



REGIONAL SENSITIZATION FORUM – WESTERN BRANCH

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Milimani Resort, Kakamega

INTRODUCTION & OVERVIEW OF THE LEGAL FRAMEWORK

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Government of Kenya
FRC



**Anti-Money
Laundering Guide
for Accountants in
Kenya**

OBJECTIVES

At the end of the session...



- Define money laundering and terrorist financing
- Explain the three (3) phases of money laundering
- Describe a company's obligations in preventing money laundering
- Recognize your role in preventing money laundering
- Describe your (and your company's) reporting obligations
- Understand the AML legal framework including sanctions & penalties for non-compliance

KES 560 billion

lost to corruption 'scandals' since 2013 – Kenya media reports

US\$1 trillion

in bribes – UN 2018

US\$2.6 trillion

stolen public funds – UN 2018

US\$1.3 trillion

spent fighting Financial Crime – Refinitiv 2019

BACKGROUND



The Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), 2009 and its regulation (the proceeds of crime and anti-money laundering Regulations, 2013) makes it mandatory for reporting institutions report any transaction related to money laundering to the Financial Reporting Centre (FRC).

ICPAK, being a supervisory body under the Act, has prepared this document to provide guidance to Professional Accountants engaged in triggering activities as defined in under POCAMLA (Section 48) when performing their duties.

Objective of the Guide



- ❑ The guideline is designed to reduce the possibility of the accountancy profession being knowingly or unknowingly used for purposes connected with an offence involving proceeds of crime, fraud, theft or money laundering as defined under POCAMLA.



About the Guide



Triggering activities - To whom is this guide applicable?

This Guideline is intended for use by any persons registered as a professional accountant in Kenya, whether in public practice or in business, together with their practices or employing organizations when preparing or carrying out transactions for their clients in the following situations:

- ☐ buying and selling of real estate;
- ☐ managing of client money, securities or other assets;
- ☐ management of bank, savings or securities accounts;
- ☐ organization of contributions for the creation, operation or management of companies; or
- ☐ creation, operation or management of buying and selling of business entities.

MONEY LAUNDERING



- **Money laundering** is a process whereby illegally obtained money is filtered through a series of transactions that eventually make the money appear to be obtained from “clean” or legal activities.
- The purpose is to hide the true origin of the money and/or to avoid tax reporting/payment, increase their profits.



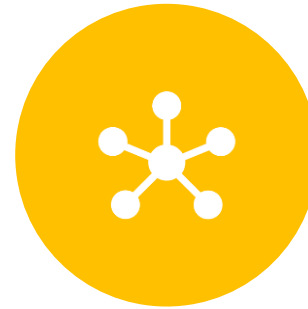
3 WAYS OF MONEY LAUNDERING



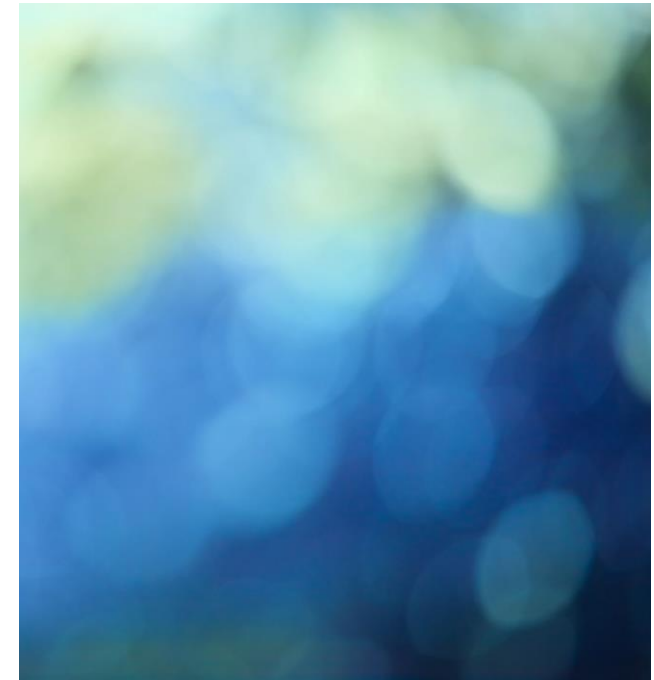
Placement



Layering



Integration

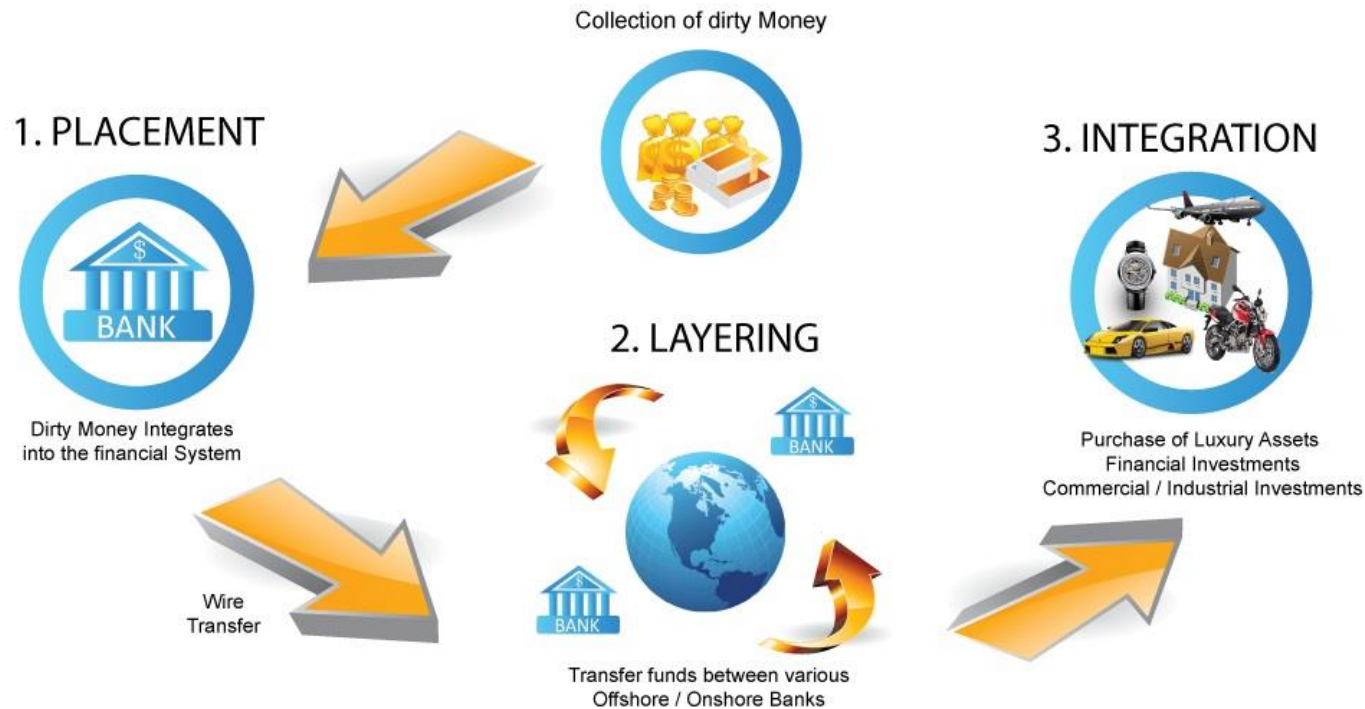


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HOW IS MONEY LAUNDERED



A TYPICAL MONEY LAUNDERING SCHEME



1.Placement

Injecting ill-gotten proceeds, including cash, into the financial system through transactions such as bank deposits or the purchase of certain capital markets/insurance products

2.Layering

Attempting to complicate the audit trail in a bid to disguise the true nature of the funds by using numerous layers of financial transactions – investing in unit trusts, taking out insurance, etc.

3.Integration

The introduction of the funds into the economy, seemingly as proceeds from a legitimate business activity.

NOTE: It is during the layering and integration stages where accountants are highly at risk of being knowingly or unknowingly used as accomplices of money laundering acts. It is also important to note that money laundering does not necessarily follow the three stages in any specific order.

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TERRORIST FINANCING



Terrorist financing involves the use of money (which may be lawfully obtained) to fund illegal activities, such as

- The terrorist events that occurred in the US on September 11, 2001*
- Dusit Attack that happened on 15th January 2018



Note: Because the transactions often have a legitimate origin and can involve small amounts of money, terrorist financing can be more difficult to identify than money laundering activities.

- As a result, paying attention to suspicious activities is important.

PURPOSE OF AML PROGRAMMES



PREVENT



DETECT



REPORT

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AML LEGISLATIVE FRAMEWORK



This guide is not intended to be exhaustive and should be read together with local and international Acts and Regulations including:

- The Proceeds of Crime and Anti Money Laundering Act, 2009 (POCAMLA);
- The Prevention of Terrorism Act, 2012 (POTA);
- The Data Protection Act, 2019 (DPA);
- The ICPAK Code of Ethics for Professional Accountants;
- Financial Action Task Force (FATF) 40 Recommendations;
- FATF-style regional bodies such as Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) guidelines and topology reports;
- The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury actions; and
- Egmont Group of Financial Intelligence Units (FIUs) guidelines and topology reports.

MONEY LAUNDERING & RELATED OFFENCES



- S.3 –Knowingly **entering into agreements** that have the effect of concealing or disguising property or the proceeds of crime-whether or disguising property or the proceeds of crime is legally enforceable.
- S.4 – **Acquisition, use or possession** of property that is proceeds of crime.
- S.5 – Wilfully **failure to report** suspicious transaction to FRC.
- S.7 – **Financial promotion** of an offence (reverse ML) * Knowingly transporting, transmitting, transferring or receiving monetary instrument with intent to commit an offence.
- S.8 –**Tipping off** * knowingly disclosing to clients that a report is being made to FRC.
- S.9 – **Misrepresentation** * Knowingly making false, fictitious or fraudulent statement or representation.
- S.10- **Malicious reporting** * Wilfully giving false information to the FRC or an authorised officer.
- S.11 – Failure to comply with requirements to:
 - *Monitor and report suspected ML activity (S.44)
 - *Verify customer identity (S. 45)
 - *Establish and maintain customer records. (S.46)
 - * set out regulations



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STIPULATED PENALTIES



OFFENCE	CUSTODIAL SENTENCE (not exceeding)	FINE (not exceeding)	OTHER PENALTY
• Contravening S. 3,4 or 7	14 years imprisonment	Natural persons-Kshs. 5M Corporate-the higher of Kshs. 25M or value of the property involved.	
• Contravening S. 5 or 8	7 years imprisonment	Natural persons-Kshs. 2.5M Corporate-the higher of Kshs. 10M or value of the property involved	
• Contravening S. 9 or 10	2 years imprisonment	Natural person- Kshs 1M Corporate- the higher of Kshs 5M or Value of the Property involved.	
• Contravening S. 11 (1)		10% of the amount of the monetary instruments involved in the offence	



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OBLIGATIONS OF FINANCIAL INSTITUTIONS



- According to POCAMLA and in order to combat money laundering, all financial institutions **MUST**;
- Undertake **AML Risk Assessment**.
- Have effective **“KYC”** (Know Your Client) processes
- Adopt an **Anti-Money Laundering Policy & Rules**, to be observed by all employees and **train employees**
- Appoint a **money laundering officer** (Must be in senior management)
- Have adequate and effective **record-keeping** procedures
- Report any **suspicious** and **unusual** transactions
- Report **cash transactions** above US\$10, 000 or currency equivalent within 7 days



Consequences – Indv.



Travel restrictions

For family and associates

Account opening challenges

For family and associates

Reputational loss

Difficult removing one's name in the financial database.

Jail Term

lost to corruption 'scandals' since 2013 – Kenya media reports

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Consequences – Corp.



Reputational Risk

Loss of links with international partners.

Operational Risk

Cannot attract talent, fail to pay staff and suppliers

Financial Risk

Fines and penalties due to conviction

Concentration Risk

Firm may collapse if its key financier is sanctioned.

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Thank You!





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