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**THE PROCEEDS OF CRIME AND ANTI-MONEY
LAUNDERING (AMENDMENT) ACT, 2021**

No. 16 of 2021

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

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, 2021.

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 “Deputy Director”;
- (b) in the definition of the term “authorised officer” by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”;
- (c) in the definition of “designated non-financial businesses or professions” by—
 - (i) inserting the following new paragraph immediately after paragraph (fa) —
 - (fb) advocates, notaries and other independent legal professionals who are sole practitioners, partners or employees within professional firms.
 - (ii) deleting the word “Minister” appearing in paragraph (d) and substituting therefor the words “Cabinet Secretary”
- (d) by deleting the definition of the term “Minister”;
- (e) in the definition of the term “supervisory body” by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.
- (f) in the definition of “financial institution”, by adding the following proviso at the end of paragraph (l)—

“Provided that this applies both to insurance underwriter and to insurance intermediaries including agents and brokers”;

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(g) by inserting the following new definitions in proper alphabetical sequence—

“Advisory Board” means the Asset Recovery Advisory Board established under section 55A;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

3. Section 24 of the principal Act is amended by deleting the word “Minister” wherever it appears and substituting therefor the words “Cabinet Secretary”.

Amendment of section 24 of No. 9 of 2009.

4. Section 25 of the principal Act is amended in—

Amendment of section 25 of No. 9 of 2009.

(a) subsection (1), by deleting the words “and a Deputy Director” appearing immediately after the word “Director-General”;

(b) subsection (2), by deleting the words “and the Deputy Director” appearing immediately after the word “Director-General”;

(c) subsection (3) by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”

(d) subsection (4), by deleting the words “or Deputy Director” appearing immediately after the word “Director-General”; and

(e) subsection (5), by deleting the words “and the Deputy Director” appearing immediately after the word “Director-General”.

5. Section 26 of the principal Act is amended

Amendment of section 26 of No. 9 of 2009.

(a) in subsection (1) by deleting the words “or the Deputy Director” appearing immediately after the word “Director General”; and

(b) by deleting the word “Minister” wherever it appears and substituting therefor the words “Cabinet Secretary”.

6. Section 27 of the principal Act is amended —

Amendment of section 27 of No. 9 of 2009.

(a) in subsection (1) by deleting the words “or Deputy Director” appearing immediately after the word “Director-General”;

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- (b) in subsection (2) by deleting the words “or Deputy Director” appearing immediately after the word “Director-General”; and
- (c) in subsection (1) and (2) by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

7. The principal Act is amended in section 28 (3) by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

Amendment of section 28 of No.9 of 2009.

8. The principal Act is amended by repealing section 30.

Repeal of section 30 of No. 9 of 2019.

9. Section 32 of the principal Act is amended in subsection (1) by deleting the words “the Deputy Director” appearing immediately after the word “Director-General”.

Amendment of section 32 of No. 9 of 2019.

10. Section 40 (1)(c) of the principal Act is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

Amendment of section 40 of No. 9 of 2009.

11. Section 42 of the principal Act is amended by deleting the word “Minister” wherever it appears and substituting therefor the words “Cabinet Secretary”.

Amendment of section 42 of No. 9 of 2009.

12. The principal Act is amended by inserting the following new section immediately after section 44—

Insertion of a new section into No. 9 of 2009.

Intervention by Centre.

44A. (1) Where the Centre, after consulting a reporting institution or a person required to make a report in terms of section 44, has reasonable grounds to suspect that a transaction or a proposed transaction may—

- (a) constitute money laundering and related activities; or
- (b) involve—
 - (i) the proceeds of crime or proceeds of unlawful activities or property which is connected to the proceeds of crime or unlawful activities and related activities; or

- (ii) the proceeds of, or property which is connected to an offence relating to the financing of terrorism and related activities; or
- (iii) property owned or controlled by or on behalf of, or at the direction of a person or entity identified or designated pursuant to the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2013 and related activities,

the Centre may, for purposes of achieving the objectives of the Act, direct the reporting institution or person, in writing, not to proceed with the transaction or proposed transaction or any other transaction in respect of the funds or property affected by that transaction or proposed transaction for a period not exceeding five working days as may be determined by the Centre, in order to allow the Centre to make the necessary inquiries concerning the transaction and, where the Centre considers it appropriate, to inform and advise an investigating authority, regulatory authority or tax agency.

(2) For the purposes of calculating the period of five working days in subsection (1), Saturdays, Sundays and proclaimed public holidays shall not be taken into account.

13. Section 45(6) of the principal Act is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

Amendment of section 45 of No. 9 of 2009.

14. Section 48 of the principal Act is amended—

Amendment of section 48 of No. 9 of 2009.

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- (a) by deleting the word “reporting” appearing immediately after the word “The” in the opening sentence; and
- (b) in paragraph (a) by inserting the words “advocates, notaries and other independent legal professionals who are sole practitioners, partners or employees within professional firms” immediately after the word “accountants”.

15. Section 49(1)(a) of the principal Act is amended by deleting the word “Minister” wherever it appears and substituting therefor the words “Cabinet Secretary”.

Amendment of section 49 of No. 9 of 2009.

16. Section 53 of the principal Act is amended—

Amendment of section 53 of No. 9 of 2009.

- (a) in subsection (2), by inserting the words “upon recommendation by the Advisory Board” immediately after the words “the Attorney-General shall”;
- (b) by inserting the following new subsection immediately after subsection (2) —

“(2A) The Agency Director shall hold office for a term of four years and shall be eligible for re-appointment for one further term of four years.”

- (c) by deleting subsection (3) and substituting therefor the following new subsection—
- (3) For a person to be appointed as the Agency Director, that person shall—

- (a) hold a degree in law, finance, accounting or any other relevant degree from a university recognised in Kenya;
- (b) have at least fifteen years work experience, of which at least five shall be in senior management;
- (c) meet such other requirements that may be specified by the Advisory Board.

17. Section 53A of the principal Act is amended—

Amendment of section 53A No. 9 of 2009.

- (a) in subsection (1), by inserting the words “and the Advisory Board” immediately after the words “the Salaries Remuneration Commission”.

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- (b) by inserting the following new subsection immediately after subsection (6)—

“(6A) For purposes of carrying out their functions under this Act, the Agency’s Counsel shall have the same privileges as State Counsel under the Office of the Attorney General or the ministry or department for the time being dealing with matters related to justice, in addition to any other powers they may have under this Act”.

- (c) in subsection (7), by deleting the word “Attorney-General” appearing immediately after the words “approval of the” and substituting therefor the words “Advisory Board”.

18. Section 54A of the principal Act is amended —

Amendment of section 54A of No. 9 of 2009.

- (a) by deleting subsection (1) and substituting therefor the following new subsection—

“(1) The National Assembly shall allocate adequate funds to the Agency to enable the Agency perform its functions under this Act and any other written law and the budget shall be a separate vote.”

- (b) in subsection (2), by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) not more than five percent of the total proceeds recovered or realized from any property seized or forfeited to the Government, as may be prescribed by the Cabinet Secretary;”

19. Section 54C of the principal Act is amended in subsection (5) by deleting the word “Agency” appearing immediately after the word “The” and substituting therefor the words “Advisory Board”.

Amendment of section 54C of No. 9 of 2009.

20. The principal Act is amended by inserting the following new sections immediately after section 55—

Insertion of new sections 55A, 55B, 55C, 55D, 55E, 55F and 55G in No. 9 of 2009.

Asset
Recovery
Advisory
Board.

55A. (1) There is established an advisory board to be known as the Asset Recovery Advisory Board which shall consist of —

- (a) the chairperson, who shall be appointed by the Cabinet Secretary from among members of the Advisory Board appointed under paragraphs (h) to (j);
 - (b) the Attorney-General;
 - (c) the Principal Secretary in the Ministry responsible for finance;
 - (d) the Governor of the Central Bank of Kenya;
 - (e) the Director General of the National Intelligence Service;
 - (f) the Director of Criminal Investigations;
 - (g) the Director General of the Centre;
 - (h) a representative of the Institute of Certified Public Accountants of Kenya;
 - (i) a representative of the Law Society of Kenya;
 - (j) a representative of the Estate Agents Registration Board;
 - (k) the Agency Director, who shall be an ex-officio member of the Advisory Board.
- (2) The bodies under subsection (1) (h) to (j) shall each nominate and submit to the Cabinet Secretary two names of persons of either gender.
- (3) The Cabinet Secretary shall appoint three persons from

among the persons nominated under subsection (2).

- (4) In appointing the members of the Advisory Board, under subsection (1) (h) to (j), the Cabinet Secretary shall take into account gender and regional balance.
- (5) A person shall be eligible for appointment to the Advisory Board under subsection (1) (h) to (j) if the person—
- (a) holds a degree in finance, accounts, economics or law from a university recognised in Kenya; and
 - (b) has knowledge and expertise in matters relating to money laundering, asset tracing and recovery.
- (6) A person appointed under subsection (1) (h) to (j) shall hold office for a period of three years and may be eligible for re-appointment for one further term.

Functions of the
Advisory Board.

55B. (1) The Advisory Board shall be responsible for—

- (a) advising and overseeing the Agency on the exercise of its powers and performance of its functions;
- (b) advising and overseeing the Agency on asset recovery policies and strategic priorities of the Agency;
- (c) advising and overseeing the Agency with respect to the administration of the Agency;
- (d) approving the annual budget of the Agency;

(e) approving the annual reports and financial statements of the Agency; and

(f) the expenditure of the Agency.

(2) The Advisory Board may establish such committees as may be necessary for the better carrying out of its functions under this Act.

Conduct of business of the Advisory Board.

55C. The business and affairs of the Advisory Board shall be conducted in accordance with the provisions of the Fifth Schedule, but subject thereto, the Advisory Board may regulate its own procedure.

Advisory Board may co-opt members.

55D. (1) The Advisory Board may co-opt into any of its committees such other persons whose knowledge and skills are necessary for the better performance of its functions under this Act.

(2) A person who has been co-opted into a committee of the Advisory Board may attend the meetings of the Advisory Board and participate in the deliberations thereof but shall not have a right to vote at the meetings.

Allowances of the members of the Advisory Board.

55E. The members of the Advisory Board shall be paid such allowances as the Cabinet Secretary may determine on the advice of the Salaries and Remuneration Commission.

Agency to facilitate the Advisory Board.

55F. The Agency shall provide the Advisory Board and any of its committees with such facilities and resources as may be required for the effective discharge of the functions of the Board or any of its committees.

Cabinet Secretary to make Regulations.

55G. (1) The Cabinet Secretary shall, in Regulations, prescribe the manner of

discharging the functions of the Advisory Board including the procedure at its meetings.

(2) Notwithstanding the generality of subsection (1), the Advisory Board shall regulate its own procedure.

21. Section 113 of the principal Act is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

Amendment of section 113 of No. 9 of 2009.

22. Section 121 of the principal Act is amended by deleting the word “Minister” wherever it appears and substituting therefor the words “Cabinet Secretary”.

Amendment of section 121 of No.9 of 2009.

23. The principal Act is amended by inserting the following new sections immediately after section 130—

Insertion of new sections 130A, 130B and 130C into No. 9 of 2009.

Rights and fundamental freedoms.

130A. All persons subject to this Act shall enjoy all rights and fundamental freedoms enshrined in the Constitution unless limited to the extent specified in Article 24 of the Constitution, this Act or any other Act.

Limitation of right to privacy.

130B (1) The right to privacy guaranteed under Article 31 of the Constitution is hereby limited under Article 24 of the Constitution only to the nature and extent contemplated under subsection (2).

(2) Where a person is suspected or accused of an offence under this Act—

- (a) the person’s home or property may be searched;
- (b) the person’s possessions may be seized;
- (c) information relating to that person’s financial, family or private affairs where required may be revealed; or

(d) the privacy of a person's communications may be investigated or otherwise interfered with.

(3) A limitation of a right under subsection (1) shall apply only for the purpose of the prevention, detection, investigation and prosecution of proceeds of crime, money laundering and financing of terrorism.

Transitional provision.

130 C. The Agency Director shall serve for the remaining period of the contract or the period stipulated in section 53(2A), whichever is longer.

24. Section 132 of the principal Act is amended by deleting the word "Minister" and substituting therefor the word "Cabinet Secretary".

Amendment of section 132 of No. 9 of 2009.

25. Section 134 of the principal Act is amended by deleting the word "Minister" wherever it appears and substituting therefor the words "Cabinet Secretary".

Amendment of section 134 of No.9 of 2009

26. The First Schedule to the principal Act is amended in paragraph 1 by adding the following new subparagraphs immediately after subparagraph (h)—

Amendment of First Schedule to No. 9 of 2009.

- (i) Law Society of Kenya.
- (j) Sacco Societies Regulatory Authority.

27. The Fifth Schedule to the principal Act is amended—

Amendment of the Fifth Schedule to No. 9 of 2009.

- (a) in the title to the schedule by inserting the words "and Advisory Board" immediately after the word "Board";
- (b) in paragraph 1 by inserting the words "or Advisory Board" immediately after the word "Board" wherever it appears;
- (c) in paragraph 2 by inserting the words "or Advisory Board" immediately after the word "Board" wherever it appears;

- (d) in paragraph 3 by inserting the words “or Advisory Board” immediately after the word “Board”;
- (e) in the marginal note to paragraph 4 by inserting the words “or Advisory Board” immediately after the word “Board” ;
- (f) in paragraph 5 by inserting the words “or Advisory Board” immediately after the word “Board” wherever it appears;
- (g) in paragraph 6 by inserting the words “or Advisory Board” immediately after the word “Board” wherever it appears;
- (h) in paragraph 7 by inserting the words “or Advisory Board” immediately after the word “Board” wherever it appears;
- (i) in paragraph 8 by inserting the words “or Advisory Board” immediately after the word “Board” wherever it appears;