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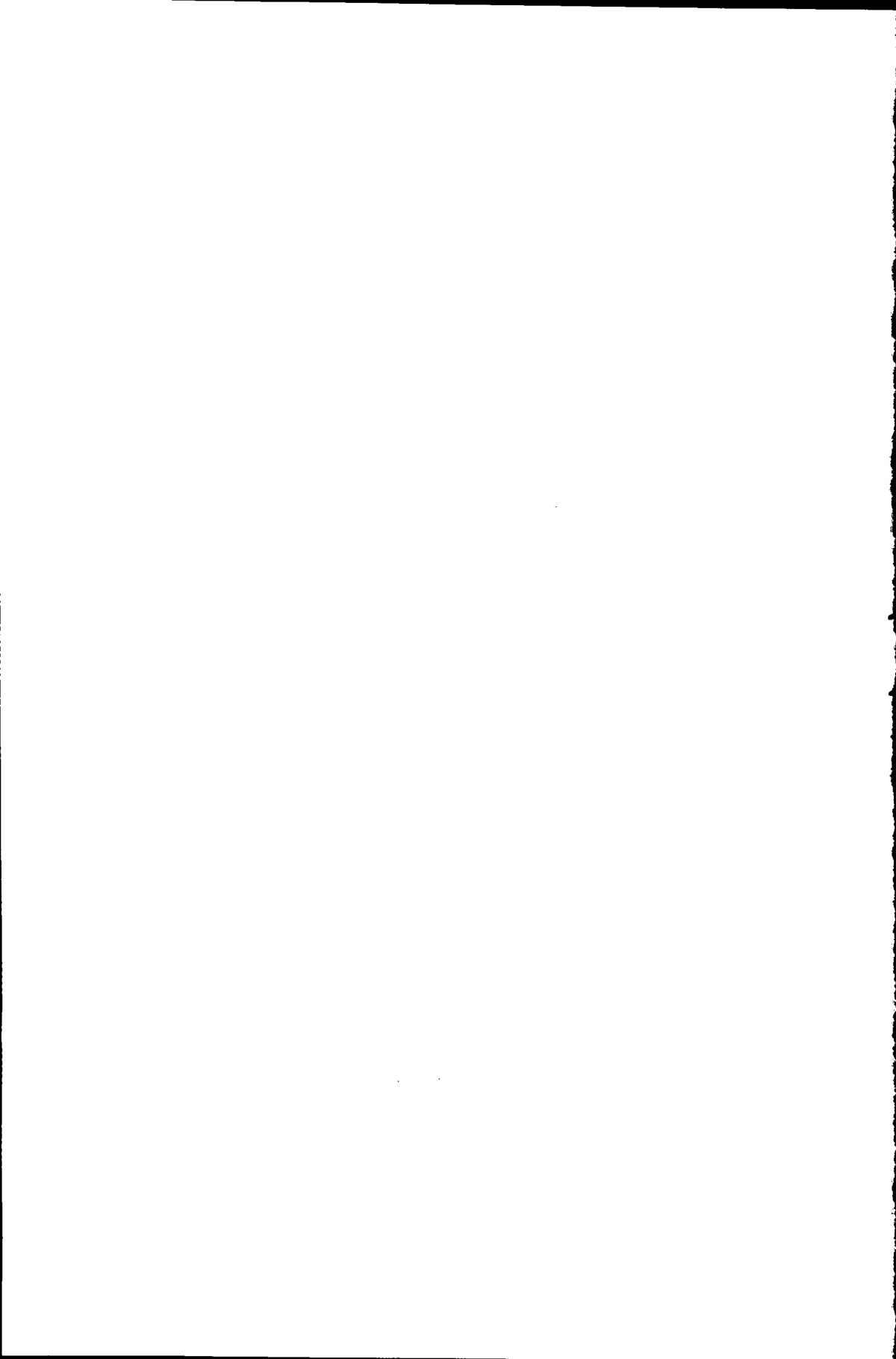
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**NATIONAL COUNCIL FOR LAW REPORTING
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**THE PROCEEDS OF CRIME AND ANTI-MONEY
LAUNDERING (AMENDMENT) ACT**

No. 3 of 2017

Date of Assent: 3rd March, 2017

Date of Commencement: 24th March, 2017

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, 2017.

Short title.

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—

Amendment of section 2 of Cap. 59B.

“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”.

Amendment of section 24 of Cap. 59B.

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

Insertion of new sections in Cap. 59B.

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 to a monetary penalty not exceeding five million shillings;
- (b) in the case of a corporate body, the corporate body shall be liable to a monetary penalty not exceeding twenty five million shillings;

(c) in the case of continued failure, the person or reporting institution shall be liable to an additional monetary penalty 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 monetary penalty on any person or reporting institution under this section, the Centre shall give not less than fourteen days notice in writing, requiring the person or reporting institution to show cause as to why the prescribed monetary penalty should not be imposed.

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

- (a) be paid to the Centre and form part of the funds of the Centre;
- (b) be paid within fourteen days, unless otherwise stated; and
- (c) where a person or reporting institution fails to pay the monetary penalty within the prescribed time, the Centre may take such other action as the Centre may deem necessary in accordance with this Act.

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

24C. (1) The Centre may for reasons disclosed in writing—

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

- (b) issue an order requiring a specified person or reporting institution to comply with any specific instruction or direction issued by the Centre;
- (c) issue an order barring an individual or individuals 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 license, registration, permit or authorization of a specified reporting institution whether entirely or in a specified capacity or of any director, principal, officer, agent or employee of the reporting institution..

(2) Before taking administrative action imposed against any person or reporting institution under this section, the Centre shall give the person or reporting institution a written notice of not less than fourteen days requiring the person or institution to show cause as to why the prescribed administrative action should not be taken.”

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);
- (b) deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”;
- (c) inserting the words “public administration, management, international relations” immediately after the word “law” appearing in paragraph (a) of subsection (4); and
- (d) deleting the words “seven years work experience in the relevant field” appearing in paragraph (b) of

Amendment of
section 25 of Cap.
59B.

subsection (4) and substituting therefor the words “ten years work experience in the relevant field, of which at least three shall be in senior management”.

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

Amendment of section 26 of Cap. 59B.

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

Amendment of section 27 of Cap. 59B.

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

Amendment of section 28 of Cap. 59B.

(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) taking all decisions of the Centre in the exercise, discharge and performance of the Centre’s objectives, powers, functions and duties.

(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”.

Amendment of section 29 of Cap. 59B.

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

Amendment of section 30 of Cap. 59B.

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

Deletion of section 31 of Cap. 59B.

Appointment of staff.

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 specific act or 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”. Amendment of section 32 of Cap. 59B.

13. Section 33 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”. Amendment of section 33 of Cap. 59B.

14. Section 34 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”. Amendment of section 34 of Cap. 59B.

15. Section 35 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”. Amendment of section 35 of Cap. 59B.

16. Section 44 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”. Amendment of section 44 of Cap. 59B.

17. Section 49 of the principal Act is amended— Amendment of section 49 of Cap. 59B.

(a) in subsection (1) by—

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

(ii) inserting the following new paragraphs immediately after paragraph (h)—

(ha) the Director-General of the National Intelligence Service;

(hb) the Director, Asset Recovery Agency; and

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

“(2) The members under paragraphs (b) to (i) may attend in person or through a designated representative.”

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

Deletion of section 50 of Cap. 59B.

Functions of the Board.

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.

19. Section 53 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment of section 53 of Cap.59B.

“(1) There is established a body to be known as Assets Recovery Agency, which shall be a body

corporate with perpetual succession and a common seal, and shall in its corporate name, be capable of—

- (a) suing and being sued;
- (b) holding and alienating movable and immovable property;
- (c) borrowing and lending money;
- (d) doing and performing all such other acts or things as may be lawfully done by a body corporate.”

20. The principal Act is amended by inserting a new section immediately after section 53—

Insertion of new section in Cap.59B

Staff of the Agency.

53A. (1) Despite the provisions of section 53, the agency may, for the proper discharge of its functions, appoint professional and technical staff and other staff, upon such terms and conditions as the Attorney General, in consultation with the Salaries Remuneration Commission, approve.

(2) The staff referred to in subsection (1) may include deputy directors, assistant directors, forensic and financial investigators, asset managers and other staff as the Agency may determine.

(3) In determining the terms and conditions of service for the Agency Director and staff, the Attorney General shall be guided by the following principles-

- (a) that asset recovery falls in a strategic sector in the administration of justice process of the country and the nature of the service entailed requires commensurate compensation; and
- (b) that the nature of the operations of the Agency requires probity, integrity and incorruptibility.

(4) The Agency shall, with the approval of the Cabinet Secretary for

finance, establish a suitable social security scheme for the Agency Director and staff of the Agency.

(5) For the purposes of their functions under the Act, the Agency Director, certified forensic and financial investigators, shall have all the powers, privileges and immunities of a police officer in addition to any other powers they may have under the Act.

(6) Any public officer who is transferred or seconded to the Agency under section 53(4) shall be regarded as a member of staff of the Agency and subject to the control and direction of the Agency.

(7) The Agency may, with the approval of the Attorney General, make regulations for the better management, administration and operations of the Agency.

21. Section 54 of the principal Act is amended by inserting a new subsection immediately after subsection (1) as follows—

Amendment of section 54 of Cap.59B.

“(1A) Notwithstanding any provisions in any other written law, all cases of recovery of the proceeds of crime or benefits accruing from any predicate offence in money laundering, shall be handled by the Agency, in accordance with this Act.”

22. The principal Act is amended by inserting new sections 54A, 54B, 54C, 54D, 54E and 54F immediately after section 54 as follows—

Insertion of new sections in Cap. 59B.

Funds of the Agency.

54A. (1) Parliament shall allocate adequate funds to the Agency to enable the Agency perform its functions under the Constitution, this Act and any other written law and the budget shall be a separate vote in accordance with Article 249 (3) of the Constitution.

(2) The funds of the Agency shall consist of—

- (a) monies provided for by Parliament for the purposes of the Agency;
- (b) a percentage of the total proceeds recovered or realized from any property seized or forfeited to the Government, as may be prescribed, from time to time, with the approval of the Cabinet Secretary for finance;
- (c) such monies or assets as may accrue to the Agency in the course of the exercise of its powers or the performance of its functions under this Act; and
- (d) all monies from any other source provided, donated or granted to the Agency towards the achievement of the objects of the Agency.

(3) The Agency shall not accept any grant, gift, donation or bequests made on condition that the Agency performs any function or discharges any duty or obligation other than duties under the Constitution or this Act.

(4) The Agency shall disclose any grants, gifts, donations or bequests made to it in each financial year.

(5) The Agency Director shall, subject to the law, be charged with the responsibility of accounting for state monies received or paid out or on account of the Agency.

(6) The receipts, earnings or accounts of the funding and balance of the funding at the close of each financial year, shall not be paid into the Consolidated Fund, but shall be retained for the purposes of the Agency.

Bank
Accounts.

54B. The Agency shall open and maintain such bank accounts as are necessary for the exercise of the functions of the Agency.

Estimates
of expenditure.

54C. (1) The financial year of the Agency shall be the period of twelve months beginning first July and ending on the thirtieth June in each year.

(2) The Agency shall within three months before the commencement of the financial year, prepare annual estimates of the expenditure of the Agency for that financial year.

(3) The annual estimates shall make provisions for all the estimated expenditure of the Agency for the financial year concerned and in particular, shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the Agency Director and other staff of the Agency;
- (b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Agency;
- (c) the maintenance of the buildings and grounds of the Agency;
- (d) the funding of training, research and development of activities of the Agency; and
- (e) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Agency may deem expedient.

(4) The annual estimates shall make provisions for all estimated expenditure of the Agency for the financial year to which they relate, including of reserve fund to provide for contingency in the event of an unforeseen increase in expenditure and other emergencies not contemplated at the time of making the estimates.

(5) The Agency shall review the estimates forwarded under subsections (2) and (3) and may make such alterations thereto as it may consider necessary, and shall forward the same to the National Assembly for approval.

(6) Upon approval of the estimates by the National Assembly, all monies from time to time required for the purposes of this Act shall be paid from the Consolidated Fund into the Agency's bank account.

Accounts and audit.

54D. (1) The Agency shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Agency.

(2) Within a period of three months after the end of each financial year, the Agency shall submit to the Auditor-General the accounts of the Agency in respect of that year together with a—

- (a) statement of the income and expenditure of the Agency during that year; and
- (b) statement of the assets and liabilities of the Agency on the last day of that financial year.

(3) The annual accounts of the Agency shall be prepared, audited and reported upon in accordance with the provisions of the Constitution and the Public Audit Act.

Annual reports.

54E. (1) The Agency shall within four months after the end of each financial year, make a report on its activities and operations during the financial year, and submit the report to the Attorney-General.

(2) The Attorney-General shall within fourteen days after receipt of the report from the Agency, submit the report to the President.

The common seal of
the Agency.

54F. (1) The common seal of the Agency shall be such device as may be determined by the Agency Director.

(2) The common seal of the Agency shall be kept in such custody as the Agency Director shall direct and shall not be used except on the order of the Agency Director.

(3) The common seal of the Agency when affixed to a document and duly authenticated shall be judicially and officially noticed and unless the contrary is proved, any necessary order or authorization of the Agency under this section shall be presumed to have been duly given.