REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2015

NAIROBI, 26th November, 2015

CONTENT

Bill for Introduction into the National Assembly—

The Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2015 ... 2573
THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT) BILL, 2015

A Bill for

AN ACT of Parliament to amend the Proceeds of Crime and Anti-Money Laundering Act, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Proceeds of Crime and Anti-Money Laundering (Amendment) Act, 2015.

2. The Proceeds of Crime and Anti-Money Laundering Act, (in this Act referred to as “the principal Act”), is amended by deleting the definition of “Director” and substituting therefor the following new definition—

“Director-General” means the Director-General appointed under section 25;

3. Section 24 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.

4. The principal Act is amended by inserting the following new section immediately after section 24A—

Powers of the Centre to impose civil penalties for non-compliance.

24B. (1) Without derogating from any criminal penalty or other sanction that may be imposed by this Act, where a person or a reporting institution is in breach of, or fails to comply with any instruction, direction or rules issued by the Centre under section 24A—

(a) in the case of a natural person, a person shall be liable on conviction to a fine not exceeding five million shillings;

(b) in the case of a corporate body, the corporate body shall be liable on conviction to a fine not exceeding twenty five million shillings;
(c) in the case of continued failure, the person or reporting institution shall be liable on conviction to additional fine of ten thousand shillings per day on which such failure continues for a maximum period of one hundred and eighty days.

(2) Before imposing a fine on any person or reporting institution under this section, the Centre shall give not less than seven days notice in writing, requiring the person or reporting institution to show cause as to why the prescribed fines should not be imposed.

(3) Where a fine is prescribed under this section, such fine shall—

(a) be paid to the Centre and form part of the funds of the Centre;

(b) be paid within fourteen ten days, unless otherwise stated; and

(c) where a person or reporting institution fails to pay the fine within the prescribed time, the Centre may take such other action as the Centre may deem necessary in accordance with this Act.

(4) A fine imposed under this section on any person under this section shall constitute a debt due to the Centre and shall, at any time after it becomes due be recoverable in a court of competent jurisdiction.

24C. The Centre may for reasons disclosed in writing—

(a) issue a warning to a specified person or reporting institution;

(b) issue an order requiring a specified person or reporting institution to
comply with any specific direction issued by the Centre;

(c) issue an order barring an individual from employment within the specified reporting institution whether entirely or in a specified capacity;

(d) issue an order to a competent supervisory authority requesting the suspension or revocation of a licence or registration of a specified reporting institution whether entirely or in a specified capacity or of any employee of the reporting institution.

5. Section 25 of the principal Act is amended by—

(a) inserting the words “Cabinet Secretary in consultation with the” immediately after the words “by the” in subsection (5)(b); and

(b) deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.

6. Section 26 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.

7. Section 27 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.

8. Section 28 of the principal Act is amended by—

(a) deleting subsection (2) and substituting therefor the following new subsection—

“(2) Without prejudice to the generality of subsection (1), the Director-General as the Chief Executive Officer shall be responsible for—

(a) the formation and development of an efficient and performance driven administration;

(b) control and maintenance of discipline of staff; and
(c) the performance of such other acts or functions as may be necessary for the general direction and management of the Centre.

(b) deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.

9. Section 29 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.

10. Section 30 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.

11. The principal Act is amended by deleting section 31 and substituting therefor the following new section —

31. (1) The Cabinet Secretary may approve the general terms and conditions of service of the Centre.

(2) The Centre shall determine its own staff establishment and may appoint other officers as are necessary for the proper discharge of its functions under this Act in accordance with the approved general terms and conditions of service.

(3) The Centre may engage the services of any person by agreement including any state department to perform any function.

12. Section 32 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.

13. Section 33 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.

14. Section 34 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.

15. Section 35 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.
16. Section 44 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.

17. Section 49 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.

18. The principal Act is amended by deleting section 50 and substituting therefor the following new section —

**50. (1)** The functions of the Board shall be to —

(a) on the request of the Cabinet Secretary or at its own initiative, advise the Cabinet Secretary on—

(i) policies, best practices and related activities to identify proceeds of crime or proceeds of unlawful activities and to combat money laundering activities;

(ii) the exercise of the powers conferred to the Cabinet Secretary under this Act.

(b) advise the Centre generally on its functions and the exercise of its powers under this Act;

(c) act as a forum in which the Centre, associations representing categories of reporting institutions, state organs and supervisory bodies can consult one another on anti-money laundering developments, concerns and initiatives;

(d) to perform any other duty as may be prescribed under this Act.

(2) The Centre shall provide administrative support and sufficient resources to the Board to enable it perform its functions effectively.
MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons for the Bill

The principal object of this Bill is to amend the Proceeds of Crime and Anti-Money Laundering Act, Cap. 59B in order to enhance the powers of the Financial Reporting Centre to impose civil penalties and take administrative action against non-compliance with the directives of the Centre. The Bill further seeks to enhance the operational independence of the Centre by removing any possibility of conflict of interest. The operational independence of the Bill is also enhanced by the fact that the Bill also removes the Centre from the ambit of the State Corporations Act in terms of appointment of member of its staff. Further, the Bill seeks to clarify the advisory nature of the Anti-Money Laundering Board which includes advising the Cabinet Secretary on the policies, best practices and related activities to identify proceeds of crime or proceeds of unlawful activities and to combat money laundering activities and the exercise of the powers conferred to the Cabinet Secretary under the Act.

Statement on the delegation of legislative powers and limitations of fundamental rights and freedoms

The Bill does not delegate legislative powers and does not contain provisions limiting any fundamental rights and freedoms.

Statement on how the Bill concerns counties

The Bill does not affect the functions of County governments as set out in the Fourth Schedule to the Constitution and is therefore not a Bill concerning counties.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 26th November, 2015.

ADEN DUALE,
Leader of the Majority Party.
Section 2 of the principal Act which it is proposed to amend-

Interpretation

2. In this Act, unless the context otherwise requires—

"account" includes any facility or arrangement by which a reporting institution does any one or more of the following—

(a) accepts deposits of monetary instruments;

(b) allows withdrawals of monetary instruments or transfers into or out of the account;

(c) pays cheques or payment orders drawn on a financial institution or collects cheques or payment orders on behalf of any person;

(d) supplies a facility or arrangement for a safety or fixed term deposit box;

"accounting officer" means an accounting officer appointed under section 17 of the Government Financial Management Act, 2004 (No. 5 of 2004);

"affected gift" means any gift made by the defendant at any time, if it was a gift of property—

(a) received by that defendant in connection with an offence committed by him or any other person; or

(b) any part thereof, which, directly or indirectly represents, in that defendant’s hands, the property which that person received in that connection with an offence:

Provided that any such gift was made on or after the commencement of this Act;

"Agency" means the Assets Recovery Agency established under section 53(1);

"Agency Director" means the Director of the Agency appointed under section 53(2);

"authorised officer" means—

(a) a police officer;

(b) an officer of the department of the Kenya Revenue Authority for the time being responsible for matters relating to customs;

(c) Agency Director; or

(d) any person or class of persons designated by the Minister as an authorised officer to perform any function under this Act;
“Board” means the Anti-Money Laundering Advisory Board established under section 49;

“Centre” means the Financial Reporting Centre established under section 21;

“confiscation order” means an order referred to in section 61;

“court” means a court of competent jurisdiction;

“customs” or “the customs” means the customs department of the Kenya Revenue Authority;

“data” means representations, in any form, of information or concepts;

“defendant” means a person against whom a prosecution for an offence has been instituted, irrespective of whether that person has been convicted or not;

“designated non-financial businesses or professions” means—

(a) casinos (including internet casinos);

(b) real estate agencies;

(c) dealing in precious metals;

(d) dealing in precious stones;

(e) accountants, who are sole practitioners or are partners in their professional firms;

(f) non-governmental organisations;

(g) such other business or profession in which the risk of money laundering exists as the Minister may, on the advice of the Centre, declare;

“Deputy Director” means the Deputy Director appointed under section 25;

“Director” means the Director appointed under section 25;

“document” means any record of information, and includes—

(a) anything on which there is writing;

(b) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
(c) anything from which sounds, images, writings or data can be retrieved, with or without the aid of anything else; or

(d) a map, plan, drawing, photograph, video tape or similar thing;

“estate agency” in connection with the selling, mortgaging, charging, letting or management of immovable property or of any house, shop or other building forming part thereof, means doing any of the following acts—

(a) bringing together, or taking steps to bring together, a prospective vendor, lessor or lender and a prospective purchaser, lessee or borrower; or

(b) negotiating the terms of sale, mortgage, charge or letting as an intermediary between or on behalf of either of the principals;

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

(a) accepting deposits and other repayable funds from the public;

(b) lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions;

(c) financial leasing;

(d) transferring of funds or value, by any means, including both formal and informal channels;

(e) issuing and managing means of payment (such as credit and debit cards, cheques, travellers’cheques, money orders and bankers’ drafts, and electronic money);

(f) financial guarantees and commitments;

(g) trading in—

(i) money market instruments, including cheques, bills, certificates of deposit and derivatives;

(ii) foreign exchange;

(iii) exchange, interest rate and index funds;

(iv) transferable securities; and

(v) commodity futures trading;

(h) participation in securities issues and the provision of financial services related to such issues;

(i) individual and collective portfolio management;
(j) safekeeping and administration of cash or liquid securities on behalf of other persons;

(k) otherwise investing, administering or managing funds or money on behalf of other persons;

(l) underwriting and placement of life insurance and other investment related insurance; and

(m) money and currency changing;

“fixed date”, in relation to a defendant against whom—

(a) a prosecution for an offence has been instituted, means the date on which such prosecution has been instituted; or

(b) a restraint order has been made against the defendant, means the date of such restraint order, whichever is the earlier date;

“Fund” means the Criminal Assets Recovery Fund established under section 109;

“inspector” means a person designated as such under this Act;

“Kenya Revenue Authority” means the Kenya Revenue Authority established by section 3 of the Kenya Revenue Authority Act; (Cap. 469)

“Minister” means the Cabinet Secretary for the time being responsible for matters relating to finance, and all references in this Act to “the Minister” shall be construed accordingly;

“monetary instruments” means—

(a) coins and paper currency designated as legal tender of Kenya or of a foreign country and which is customarily used and accepted as a medium of exchange in Kenya or the country of issue;

(b) travellers'cheques, personal cheques, bank cheques, money orders or securities;

(c) any other negotiable instrument which is in bearer form, or other form through which title passes upon delivery;

“money laundering” means an offence under any of the provisions of sections 3, 4 and 7;

“offence” in this Act, means an offence against a provision of any law in Kenya, or an offence against a provision of any law in a foreign state for conduct which, if it occurred in Kenya, would constitute an offence against a provision of any law in Kenya;

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

"property" means all monetary instruments and all other real or personal property of every description, including things in action or other incorporeal or heritable property, whether situated in Kenya or elsewhere, whether tangible or intangible, and includes an interest in any such property and any such legal documents or instruments evidencing title to or interest in such property;

"realizable property" means—
(a) property laundered;
(b) proceeds from or instrumentalities used in, or intended to be used in money laundering or predicate offences;
(c) property that is the proceeds of, or used, or intended or allocated for use in, the financing of any offence; and
(d) property of corresponding value;

"regulations" means regulations made under this Act;

"reporting institution" means a financial institution and designated nonfinancial business and profession;

"restraint order" means an order made under section 68;

"supervisory body" means a functionary or institution specified in the First Schedule, or such other functionary or institution as may be prescribed by the Minister;

"tainted property" in relation to an offence means—
(a) any property used in, or in connection with, the commission of the offence;
(b) any proceeds of the offence; or
(c) any property in Kenya which is the proceeds of a foreign offence in respect of which an order may be registered, and when used without reference to a particular offence means tainted property in relation to an arrestable offence.
Section 24 of the principal Act which it is proposed to amend—

Functions and powers of the Centre

24. The Centre—

(a) shall receive, analyse and interpret —

(i) reports of usual or suspicious transactions made by reporting institutions pursuant to section 12;

(ii) all reports made pursuant to section 44;

(iii) information disclosed to it pursuant to section 42 of the Prevention of Terrorism Act, 2012; and

(iv) any additional or other information disclosed to it and obtained by it in terms of this Act.

(b) shall send information received under this Act to the appropriate law enforcement authorities, any intelligence agency, or any other appropriate supervisory body for further handling if, having considered the reports, the Director has reasonable grounds to suspect that a transaction or activity involves proceeds of crime, money laundering or financing of terrorism.

(c) may, at any time, cause an inspection to be made by an inspector authorised by the Director in writing and the inspector may enter the premises of any reporting institution during ordinary business hours to inspect any documents kept pursuant to the requirements of this Act, and ask any question relating to such documents, make notes and take copies of the whole or any part of such documents;

(d) shall send to the appropriate law enforcement authorities, intelligence agency, or supervisory body any information derived from an inspection carried out pursuant to paragraph (c) if such inspection gives the Director reasonable grounds to suspect that a transaction or activity involves proceeds of crime, money laundering or the financing of terrorism;

(e) may instruct any reporting institution to—

(i) provide it with such other or additional information or documents to enable the centre to properly Undertake functions under this Act; or

(ii) take such steps as may be appropriate to facilitate any investigation undertaken or to be undertaken by the Centre including providing documents and other relevant information.
(f) may compile statistics and records, disseminate information within Kenya or elsewhere, and make recommendations arising out of any information received, issue guidelines to reporting institution and advise the Minister;

(g) shall design training requirements and may provide such training for any reporting institution in respect of transactions, record-keeping and reporting obligations in accordance with the provisions of this Act;

(h) may consult with any relevant person, institution or organization for the purpose of exercising the powers or duties under this Act;

(i) may, from time to time, publish in the Gazette such information as may be prescribed by the Minister;

(j) shall create and maintain a database of all reports of suspicious transactions, related Government information and such other materials as the Director may from time to determine to be relevant to the work of the Centre;

(k) may provide information relating to the commission of an offence to any foreign financial intelligence unit or appropriate foreign law enforcement authority, subject to any conditions as may be considered appropriate by the Director;

(l) may, on the basis of mutual agreement and reciprocity, enter into any agreement or arrangement, in writing, with a foreign financial intelligence unit which the Director considers necessary or desirable for the discharge or performance of the functions of the Centre: Provided that the Director is satisfied, on a case by case basis, that the foreign financial intelligence unit has given appropriate undertakings—

(i) for protecting the confidentiality of anything communicated to it;

(ii) for controlling the use that will be made of such information.

(m) shall draft the regulations required by this Act, in consultation with the Board, for submission to the Minister for his approval, prior to publication in the Gazette;

(n) shall set anti-money laundering policies in consultation with the Board;

(o) shall maintain proper books of accounts;

(oo) shall have power to compel the production of, or to obtain access to all records, documents or information relevant to
monitoring compliance outside the scope of onsite inspection;

(p) shall engage in any lawful activity, whether alone or together with any other organization in Kenya or elsewhere, aimed at promoting its objectives;

(q) shall perform such other functions in relation to money laundering as the Minister may direct;

(r) The Centre may request any supervisory body, monetary authority, financial regulatory authority, fiscal or tax agency, or fraud investigations agency to provide it with information where such information is reasonably required for the proper discharge of the functions of the Centre under this Act or for purposes of achieving the objectives of the Act; and

(s) shall have all the powers necessary or expedient for the proper performance of its functions.

Section 25 of the principal Act which it is proposed to amend—

Appointment of Director and Deputy Director

25. (1) There shall be a Director and a Deputy Director of the Centre.

(2) The Director and the Deputy Director shall be fit, competent and proper persons, recommended by the Board and approved by the National Assembly for appointment to their respective positions.

(3) On approval of a person by the National Assembly under subsection (2), the Minister shall appoint that person to the office in respect of which the approval was given.

(4) A person shall not be appointed as a Director or Deputy Director unless that person—

(a) holds a degree in law, economics or finance from a recognised institution;

(b) has at least seven years work experience in the relevant field; and

(c) meets such other requirements that may be prescribed by the Board.

(5) The persons appointed as the Director and the Deputy shall hold office—

(a) for a term of four years and three years, respectively, subject to renewal for one further term of four years and three years, respectively; and
(b) on such terms and conditions as may be determined by the Board and set out in the instrument of appointment which shall include specific and measurable performance targets.

(6) The provisions of subsection (3) shall apply to the renewal of an appointment under subsection (5)(a).

Section 26 of the principal Act which it is proposed to amend—

Resignation of Director or Deputy Director

26. (1) The Director or the Deputy Director may resign by a written resignation addressed to the Minister.

(2) A resignation is effective upon being received by the Minister or by a person authorized by the Minister to receive it.

Section 27 of the principal Act which it is proposed to amend—

Removal from office

27. (1) The Minister may, in consultation with the Board, remove the Director or Deputy Director from office on the grounds of gross misconduct, mental or physical incapacity or failure to satisfy the terms and conditions of service set forth in section 25(5)(b), or—

(a) where there is proof of a financial conflict of interest with any reporting institution;

(b) if he is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors; or

(c) if he has been convicted of an offence for which one may be sentenced to imprisonment for a term exceeding six months.

(2) The Minister may, in consultation with the Board, suspend the Director or Deputy Director from office pending determination of any inquiry as to whether grounds of misconduct, incapacity or incompetence exist.
Section 28 of the principal Act which it is proposed to amend—

Responsibilities of the Director

28. (1) The Director shall be the Chief Executive Officer of the Centre and shall be responsible for its direction and management.

(2) As the Chief Executive Officer, the Director shall be responsible for—

(a) the formation and development of an efficient and performance driven administration; and

(b) control and maintenance of discipline of staff.

(3) The Director shall perform the functions of the office subject to the policy framework which may be prescribed by the Minister on the advice of the Board.

Section 29 of the principal Act which it is proposed to amend—

Delegation by the Director

29. (1) Subject to this Act, the Director may in writing, delegate any of his powers and duties under this Act to such other officer or officers of the Centre as the Director may determine.

(2) A delegation made under subsection (1) may, at any time, be varied or cancelled by the Director.

Section 30 of the principal Act which it is proposed to amend—

When Deputy Director may act

30. The Deputy Director may act for the Director and shall exercise all the powers and perform all the functions conferred on the Director under this Act whenever the Director is temporarily absent, and shall perform such other functions as the Director may, from time to time, assign to him.
Section 31 of the principal Act which it is proposed to amend—

Appointment of staff

31. (1) The Centre may appoint other officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Minister may, in consultation with the State Corporations Advisory Committee, approve.

(2) For the purposes of subsection (1), the State Corporations Advisory Committee means the Committee by that name established by section 26 of the State Corporations Act (Cap. 446).

Section 32 of the principal Act which it is proposed to amend—

Oath of confidentiality

32. The Director, the Deputy Director and staff of the Centre shall—

(a) before they begin to perform any duties under this Act, take and subscribe before a Magistrate or Commissioner for Oaths the oath of confidentiality prescribed in the Third Schedule;

(b) maintain, during and after their employment, the confidentiality of any matter which they came across during their tenure of office.

Section 33 of the principal Act which it is proposed to amend

Inspection

33. (1) Where an inspection is made under section 24(c), the reporting institution concerned and every officer and employee thereof shall produce and make available to the inspector all the books, accounts and other documents of the reporting institution and such correspondence, statements and information relating to the reporting institution, its business and the conduct thereof which the inspector may require within seven days or such longer time as the inspector may direct in writing.

(2) Failure to produce books, accounts, records, documents, correspondence, statements, returns or other information within the period specified in the direction under subsection (1) shall constitute an offence under this Act.

(3) The books of accounts and other documents required to be produced shall not, in the course of inspection, be removed from the premises of the reporting institution or other premises at which they are produced.
(4) The inspector shall make copies of any books, accounts and other documents required for the purpose of the inspector’s report.

(5) All information obtained in the course of the inspection shall be treated as confidential and used solely for the purposes of this Act.

(6) An inspector shall submit a report to the Director, in which attention shall be made to any breach or non-observance of the requirement of this Act or any regulations made thereunder and any other matter revealed or discovered in the course of the inspection, warranting in the opinion of the inspector, remedial action or further action by the Director or the appropriate supervisory body.

Section 34 of the principal Act which it is proposed to amend

Obligation to respond to the inspection reports

34. The Director may by notice in writing and after giving the reporting institution a reasonable opportunity of being heard, require the reporting institution to comply by the date or within the period as may be specified therein, with such directions as are necessary in connection with any matter arising out of a report made under section 33.

Section 35 of the principal Act which it is proposed to amend

Obligation of persons to provide information to the inspectors

35. (1) The Director may, by notice in writing, require any person who is or has at any time been an employee or agent of the reporting institution being inspected, to—

(a) give to the inspector all reasonable assistance in connection with the inspection; or

(b) appear before the inspector for examination concerning matters relevant to the inspection; or

(c) produce any books or documents that relate to the affairs of the reporting institution.

(2) A person who—

(a) refuses or fails to comply with a requirement of an inspector which is applicable to that person, to the extent to which the person is able to comply with it; or

(b) obstructs or hinders an inspector in the exercise of the powers under this Act; or

(c) furnishes information which the person knows to be false or misleading in any material way; or
(d) appears before an inspector for examination pursuant to such requirement, makes a statement which the person knows to be false or misleading in any material particular, commits an offence.

(3) A person who contravenes the provisions of this section shall be liable, on conviction, to—

(a) in case of a natural person, imprisonment for a term not exceeding three years or a fine not exceeding one million shillings, or to both; and

(b) in the case of a body corporate a fine not exceeding five million shillings.

Section 44 of the principal Act which it is proposed to amend

Monitoring and Report by institutions

44. (1) A reporting institution shall monitor on an ongoing basis all complex, unusual, suspicious, large or such other transactions as may be specified in the regulations, whether completed or not, and shall pay attention to all unusual patterns of transactions, and to insignificant but periodic patterns of transactions which have no apparent economic or lawful purpose as stipulated in the regulations.

(2) Upon suspicion that any of the transactions or activities described in subsection (1) or any other transaction or activity could constitute or be related to money laundering or to the proceeds of crime, a reporting institution shall report the suspicious or unusual transaction or activity to the Centre in the prescribed form immediately and, in any event, within seven days of the date the transaction or activity that is considered to be suspicious occurred.

(3) Notwithstanding subsections (1) and (2), a reporting institution shall report all suspicious transactions, including attempted transactions to the Centre.

(4) A financial institution shall as far as possible examine the background and purpose of the transactions referred in subsections (1) and (2) and shall set out its findings in writing.

(5) A reporting institution shall retain its findings under subsection (4) for at least seven years from the date of the making thereof, and shall make them available to the Centre, and to its supervisory body or auditors.

(6) Despite the provisions of this section, a reporting institution shall file reports on all cash transactions equivalent to or exceeding the amount prescribed in the Fourth Schedule, whether they appear to be suspicious or not.
(7) A report under subsections (2) and (3) shall be accompanied by copies of all documentation directly relevant to the suspicion and the grounds on which it is based.

(8) The Centre may, in writing, require the person making the report under subsection (2) or (3) to provide the Centre with— (a) particulars or further particulars of any matter concerning the suspicion to which the report relates and the grounds upon which it is based; and (b) copies of all available documents concerning such particulars or further particulars.

(9) When a person receives a request under subsection (8), that person shall furnish the Centre with the required particulars or further particulars and copies of documents to the extent that such particulars or documents are available to that person within a reasonable time, but in any case not later than thirty days from the date of the receipt of the request:

Provided that the Centre may, upon written application by the person responding to a request and with the approval of the Director, grant the person an extension of the time within which to respond.

(10) A person who is a party to, or is acting on behalf of, a person who is engaged in a transaction in respect of which he forms a suspicion which, in his opinion, should be reported under subsections (2) or (3), may continue with and complete that transaction and shall ensure that all records relating to that transaction are kept, and that all reasonable steps are taken to discharge the obligation under this section.

Section 49 of the principal Act which it is proposed to amend

The Anti-Money Laundering Advisory Board

49. (1) There is established a Board to be known as the Anti-Money Laundering Advisory Board consisting of—

(a) the Chairperson, who shall be appointed by the Minister from among members of the Board appointed under paragraphs (f) to (h);

(b) the Permanent Secretary in the Ministry for the time being responsible for finance;

(c) the Attorney-General;

(d) the Governor, Central Bank of Kenya;

(e) the Commissioner of Police;

(f) the Chairman, Kenya Bankers’ Association;

(g) the Chief Executive Officer, Institute of Certified Public Accountants of Kenya;
(h) two other persons appointed by the Minister from the private sector who shall have knowledge and expertise in matters relating to money laundering;

(i) the Director, who shall be the secretary.

(2) The ex officio members under paragraphs (b) to (g) may attend in person or through a designated representative.

(3) A person appointed under subsection (1)(h) shall hold office for a term of three years but shall be eligible for re-appointment for one further term of not more than three years.

(4) In deliberation of a matter, the Board may co-opt such other persons as appear to it to have special knowledge or experience in anti-money laundering.

Section 50 of the principal Act which it is proposed to amend—

Functions of the Board

50. The functions of the Board shall be to advise the Director generally on the performance of his functions and the exercise of his powers under this Act and to perform any other duty as prescribed to be performed by the Board under this Act.