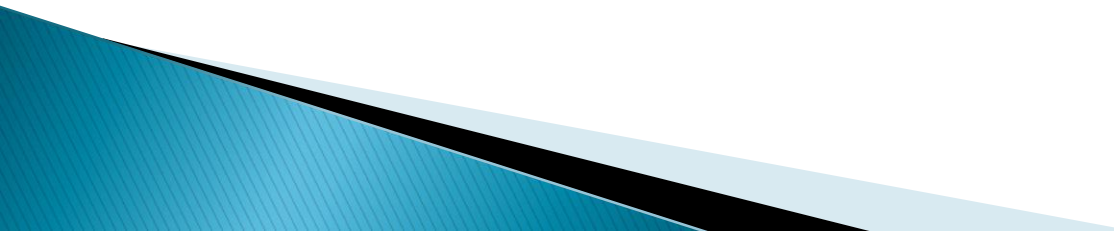


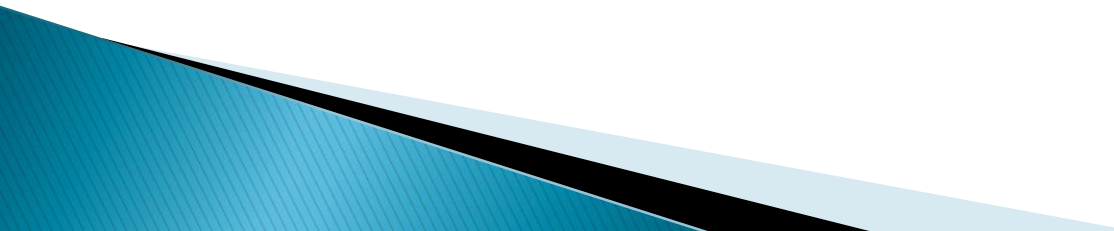
# INVESTIGATING MONEY LAUNDERING AND PROCEEDS OF CRIME

*Presented By*  
*Muthoni Kimani*  
*Director Assets Recovery Agency*

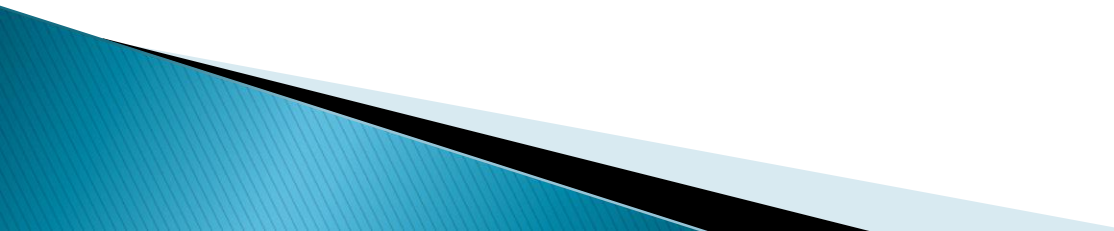
# Outline

- ▶ Introduction
  - ▶ Legal framework and institutional framework for AML/CFT
  - ▶ Investigations into money laundering
  - ▶ Role of accountants in anti-money laundering and financial crime investigations
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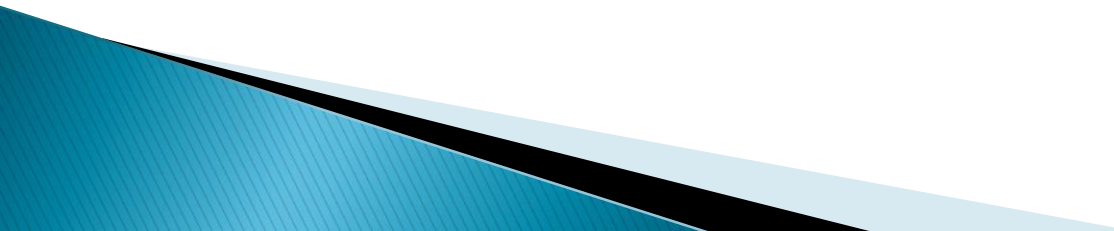
# What is money laundering?

- ▶ Money laundering is the process by which funds derived from criminal activity (“dirty money”) are given the appearance of having been legitimately obtained, through a series of transactions in which the funds are cleaned. Its purpose is to provide a legitimate cover for the source of the money.
  - ▶ Money laundering is a global phenomenon that affects all countries to varying degrees. By its very nature, it is a hidden activity and involves various actor and is a white collar crime.
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# Cont'

- ▶ It is important for auditors conducting forensic audit to understand what money laundering entails, the International and domestic legal and institutional framework to combat money laundering .
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# International Conventions

- ▶ Article 2(6) provides that any treaty or convention ratified by Kenya forms part of the Kenya law.
  - ▶ Kenya is a member of FATF the global standard setting body on AML/CFT and has signed several international instruments on combating organized crime, suppression and countering terrorism/ CVE
  - ▶ Kenya is under obligation to implement these international agreements and the President is required under Article 132(iii) to submit a report to Parliament on the progress made in fulfilling the international obligations .
- 

# International & Regional Conventions



Financial Action Task Force 40  
Recommendations on AML/CFT



United Nations Convention Against  
Corruption(UNCAC)



United Nations Convention Against  
Transnational Organised Crime(UNTOC)



United Nations Conventions for Countering  
Terrorism and Terrorist Finance

# International & Regional Conventions



The Harare and London Scheme for Mutual Assistance in Criminal Matters within the Commonwealth (MLA)



Multilateral Convention on Mutual Administrative Assistance in Tax Matters, February 2016 (Tax evasion)

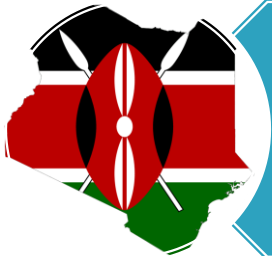


East Africa Community Customs Management Act, S.10 (Tax evasion) and East African Police Chief Cooperation Organization to combat crime



Bilateral Treaties between FIUs and Tax Authorities on mutual cooperation

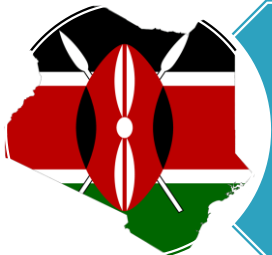
# Domestic Legal framework



Proceeds of Crime and Anti-Money  
Laundering Act Cap 59B(POCAML)



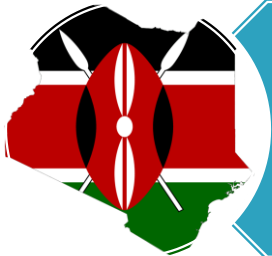
Prevention of Terrorism  
Act,2012(POTA)



Prevention of Organized Crime  
Act(POCA)



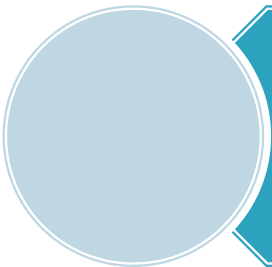
# Domestic Legal framework



The Banking Act Cap  
488



Mutual Legal Assistance  
Act 2011

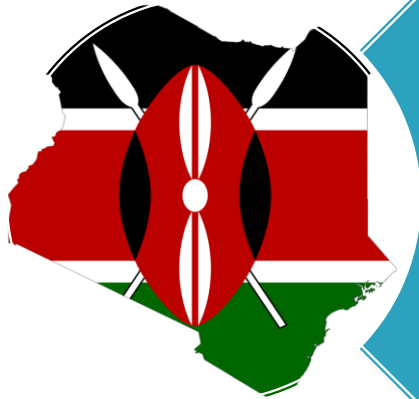


Income Tax Act Cap  
470

# Domestic Legal framework



Tax Procedures  
Act, 2015



Companies  
Act 2015

# POCAML

- ▶ The POCAML is the principal legislation to combat money laundering and provide for measures for recovery of proceeds of crime.
- ▶ The Act establishes competent authority for financial intelligence ,Anti- Money Laundering Advisory Board and the Assets Recovery Agency

# Cont..

- ▶ POCAMLA establishes institutions such as;

## **Financial Reporting Centre (FRC)-Section 21**

is an independent body whose principal objective is to assist in the identification of the proceeds of crime and combating money laundering.

## **Anti- Monetary Laundering Advisory Board- Section 49**

The Board advise the Director generally on the performance of his functions and to perform any other duty as prescribed to be performed by the Board under POCAMLA.

## **Asset Recovery Agency (ARA)**

# Assets Recovery Agency

- ▶ Asset Recovery Agency (ARA) is established as a body corporate under section 53(1) of the Proceeds of Crime & Anti-money Laundering (Amendment) Act, 2017
- ▶ The Agency is headed by a Director appointed by the Attorney General-section 53(2) of POCAMLA.
- ▶ Role is to trace, freeze, seize and confiscate assets which are the proceeds of crime .
- ▶ Section 2 of POCAMLA defines proceeds of crime to include any property or economic advantage derived or realized, directly or indirectly, as a result of or in connection with an offence.

# Reporting institutions

- ▶ Are financial institutions and designated non financial business and professions include; casinos, real estate agents, precious metal dealers, accountants, NGOs or any other business in which the risk of ML exist as the Minister on the advice of the FRC may declare.
- ▶ The FRC has administrative powers to impose a fine of 5 million on a reporting institution which is in breach of / or failing to comply with directions or rules o

# POCAMLA

- ▶ Money laundering is an offence under **Section 3 of POCAMLA.**
- ▶ Section 3 of POCAMLA defines Money Laundering as the process of using the proceeds of crime in an agreement, engagement or in any arrangement or transaction that;
  - i. Conceals or disguises the nature, source, location, disposition, movement or ownership of the property.
  - ii. Assists or enables a person who has committed an offence to avoid prosecution.
  - iii. Removes or diminishes the value of the property acquired directly or indirectly as a result of commission of an offence.

# Predicate offences

- ▶ **The Penal Code Offences**

- ▶ **The Anti-counterfeit Act 2008.**

- Part V, section 32 of the Act, provides for the offence of possession, manufacture, sell or importing of counterfeit goods.

- ▶ **The Counter-trafficking Persons Act 2010**

- Part 11 of the Act provides for the offences of tracking of persons and related offences

- **The Narcotic Drugs and Psychotropic Substance(Control) Act**

- Part 11 of the Act provides for the offence of being in possession or trafficking of narcotics drugs.

- **The Wildlife Conservation and Management Act no 47 of 2013**

- Part XI provides for various offences.

**Anti-corruption and Economic Crimes Act**

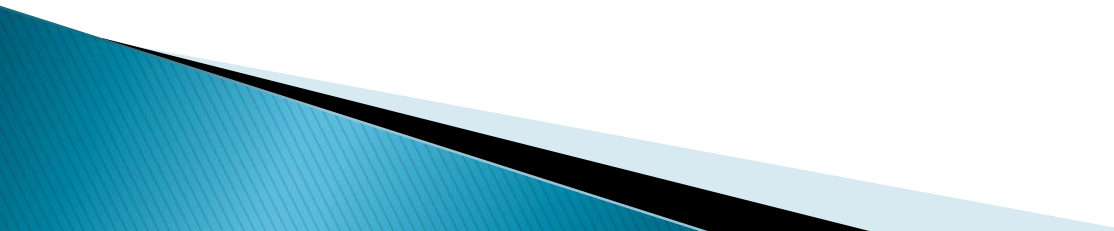
**Bribery Act**

**Tax evasion**

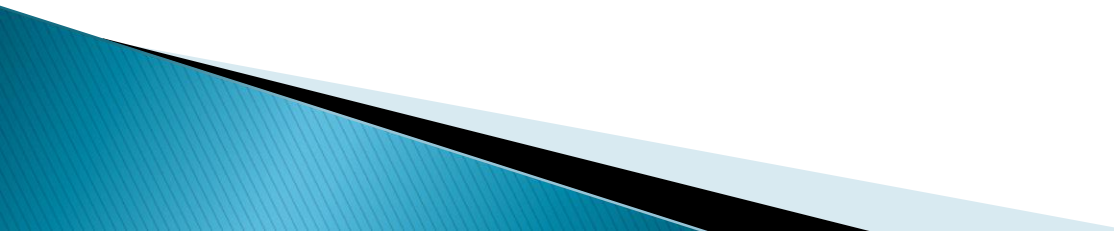




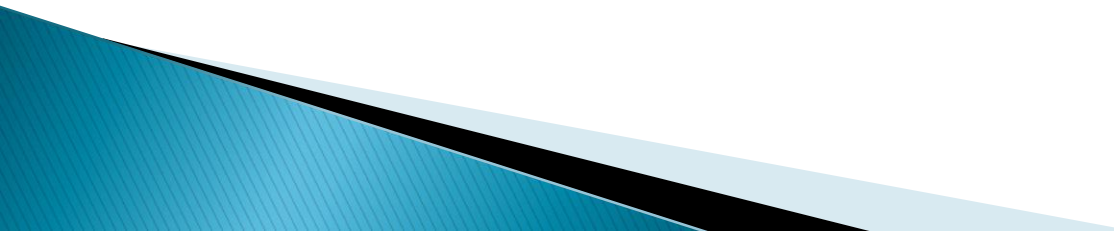
# Forensic Investigations in ML

- ▶ Crime investigation mainly involves forensic auditing of accounts and documents, examination of bank statements and various records and statements filed by the companies or Govt. Agencies.
  - ▶ Forensic auditing is a technique to legally determine whether accounting transactions are in consonance with various accounting, auditing and legal requirements and eventually determine whether any crime has taken place.
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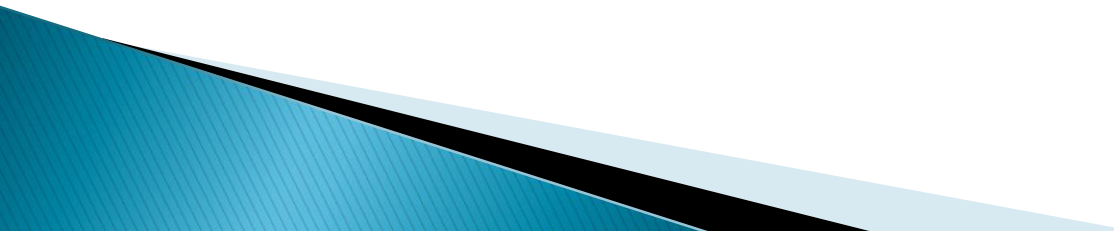
# Cont'

- ▶ Forensic auditing is a blend of accounting, auditing and investigative skills.
  - ▶ Forensic examination of documents is also required to be done to verify the signature, handwriting etc
- 

# Steps Involved In Forensic Auditing

- ▶ Detailed examination of financial statements and books of accounts.
  - ▶ Examination of related party transactions and Inter-corporate Deposits as disclosed in the financial statements
  - ▶ Auditing of off Balance sheet items.
- 

# Role of accountants in AML and financial crime investigations

- ▶ Report suspicious transactions
  - ▶ Maintain and keep proper accounting records and when required be made available to law enforcement agencies.
  - ▶ Undertake customer due diligence to identify the beneficial owner
  - ▶ Verify the legitimacy of funds.
  - ▶ Duty to ensure that financial statements are true and fair view of legal entities
- 

# QUESTIONS??

