

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 215 (Acts No. 51)*



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**KENYA GAZETTE SUPPLEMENT**

**ACTS, 2012**

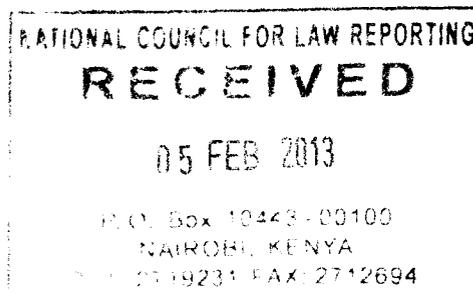
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**NAIROBI, 4th January, 2013**

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**THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING  
(AMENDMENT) ACT**

**No. 51 of 2012**

*Date of Assent: 20th December, 2012*

*Date of Commencement: 4th January, 2013*

**AN ACT of Parliament to amend the Proceeds of  
Crime and Anti-Money Laundering Act, 2009,  
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, 2012.

Short title.

2. Section 2 of the proceeds of Crime and Anti-  
Money Laundering Act, in this Act referred to as “the  
Principal Act” is amended –

Amendment of  
section 2 of  
No. 9 of 2009.

(a) by deleting the definition of “monetary  
instruments” and substituting therefor  
the following new definition

“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;
- (b) by inserting the words “or benefits” immediately after the words “economic gains” in the definition of “proceeds of crime.”
- (c) by deleting the definition of “realizable property” and substituting therefor the following new definition-

“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.

Amendment of  
section 4 of No.  
9 of 2009.

**3.** Section 4 of the principal Act is amended by inserting the words “him or by” immediately after the words “committed by”.

**2012** *Proceeds of Crime and Anti-Money Laundering (Amendment)* **No. 51****4.** Section 8 of the principal Act, is amended –Amendment of  
section 8 of No.  
9 of 2009.

- (a) in subsection (1) by deleting paragraph (ii) and substituting therefor the following new paragraph –

(ii) discloses to another person information or other matters relating to a report made under paragraph (i).

- (b) in subsection (2) by deleting the words “any investigation of an offence or possible offence of money-laundering” and substituting therefor the words “a report made under subsection (1)”.

**5.** Section 12 of the principal Act, is amended -Amendment of  
section 12 of No.  
9 of 2009,

- (a) by inserting the following new subsections immediately after subsection (5)–

(5A) An authorised officer shall, upon discovery of a false declaration or disclosure of monetary instruments or a failure to declare or disclose them, enquire from the person in whose possession the monetary instruments are found the origin thereof and their intended use, and shall record the same in writing signed by the person in possession of the monetary instruments and countersigned by himself.

(5B) The authorized officer shall indicate in the prescribed form –

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- (a) the amount comprised in the monetary instruments declared or disclosed, and
- (b) the identity of the bearer of the monetary instruments,

and such information shall be retained for not less than seven years.

(5C) The information provided under subsection (5B) shall be used by the appropriate authorities when –

- (a) the subsequent declaration by the same person exceeds the prescribed threshold specified in the Fourth Schedule; or
- (b) there is false declaration; or
- (c) there is suspicion of the commission of any other offence.

Amendment of  
section 16 of No.  
9 of 2009.

**6.** Section 16 of the principal Act, is amended –

- (a) in subsection (2) by inserting the expression “11(1)” immediately after expression “8”;
- (b) by deleting subsection (5).

Amendment of  
section 17 of No.  
9 of 2009.

**7.** Section 17 of the principal Act is amended by deleting the proviso.

**2012** *Proceeds of Crime and Anti-Money Laundering (Amendment)* **No. 51****8.** Section 24 of the principal Act is amended –Amendment of  
section 24 of No.  
9 of 2009.

- (a) in paragraph (a) by deleting the expression “11” and substituting therefor the expression “12”.
- (b) by inserting the following new paragraph immediately after paragraph (o) –

(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.

- (c) by renumbering paragraph (r) as paragraph (s) and inserting the following new paragraph –

“(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”.

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Amendment of  
section 24 of No.  
9 of 2009.

**9.** The Principal Act is amended by inserting the following new section immediately after section 24 –

Instructions or  
directions

**24A.** (1) The Center may issue such instructions, directions, guidelines or rules to reporting institutions as it may consider necessary for the better carrying out of its functions under this Act or regarding the application of this Act.

(2) Any instructions, directions, guidelines or rules issued under this section may –

- (a) be either general or special;
- (b) be revoked or varied by subsequent instructions, directions, guidelines or rules;
- (c) be given to such persons and in such manner as may be considered appropriate by the Centre.

(3) The Center may, where it deems appropriate, delegate powers to a supervisory body to issue instructions, directions, guidelines or rules regarding the application of this Act to reporting institutions regulated or supervised by the supervisory body:

Provided that a supervisory body shall consult the Centre prior to issuing any instructions, directions, guidelines or rules under this section.

(4) Notwithstanding subsections (1), (2) and (3), the Centre or a supervisory body may in writing, direct any reporting institution to which the provisions of this Act applies, to –

- (a) provide the Center or that supervisory body, as the case may be –
  - (i) with the information reports or statistical returns specified in the notice, at the time or at the intervals specified in the notice; and
  - (ii) within the period specified in the notice, with any document in its possession or custody or under its control;
- (b) cease or refrain from engaging in any act, omission or conduct in contravention of this Act;
- (c) perform such act as may be necessary to remedy alleged non-compliance with this Act; or
- (d) perform such act as may be necessary to meet any obligation imposed by this Act.

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(5) The Centre or a supervisory body may examine a document submitted to it in terms of subsection (4)(a) and may make a copy thereof or of part thereof.

Amendment of  
section 36 of No.  
9 of 2009.

**10.** The Principal Act is amended by inserting the following new section immediately after section 36 –

Responsibility  
for supervision  
of Reporting  
Institutions.

**36A.** (1) The Centre shall have the powers to regulate and supervise all reporting institutions, regarding the application of this Act.

(2) Subject to subsection (1), each supervisory body shall be responsible for supervising and enforcing compliance with this Act or any instruction, direction, guideline or rule made pursuant to or in terms of this Act by all reporting institutions regulated or supervised by it and to whom the provision of this Act apply.

(3) The obligation referred to in subsection (2) shall form part of the legislative mandate of any supervisory body and shall constitute a core function of that supervisory body.

(4) Any law which regulates a supervisory body or authorises that supervisory body to supervise or regulate any reporting institution to whom the provisions of this Act apply, shall take account of subsection (2), and a supervisory body may utilise any fees or charges it is authorised to impose or collect to defray expenditure incurred in performing its obligations under this Act or any order, determination or directive made in terms of this Act.

(5) A supervisory body, in meeting its obligation referred to in subsection (2), may –

- (a) in addition to any powers it has under any other Act, exercise any power afforded to it in this Act;
  
- (b) take any measures it considers necessary or expedient to meet its obligations as imposed by this Act or any order, determination, instruction, directive or rule made in terms of this Act, or achieve the objectives of the Centre of this Act;

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- (c) require a reporting institution supervised or regulated by it and to whom the provisions of this Act apply, to report on that institution's compliance with this Act or any order, determination, instruction, directive or rule made under this Act in the form manner and within the period determined by the supervisory body;
- (d) issue or amend any licence, registration, approval or authorisation that the supervisory body may issue or grant in accordance with any Act, to include the following conditions –
  - (i) compliance with this Act;

- (ii) the continued availability of human financial, technological and other resources to ensure compliance with this Act or any order, determination or directive made under this Act; and
  
- (e) in making a determination in accordance with any Act applicable to it as to whether a person is fit and proper to hold office in a reporting institution, take into account any involvement, whether directly or indirectly, by that person in any non-compliance with this Act or any order, determination, instruction, directive or rule made in terms of this Act, or any involvement in any money laundering activity.
  
- (6) A supervisory body shall submit to the Centre, within such period and in such manner, as the Centre may prescribe, a written report on any action taken against any reporting institution in terms of this Act or any order, determination, directive, instruction, or rule made under this Act.

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(7) The Centre and each supervisory body shall co-ordinate the exercising of their powers and performance of their functions under this Act to ensure consistent application of the Act, and may for such purpose; enter into a written memorandum of understanding in respect thereof.

Amendment of  
section 44 of No.  
9 of 2009.

**11.** Section 44 of the principal Act is amended by repealing section 44 and replacing it with the following new section –

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.

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(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.

**12.** Section 46 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection –

Amendment of section 46 of No. 9 of 2009.

“(4) The records required under subsection (1) shall be kept by the reporting institution for a period of at least seven years or such longer period as the Centre may in writing require, from the date the relevant business or transaction was completed or following the termination of an account or business relationship, without prejudice to any other records required to be kept by or under any other written law, and shall be made available on a timely basis to competent authorities.

**13.** The Principal Act is amended by inserting the following new section immediately after section 47 –

Amendment of section 47 of No. 9 of 2009.

Obligation to register with the Centre.

**47A.** (1) All reporting institutions to which this Act applies shall register with the Centre within such period and in such manner as the Centre may prescribe.

(2) The registration of a reporting institution under sub section (1) shall be accompanied by such particulars as the Centre may require.

(3) The Centre shall keep and maintain a register of every reporting institution registered in terms of this section.

(4) A reporting institution shall notify the Centre, in writing, of any changes to the particulars furnished in terms of this section within 90 days of such change.

(5) A reporting institution that fails to register with the Centre as required by sub section (1) commits an offence.

Amendment of  
section 93 of No.  
9 of 2009.

**14.** Section 93 of the Principal Act is amended by inserting the following new sub section immediately after subsection (6) –

(7) The Court may –

- (a) before making a confiscation order, or
- (b) in the case of property in respect of which a restraining order was made, where that order was served in accordance with section 68, or in the case of property in respect of which a court order has been made authorizing the seizure of the property,

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set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for value to a person acting in good faith and without notice.