fine not exceeding five million shillings;</p> <p>Legal person A fine not exceeding twenty-five million Shillings</p>
Prohibition to making funds and other assets available Regulation 10 (2)	A person who contravenes the provisions of sub-regulation (1) commits an offence	<p>Natural person Imprisonment for a term not exceeding twenty years;</p> <p>Legal person A fine not exceeding twenty million shillings.</p>
The Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2023		



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