

*A Bill Supplement to the Zanzibar Government Gazette
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NOTICE

The Bill following hereunder shall be presented before the House of Representatives for the first, second and third reading which will start its session on 16th February, 2022 and is gazetted for the public notice incorporating together with their objects and reasons.

ZANZIBAR
2nd February, 2022

(Eng. Zena Ahmed Said)
*Secretary to the Revolutionary
Council and Chief Secretary*

A BILL

for

**AN ACT TO AMEND THE ANTI MONEY LAUNDERING
AND PROCEEDS OF CRIME ACT, NO. 10 OF 2009**

ENACTED by the House of the Representatives of Zanzibar.

**PART ONE
PRELIMINARY PROVISIONS**

Short title
and
Commence-
ment.

1. This Act may be cited as the Anti Money Laundering and Proceeds of Crime (Amendment) Act, 2022 and shall come into operation immediately after being assented to by the President and published in the Gazette.

Construction.

2. This Act shall be read as one with the Anti Money Laundering and Proceeds of Crime Act, No. 10 of 2009 which in this Act shall be referred to as the “Principal Act”.

**PART TWO
AMENDMENT PROVISIONS**

Amendment
of section 2.

3. Section 2 of the Principal Act is amended by:

- (a) adding the interpretation of new words in their alphabetical order as follows:

“Bank” has the meaning ascribed to it under the Bank of Tanzania Act;

“bearer negotiable instrument” means a monetary instrument in bearer form such as:

- (a) traveler’s cheques;
- (b) negotiable instruments including cheques, promissory notes and money orders that are either in bearer form, endorsed without restriction, made out to a fictitious payee or otherwise in such form that title to that instrument passes upon delivery;
- (c) incomplete instruments such as cheques, promissory notes and money orders signed, but with the payee’s name omitted;

“bearer shares” means negotiable instruments that accord ownership in a legal person to the person who possess the bearer share certificate;

“beneficial owner” means an individual who ultimately owns or controls the customer, an individual on whose behalf a transaction or activity is conducted, an individual who exercises ultimate effective control over a body corporate, a beneficiary of an insurance policy or other investment linked insurance policy and includes individuals as may be determined under section 10B;

“business relationship” means a business, professional or commercial arrangement between a reporting person and a customer that involves setting up a customer account where transactions are conducted frequently, habitually or on a regular basis;

“competent authority” means any public entity with designated responsibilities for combating money laundering, terrorist financing or proliferation financing including regulator, customs authority, law enforcement agency, FIU, National Committee and licensing or registration authority;

“customer” means any individual, legal person or legal arrangement that receives goods, product or service from a reporting person for exchange for money or any other consideration;

“customer due diligence” includes establishing the identity of the customer, a beneficial owner or a person purporting to act on behalf of the customer and:

- (a) in the case of a customer, doing any or all of the following, depending on the perceived money laundering, terrorist financing or proliferation financing risk:
 - (i) verifying the identity of the customer using reliable, independent source documents, data or information;

- (ii) understanding, and where appropriate, obtaining the required information on the nature and purpose of the business relationship;
 - (iii) understanding the occupation of the customer;
 - (iv) understanding the ownership and control structure of the customer;
 - (v) ascertaining the source of customer's income and funds;
 - (vi) establishing the identity of beneficial owners and taking reasonable measures to verify their identities using reliable, independent source documents, data or information; and
 - (vii) ascertaining that any person purporting to act on behalf of the customer is so authorized and to identify and verify the identity of that person using reliable, independent source documents, data or information;
- (b) in the case of a beneficial owner, doing any or all of the following, depending on the perceived money laundering, terrorist financing or proliferation financing risk:
- (i) taking reasonable measures to verify the identity of the beneficial owner using reliable, independent source documents, data or information;
 - (ii) understanding the occupation of the beneficial owner;
 - (iii) ascertaining the source of income and funds of the beneficial owner;
- (c) in the case of a person purporting to act on behalf of the customer, doing any or all of the following, depending on the perceived money laundering, terrorist financing or proliferation financing risk:

- (i) verifying the identity of that person using reliable, independent source documents, data or information;
- (ii) understanding the occupation of that person;
- (iii) understanding the relationship between that person and the customer; and
- (iv) ascertaining that person is so authorized to act on behalf of the customer;

“funds” means asset of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, legal documents or instruments however acquired in any form, including electronic or digital, evidencing title to, or interest in such assets;

“financial institution” means any person that conducts a business on either one or more of the following activities or operations:

- (a) acceptance of deposits and other repayable funds from the public including private banking and other repayable funds from the public, issuing and managing means of payment, trading in foreign exchange or transferable securities or decentralized virtual currencies exchangers, wallet providers, payment processors or senders, and other virtual currency business models;
- (b) lending including consumer credit, mortgage credit, factoring with or without recourse, finance of commercial transactions including forfeiting;
- (c) financial leasing;
- (d) mortgage and house financing;
- (e) money or value transfer services without extending to persons that solely provide messaging or other support systems for transmitting funds;

- (f) issuing and managing means of payment including credit cards, debit cards, money orders, cheques, traveler's cheques, money, bankers' drafts, electronic money;
- (g) financial guarantees and commitments;
- (h) dealing in gold bullion;
- (i) trading in:
 - (i) money market instruments including cheques, bills, certificates of deposit, derivatives;
 - (ii) foreign exchange;
 - (iii) exchange, interest rate and index instruments;
 - (iv) transferable securities; and
 - (v) commodity futures trading;
- (j) securities dealership, brokerage and securities market intermediation;
- (k) individual and collective portfolio management;
- (l) trusteeship and management of collective investment schemes;
- (m) safekeeping and administration of cash or liquid securities on behalf of other persons;
- (n) investing, administering or managing funds or money on behalf of other persons;
- (o) pension fund management;
- (p) insurance, insurance agency and brokerage;
- (q) money and currency changing;

“legal arrangement” means a trust or other similar arrangements.

“money laundering reporting officer” means an individual employed or otherwise engaged by a reporting person to receive reports from employees of the reporting person in relation to activities that may constitute money laundering, terrorist financing or proliferation financing;

“occasional transaction” means an exchange between a reporting person who provides goods, product or service and a customer who pays for the goods, product or service in monetary terms or any other consideration in which the exchange takes place outside a business relationship;

“politically exposed person” means an individual who has been entrusted with a prominent public function domestically or in a foreign country or a person entrusted with a prominent function by an international organization, such an individual includes respective family members and close associates;

“proliferation financing” means an act by any person who by any means directly or indirectly, renders help or provides in whole or in part any assets, funds, economic resources, technology or services to any proliferation of weapons of mass destruction course or to any person or jurisdiction or for the benefit of any person designated by the United Nations Security Council under Chapter VII of the Charter of the United Nations (pursuant to Security Council Resolutions that relate to the prevention and disruption of the financing of proliferation of weapons of mass destruction) to acquire, possess, broker, manufacture, develop, store, transport, convey, transfer, import or export nuclear, chemical or biological weapons or dual use goods, their means of delivery or related materials;

“reasonable measures” means appropriate measures which are commensurate with the money laundering, terrorist financing or proliferation financing risk;

“risk assessment” means identifying, assessing and understanding risks;

“senior management” means individuals within a body corporate at the highest level of management that have the day to day task of managing that body corporate;

“trust and company service provider” means any person, save for business licensing and registration authorities that, by way of its business, provides any of the following services:

- (a) the formation of body corporates;
- (b) acting as, or arranging for another person to act as, a director, secretary or a similar position in relation to a body corporate;
- (c) providing a registered office, business address, correspondence or administrative address and other related services for body corporates;
- (d) acting as, or arranging for another person to act as, a trustee of a trust or a similar legal arrangement;
- (e) acting as, or arranging for another person to act as, a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in accordance with the laws of United Republic of Tanzania or subject to equivalent international standards;

“virtual asset” means a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes and is recognized by the Government and does not include digital representations of fiat currencies, securities and other financial assets that are already covered in the laws of Zanzibar;

“virtual asset service provider” means any person that conducts one or more of the following activities or operations for or on behalf of a customer:

- (a) exchange between virtual assets and fiat currencies;
- (b) exchange between one or more forms of virtual assets;
- (c) transfer of virtual assets;
- (d) safekeeping or administration of virtual assets or instruments enabling control over virtual assets; and
- (e) participation in and provision of financial services related to an issuer’s offer or sale of a virtual asset.”

- (b) deleting the meaning of the words “serious offence”, “bank”, “law enforcement agency”, “regulator”, “reporting person”, “police officer” and “specified offence” and replace them with the following new words:

“bank” has the meaning ascribed to it under the Banking and Financial Institutions Act;

“law enforcement agency” means the Tanzania Police Force, Zanzibar Anti-Corruption and Economic Crimes Authority, Tanzania Immigration Service, Tanzania Revenue Authority, Zanzibar Revenue Board, the Zanzibar Drugs Control and Enforcement Authority and any other investigative agency authorized to conduct criminal investigations;

“investigation officer” means any member of the police force of or above the rank of corporal and any other officer authorized by relevant laws to undertake criminal investigations;

“regulator” includes, the:

- (a) Bank of Tanzania;
- (b) Tanzania Insurance Regulatory Authority;
- (c) Registrar of Cooperatives Societies;
- (d) Registrar of Societies;
- (e) Registrar of Political Parties;
- (f) Zanzibar Law Society;
- (g) Tanzania Communication Regulatory Authority;
- (h) Zanzibar Business and Property Registration Agency;
- (i) Zanzibar Investment Promotion Authority; and
- (j) any other regulatory authority or agency which the Minister may, by order published in the Gazette specify;

“reporting person” means:

- (a) financial institution;
- (b) real estate agent, accountant, auditor, tax advisor, dealer in work of arts;
- (c) dealer in precious metals and stones;
- (d) advocate, notary and other independent legal professional when:
 - (i) assisting clients in preparing or executing transactions involving:
 - (aa) the purchase or sale of real property or commercial enterprises;
 - (bb) management of funds, securities or other assets which belong to a client;

- (cc) the opening or management of bank accounts, savings accounts or portfolios;
- (dd) the organization of contributions required to create, manage or direct corporations or legal entities;
- (ee) the creation, management or direction of corporations or legal entities; and
- (ff) the buying or selling of business entities;
- (ii) acting on behalf of a client in any financial or real estate transaction;
- (e) auctioneer;
- (f) trust and company service provider;
- (g) credit reference bureau;
- (h) motor vehicle dealer;
- (i) clearing and forwarding agent; and
- (j) any other person who the Minister may, by notice published in the Gazette, specify;

“serious offence” means an offence against provisions of any law in Zanzibar or in a foreign country for a conduct which, had it occurred in Zanzibar would constitute a serious offence, the punishment of which is either death or imprisonment for a period of not less than twelve months and includes any other offence in which property has been used or proceeds generated or benefit derived;

“specified offence” means serious offence;

Repeal and replacement of the heading of Part III.

4. The heading of the Part III of the Principal Act is repealed and replaced with a new heading as follows:

**“PART III
ANTI-MONEY LAUNDERING, COUNTER TERRORIST
FINANCING AND COUNTER PROLIFERATION
FINANCING SUPERVISION”**

Repeal and replacement of section 10.

5. Section 10 of the Principal Act is repealed and replaced with a new section 10 as follows:

“Conducting risk assessments. **10.-(1)** Risk Assessments on money laundering, terrorist financing and proliferation financing shall be conducted in Zanzibar.

(2) Risk assessments shall entail identifying, assessing and understanding risks at the national, sectoral and institutional level and apply commensurate risk mitigation measures.

(3) The risk assessments shall be conducted by competent authorities and reporting persons on anti-money laundering, counterterrorist financing and counterproliferation financing and be approved by senior management.

(4) In conducting risk assessments, the person or institution may seek assistance, data or information from any other person within or outside Zanzibar.

(5) There shall be mechanisms in place to provide and share with relevant stakeholders, information from risk assessments for awareness creation to:

- (a) prioritize the allocation of resources;
- (b) help in mitigating the associated risks; and
- (c) help institute implementation of adequate measures to prevent money laundering, terrorist financing and proliferation financing.

(6) Reporting persons shall conduct money laundering, terrorist financing and proliferation financing risk assessments associated with:

- (a) new and existing customers, countries or geographic areas, products, services, transactions and delivery channels;
- (b) new or developing products, business practices, services, technologies and delivery channels prior to their launch or use;
- (c) existing products, business practices, services, technologies and delivery channels which have undergone changes, prior to their continued use; and
- (d) the use of new or developing technologies for both new and pre-existing products.

(7) Subject to the provisions of subsection (6) of paragraph (d) of this section, new products shall include any transfers within decentralized convertible virtual currencies or assets networks, person to person transfers involving hosted wallet providers, large value virtual currency payments or assets transfer, mobile payments and internet-based payments services.

(8) Subject to any relevant law allowing the use of virtual currencies or assets, when conducting risk assessments with respect of virtual currencies or virtual assets, the reporting persons shall pay particular attention to the risks posed by the nodes or points of intersection that are used to move value into and out of fiat currencies and focus the efforts on identifying higher risks convertible virtual currencies or assets.

(9) Reporting persons shall have appropriate mechanisms to provide to competent authorities' results, findings and other information on risk assessments conducted under subsection (6) of this section.

(10) Competent authorities and reporting persons shall:

- (a) have documented policies, controls and procedures which are approved by senior management to manage and mitigate the risks identified under subsection (1) and (6) of this section;
- (b) ensure that the level of detail of the documented policies, controls and procedures in the case of reporting persons are commensurate with the size, structure and complexity of the business of the reporting person;
- (c) monitor and audit the implementation of policies, controls and procedures;
- (d) regularly review and update the policies, controls and procedures and document such reviews and updates; and
- (e) take enhanced measures to mitigate the risks where higher risks are identified.

(11) The risk assessments referred to under subsections (1) and (6) shall be documented and updated at a frequency commensurate with the identified risks at least once a year.

(12) The FIU or regulator shall provide guidance to competent authorities and reporting persons on conducting risk assessments on money laundering, terrorist financing and proliferation financing.”

Addition of new sections 10A, 10B and 10C.

6. The Principal Act is amended by adding new sections 10A, 10B and 10C immediately after section 10 as follows:

“Risk mitigation measures and allocation of resources according to risks.

10A. Subject to the risks identified under section 10:

- (a) a regulator shall effectively monitor reporting persons under its purview and take the necessary

measures to ensure that the risks are managed, mitigated and enforce anti-money laundering, counter terrorist financing and counter proliferation financing compliance;

- (b) competent authorities and reporting persons may apply in a simplified way some of the anti-money laundering, counter terrorist financing and counter proliferation financing measures based on proven low risk of money laundering, terrorist financing or proliferation financing;
- (c) competent authorities and reporting persons may apply simplified measures to manage and mitigate the risks, if the risk assessments have identified low risk areas and there is no suspicion of money laundering, terrorist financing or proliferation financing;
- (d) counter measures applied shall be proportionate to the identified risks and explanations shall be made by competent authorities and reporting persons on their proportionality to the risks on their own motion or when called upon by the appropriate authority.”

“Determination of beneficial owner.

10B. A person shall be considered to be a beneficial owner where:

- (a) in the case of a customer being a legal person:
 - (i) an individual who ultimately owns or controls the legal person through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that legal person and such ownership, ownership interest or control also includes possession of bearer shares, the ability to appoint or remove the majority of board members, the chief executive officer or senior management;

- (ii) a shareholding of five percent or more in the legal person or an ownership interest of five percent or more in the legal person held by an individual shall be an indication of direct ownership or a sufficient percentage of the shares or voting rights or ownership interest in that legal person or a shareholding of five percent or more or an ownership interest of five percent or more in the legal person held by a legal person, which is under the control of an individual, or by multiple legal persons, which are under the control of the same individual, shall be an indication of indirect ownership;
 - (iii) if, after having exhausted all possible means and provided there are no grounds for suspicion of money laundering, terrorist financing or proliferation financing, no individual under subparagraph (i) is identified, or if there is any doubt that the individual identified is the beneficial owner, the individual who hold the position of senior managing official shall be considered as a beneficial owner;
- (b) in the case of a customer being a trust:
 - (i) the settlor, trustee or the protector;
 - (ii) the beneficiaries, or where the individual benefiting from the trust have yet to be determined, the class of individuals in whose main interest the trust is set up or operates;
 - (iii) any other individual exercising ultimate control over the trust by means of direct or indirect ownership or by other means;
- (c) in the case of a customer being any other legal arrangement, the individual holding equivalent or similar positions to those referred to in paragraph (b).”

“Report-
ing person
to conduct
customer due
diligence.

10C.-(1) A reporting person shall:

- (a) conduct customer due diligence in accordance with identified risks:
 - (i) before establishing a business relationship;
 - (ii) before carrying out an occasional transaction;
 - (iii) when money laundering, terrorist financing or proliferation financing is suspected;
 - (iv) when the veracity or adequacy of documents, data or information previously obtained for the purposes of customer due diligence is doubted; or
 - (v) based on the materiality of money laundering, terrorist financing and proliferation financing risk;
- (b) conduct ongoing customer due diligence after establishing a business relationship, including the updating of customer information;
- (c) not open or operate an account in a false, disguised, anonymous or fictitious name;
- (d) not commence a business relationship when it is not possible to complete customer due diligence, except, under proven low risk, business relationship may be allowed to commence;
- (e) terminate an existing business relationship when customer due diligence cannot be completed; and
- (f) submit a suspicious transaction report to the FIU when customer due diligence cannot be completed in accordance with paragraph (d) and (e) of this subsection.

(2) In the case of a politically exposed person, the reporting person shall conduct due diligence in accordance with the provisions under subsection (1) of this section and:

- (a) have appropriate risk management systems to determine whether the customer is a politically exposed person;
- (b) obtain senior management approval for establishing business relationship with such customer;
- (c) take reasonable measures to establish the source of wealth and funds; and
- (d) conduct enhanced ongoing monitoring on that relationship.”

Repeal and
replacement
of section 11.

7. Section 11 of the Principal Act is repealed and replaced with the new section 11 as follows:

“Reporting
persons to
establish
and maintain
customer
records.

11.-(1) Every reporting person shall establish and maintain records of all:

- (a) domestic and international transactions;
- (b) customer due diligence information;
- (c) customer account information;
- (d) business correspondences;
- (e) risk assessments on money laundering, terrorist financing and proliferation financing;
- (f) the results of any analysis carried out on money laundering, terrorist financing and proliferation financing; and
- (g) suspicious transaction reports, other reports and statistics as required by this Act;

(2) Every reporting person shall keep records required under this section for a minimum period of five years from the date when:

- (a) all activities relating to a transaction or a series of linked transactions were completed or were last carried out;
- (b) the business relationship was formally ended;
- (c) analysis was completed; or
- (d) money laundering, terrorist financing or proliferation financing risk assessment was completed.

(3) Without prejudice to the provisions of subsection (2) of this section, the reporting person shall retain all records as long as may be required by a competent authority where a report has been made to the FIU or the reporting person believes that the matter is under investigation.

(4) Records required under subsection (1) of this section, shall contain particulars sufficient to identify:

- (a) the full name, occupation and where appropriate address, business or principal activity of the customer or each person conducting the transaction or the person on whose behalf the transaction is being conducted or method used by the reporting person to verify the identity of each person;
- (b) the nature and date of the transaction;
- (c) the type and amount of currency involved;
- (d) the type and identifying number of any account with the reporting person involved in the transaction;
- (e) if the transaction involves a negotiable instrument:

- (i) the name of the drawer of the instrument;
 - (ii) the name of the institution on which it was drawn;
 - (iii) the name of the payee, if any;
 - (iv) the amount and date of the instrument;
 - (v) the number, if any, of the instrument; and
 - (vi) details of any endorsements appearing on the instrument;
- (f) the name and where appropriate address of the reporting person and of the officer, employee or agent of the reporting person who prepared records.

(5) Records maintained pursuant to this section shall be made available in a timely manner to competent authorities upon request.

(6) Where a reporting person is required to release any document under this section, he shall retain a copy of the document and maintain a register of released documents with such particulars as may be prescribed in the regulations.

(7) Any reporting person who contravenes the provisions of this section commits an offence and shall be liable to administrative sanctions as prescribed in the regulations made under this Act or criminal sanctions as provided under section 14 of this Act.”

Amendment
of section
12.

8. The Principal Act is amended in section 12 by:

- (a) repealing subsection (1) and replace it with the following new subsection (1):

“(1) Where a reporting person suspects or has reasonable grounds to suspect that, funds or property are proceeds of crime, or are related or linked to or are to be used for commission or continuation of a specified offence or has knowledge of a fact or an activity that may be an indication of money laundering, terrorist financing, proliferation financing or specified offence, he shall within twenty-four hours after forming that suspicion and, wherever possible, before any transaction is carried out:

- (a) take reasonable measures to ascertain the purpose of the funds or property, transaction or proposed or attempted transaction, the origin and ultimate destination of the funds or property involved, and the identity and address of any ultimate beneficiary; and
- (b) prepare a report of the transaction, or proposed or attempted transaction in accordance with subsection (2), and submit the report to the FIU by any secure means as may be specified by FIU.”
- (b) Inserting the words “commits an offence and” after the words “subsection (1) of this section” appearing in subsection (4).
- (c) Inserting the words “to a fine not less than One Million or” between the words “liable” and “to imprisonment” appearing in paragraph (a) of subsection (4).

9. Section 13 of the Principal Act is repealed and replaced with a new section 13 as follows:

Repeal and
replacement
of
section 13.

“Reporting persons to establish and maintain internal Reporting procedures.

13.-(1) A reporting person shall establish and maintain the internal policies, procedures and controls that:

- (a) ensure that persons to be engaged or employed by the reporting person are properly screened and vetted, in order to recruit qualified persons with integrity;
- (b) designate an individual at senior management level as money laundering reporting officer, to whom its employees shall report any actual or suspicious activities or transactions in terms of money laundering, terrorist financing, proliferation financing or any other criminal activity which comes to the attention of employees in the course of work;
- (c) enable the money laundering reporting officer to have reasonable access to information that may be relevant in determining whether sufficient basis exists to report the suspicious activity or transaction to the FIU, pursuant to section 12 of this Act;
- (d) require the money laundering reporting officer to report the suspicious activity or transaction to the FIU pursuant to section 12 of this Act, in the event there exists reasonable grounds to report the matter;
- (e) put in place measures to ensure that employees are made aware of the legislation relating to combating money laundering, terrorist financing and proliferation financing and related policies, procedures and controls, that are established and maintained pursuant to this Act;
- (f) ensure that relevant employees are appropriately trained on a regular basis in the recognition and handling of suspicious transactions relating

to money laundering, terrorist financing and proliferation financing;

- (g) provide for compliance management arrangements that ensure that a compliance officer at management level is appointed; and
- (h) ensure independent and regular auditing of internal policies, procedures and control established in this section is carried out.

(2) In determining whether a person has complied with any requirement of paragraph (e) and (f) of subsection (1), the court shall have regard to all the circumstances of the case, including such customs and practices as may from time to time be current in the relevant trade, business, profession or employment, and may take account of any relevant guidance adopted or approved by a public authority or other body that supervises, regulates or is representative of the trade, business, profession or employment carried on by that person.”

10. Section 14 of the Principal Act is amended by:

Amendment
of section
14.

- (a) repealing subsection (1) and replacing it with the new subsection (1) as follows:

“(1) A reporting person shall, in addition to requirements provided for under section 13:

- (a) in the case of reporting persons with group-wide corporate structures, shall formulate and implement consistent group-wide programmes to combat money laundering, terrorist financing and proliferation financing as provided in section 13 of this Act, which include policies, procedures and controls for sharing information within the group;

- (b) in the case of reporting persons whose corporate structures extend beyond Zanzibar, shall ensure that foreign branches and majority-owned subsidiaries apply anti-money laundering, counter terrorist financing and counter proliferation financing measures consistent with the requirements of section 13 of this Act;
- (c) in the case of foreign operations of such reporting persons, where the minimum anti-money laundering, counter terrorist financing and counter proliferation financing requirements of the host country or jurisdiction are less strict than those of Zanzibar, the reporting person shall ensure that their branches and majority-owned subsidiaries in the host country implement the requirements of Zanzibar, to the extent that the host country legislation permits;
- (d) where the host country does not permit the proper implementation of the measures of Zanzibar, the reporting persons shall apply appropriate additional measures to manage the money laundering, terrorist financing and proliferation financing risks, and inform their respective regulator in the host country or jurisdiction, and in Zanzibar; and
- (e) where the additional measures are not sufficient, the relevant regulator in Zanzibar shall consider additional supervisory actions, including placing additional controls on the reporting person, including, as appropriate, requesting the financial group to close down its operations in the host country or jurisdiction.”

(b) repealing subsection (4).

11. Section 14A of the Principal Act is repealed and replaced with a new section 14A as follows:

Repeal and replacement of section 14A.

Admin-
istrative
Sanctions.

14A. Where a reporting person fails to comply with the reporting obligations provided for under sections 10,10C,11,12,13 and 14 of this Act, the FIU or regulator as the case may be, shall impose administrative sanctions against such person as prescribed in the Regulations made under this Act.”

12. Section 15 of the Principal Act is amended by inserting the words “commits an offence and” after the words “subsection (1) of this section” appearing in subsection (2).

Amendment of section 15.

13. Section 16 of the Principal Act is amended by repealing subsection (2) and replacing it with a new subsection (2) as follows:

Amendment of section 16.

“(2) For the purpose of subsection (1) of this section, on any matters related to combating money laundering, terrorist financing and proliferation financing, competent authorities and reporting persons may share information among each other and with their Counterparts abroad.”

14. Section 17 of the Principal Act is amended by deleting the words “a bank, cash dealers or a financial institution or a designated non-financial business or professions or their respective directors, head of institution, partners, professions or employees” appearing in the section and substituting for them the words “a reporting person, or any other person in anyway employed or engaged by the reporting person”.

Amendment of section 17.

15. Section 18 of the Principal Act is repealed and replaced with a new section 18 as follows:

Repeal and replacement of section 18.

“Obligation
to report
physical
cross
border
transporta-
tion of
cash.

18.-(1) Any person who transports or is about to transport or has transported in or out of the territory of Zanzibar cash or a bearer negotiable instrument in any amount equal or above the amount prescribed by the Minister, shall declare such amount of money or negotiable instrument to customs authorities which shall verify and transmit that information to the FIU.

(2) An officer of the Customs shall have powers to enquire on the cash or bearer negotiable instruments from the person making the declaration where there is reasonable ground to suspect non-declaration, false or inaccurate declaration or suspicion of commission of money laundering offence, terrorist financing, and proliferation financing or predicate offences.

(3) Where a customs officer is satisfied that:

- (a) any amount of cash or bearer negotiable instruments has not been declared;
- (b) any amount of cash or bearer negotiable instruments or any other particular, detail or information has been falsely or inaccurately declared;
- (c) the person making the declaration has not provided convincing or satisfactory responses on, among others, the source of the cash or bearer negotiable instruments, the ultimate beneficiaries, or the intended use of the cash or bearer negotiable instruments; or
- (d) there is suspicion of money laundering, terrorist financing, proliferation financing, or predicate offence, even if cash or bearer negotiable instruments have been correctly or accurately declare,

he shall stop, restrain or seize the whole amount required to be declared or part of the cash or bearer negotiable instruments in a manner prescribed in the Regulations.

(4) Any person who contravenes the provisions of this section commits an offence and shall be liable to:

- (a) administrative sanctions as prescribed in the Regulations made under this Act; or
- (b) criminal sanctions as provided for under section 81B of this Act, and in addition, the court may order confiscation of cash or a bearer negotiable instrument in respect of an offence committed.”

16. Section 18A of the Principal Act is repealed and replaced with a new section as follows:

Repeal and replacement of section 18A.

“Regulator and FIU’s obligation.

18A.-(1) The regulator or FIU shall:

- (a) enforce compliance by reporting persons in accordance with the requirements of this Act;
- (b) conduct onsite and offsite examinations for the purpose of monitoring and ensuring compliance by reporting persons; and
- (c) impose administrative sanctions on reporting persons for non-compliance.

(2) Subject to paragraph (b) of subsection (1) of this section, the supervision for anti money laundering and counter terrorist financing and counter proliferation financing compliance shall include the application of the consolidated group supervision or monitoring.”

Repeal and replacement of the heading of Part IV.

17. The heading of the Part IV of the Principal Act is repealed and replaced with a new heading as follows:

**“PART IV
FORFEITURE AND CONFISCATION”**

Amendment of section 19.

18. The Principal Act is amended in section 19 by:

(a) adding new paragraph (b) immediately after paragraph (a) of subsection (1) as follows:

“(b) forfeiture order against any property of corresponding value; or”

(b) renumbering paragraph (b) in subsection (1) to be paragraph (c);

(c) adding new subsection (6) immediately after subsection (5) as follows:

“(6) The period provided for making an application in subsection (1) of this section, may be extended by the court when there is good cause for such extension”.

Amendment of section 20.

19. Section 20 of the Principal Act is amended by:

(a) inserting the words “within thirty days” between the words “shall give” and “written notice” appearing in paragraph (a) of subsection (1);

(b) inserting the words “who appears to have an interest in the property” between the words “persons” and “in” appearing in paragraph (c) of subsection (1); and

(c) inserting the words “within thirty days” between the words “shall give” and “written notice” appearing in paragraph (a) of subsection (2).

20. Section 21 of the Principal Act is amended by:

- (a) inserting the words “within fourteen days” between the words “shall give” and “written notice” appearing in paragraph (a) of subsection (3); and
- (b) inserting the words “within fourteen days” between the words “shall give” and “the person” appearing in subsection (4).

21. The Principal Act is amended by adding a new section 23A immediately after section 23 as follows:

Addition of
a new
section
23A.

“Confisca-
tion order
where a
person dies.

23A.-(1) Where a person dies while under investigation or after being charged but before a conviction, the Director of Public Prosecutions may apply to the court for a confiscation order and give notice to the general public.

(2) The court may grant an application for confiscation order where it is satisfied, on balance of probabilities, that:

- (a) a person was under investigation when he died and reasonable steps have been taken to conduct investigation of an offence alleged to have been committed; or
- (b) a person has been charged but dies before the conclusion of the trial, and there are reasonable grounds to believe that a confiscation order would have been issued against that person if he was alive.

(3) Where the Director of Public Prosecutions makes an application in terms of subsection (1) of this section for a confiscation order against property:

- (a) shall give written notice of the application to the person or to any other person he has reason to believe may have an interest in the property;
- (b) that person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and
- (c) the court may, at any time before the final determination of the application, direct the Director of Public Prosecutions to give notice of the application to specified person or class of person in the manner and within such time as the court considers appropriate.”

Addition of new sections 24A and 24B.

22. The Principal Act is amended by adding new sections 24A and 24B immediately after section 24 as follows:

“Forfeiture of property of corresponding value.

24A.- (1) Where a property that is subject to forfeiture:

- (a) cannot be located upon exercise of due diligence;
- (b) has been transferred or sold to a third party who at the time of acquisition was unaware that it was being disposed of to avoid prosecution or confiscation;
- (c) has been placed in foreign jurisdiction and cannot be recovered;
- (d) has been substantially diminished in value;
or

- (e) has been comingled with other property such that it becomes difficult to distinguish,

the court may order forfeiture of any other property of corresponding value of a person convicted of an offence.”

“Volding actions.

24B. – (1) The Director of Public Prosecutions may apply to the court for an order to set aside any conveyance or transfer of property where he has reasonable grounds to believe that the property has been disposed of to avoid forfeiture.

(2) The court may, before making a forfeiture order, in the case of property in respect of which a restraining order is made and notice of it is given in accordance with this Act, set aside any conveyance or transfer of the property or interest therein that occurred in the circumstances that give rise to a reasonable inference that the property is conveyed or transferred for the purposes of avoiding the forfeiture order.

(3) The provisions of subsection (1) of this section shall not apply where the transfer or conveyance is made for sufficient value to a person acting in good faith and without notice.”

23. Section 26 of the Principal Act is amended by inserting the words “except with the leave of the court” after the word “section” at the end of subsection (3).

Amendment
of section
26.

24. Section 27 of the Principal Act is amended by deleting the words “as soon as practicable” appearing at the beginning of paragraph (a) of subsection (2) and substitute them for the words “within fourteen days”.

Amendment
of section
27.

25. Section 32 of the Principal Act is amended by:

Amendment
of section
32.

- (a) adding a new subsection (5) immediately after subsection (4) as follows:

“(5) The presumption under subsection (4) shall not be rebutted by merely stating that the property is obtained from the offence that is not prosecuted”;

(b) renumbering of the remaining subsections accordingly.

Amendment
of section
33.

26. Section 33 of the Principal Act is amended by:

(a) adding new paragraph (b) immediately after paragraph (a) of subsection (2) as follows:

“(b) any trust or any other registered entity that has relationship to or interest in the property;”

(b) renumbering paragraph (b) to be (c).

Amendment
of section
35.

27. Section 35 of the Principal Act is amended by deleting the words “section 40(4)” appearing between the words “to” and “of” in subsection (1) and substitute them for the words “section 53(4)”.

Repeal and
replacement
of section
40.

28. Section 40 of the Principal Act is repealed and replaced with a new section 40 as follows:

“Forfeiture
where person
cannot be
brought
before court.

40.-(1) Where the Director of Public Prosecutions suspects on reasonable grounds that any person has acquired, holds or is dealing with tainted property and it is not possible:

(a) to bring that person before the court on a charge for any serious offence; or

(b) for a foreign pecuniary penalty order or a foreign forfeiture order to be made in respect of that person,

the Director of Public Prosecutions may apply to the High Court for an order to declare the property is forfeited to the Government.

(2) The Director of Public Prosecutions shall name as respondents to an application under subsection (1) of this section only those persons who own, possess or control the tainted property.

(3) The procedure for issuing notice prescribed under section 20 of this Act, shall apply the same in the application made under this section.

(4) Where the High Court is satisfied that a tainted property which is the subject of the application is the property referred to in subsection (1) of this section, the Court shall order that the property be forfeited to the Government.

(5) Where the Court refuses an application under subsection (1) of this section, the Court shall make an order that describes the property and declare that it is not the property referred to in that subsection.

(6) Where the Court is satisfied that the owner of the tainted property referred to in subsection (4) of this section:

- (a) has an interest in the property which is the subject of the application; and
- (b) has exercised reasonable care to ensure that the property would not be a tainted property;

the Court shall make the order that the interest not to be affected by forfeiture order.

(7) A person who claims an interest in property that has been forfeited and who has not been given notice under subsection (3) of this section, may make an application to the High Court to vary or set aside an order made under subsection (4) of this section, not later than sixty days after the day on which the forfeiture order is made.”

Addition of
new
sections
41A and
41B.

29. The Principal Act is amended by adding new sections 41A and 41B immediately after section 41 as follows:

“Collecting
information
or document
relating to
property.

41A.-(1) For the purpose of collecting information about the property under this Act or any other law, an investigation officer may summon, interrogate and record a statement from any person who has information or document relating to the property.

(2) Any person who fails without reasonable cause to appear before the investigation officer for interrogation or to produce a document or any other thing relevant to investigation of the property under subsection (1) or being a witness at such investigation refuses to answer any question put to him or to produce any document or any other thing relevant to investigation commits an offence, and shall upon conviction, be liable to a fine of not less than One Million Tanzania Shillings or to imprisonment for a term of not less than one year or to both.”

“Disclosure
of
Investigation
information.

41B.-(1) Any person who discloses to a suspect or unauthorized third party the information relating to an ongoing or impending investigation under this Act or any other law with the intent to interfere or otherwise frustrate the investigation commits an offence, and shall, upon conviction, be liable to a fine of not less than Ten Million Tanzania Shillings or to imprisonment for a term of not less than five years or to both.

(2) Where a person who contravenes the provisions of subsection (1) of this section, is a body corporate, such person shall be liable to a fine of not less than Five Hundred Million Tanzania Shillings or three times the value of the property under investigation, whichever is greater.”

Amendment
of section
42.

30. Section 42 of the Principal Act is amended by deleting the word “property” after the words “magistrate for” appearing in subsection (1).

31. Section 44 of the Principal Act is amended by deleting the word “searches in center” between the words “or” and “upon” and replace them with the word “enter”.

Amendment
of section
44.

32. Section 47 of the Principal Act is amended by:

Amendment
of section
47.

- (a) changing the words “foreign specified offence” appearing in subsection (1) of this section and wherever they appear in this Act and read as “foreign serious offence”.
- (b) deleting the word “Inspector-General of Police” appearing in subsection (4) and substituting it for the words “Commissioner of Police or head of any other investigative Authority”.

33. Section 48 of the Principal Act is repealed and replaced with a new section 48 as follows:

Repeal and
replacement
of section
48.

“Restraining
orders.

48.-(1) The Director of Public Prosecutions may make an ex-parte application to the court for a restraining order against the property of a person who:

- (a) is under investigation or has been charged with or convicted of a serious offence including the property of a person other than the person who is under investigation or has been charged with or convicted of a serious offence; or
- (b) cannot be brought to court but his property is subject to forfeiture under this Act or any other law including the property of any other person in which he has interest or the property which is under his control or direction.

(2) On an application in terms of subsection (1) of this section, the court may, subject to section 49 of this Act:

- (a) order that the property specified in the application shall not be disposed of, or otherwise dealt with, by any person except in the manner and in the circumstances specified in the order;
- (b) if it is satisfied that the circumstances so require, direct that the property or such part of the property as is specified in the order, be taken into the custody and control of a trustee appointed for that purpose by the court; or
- (c) order the Administrator-General or any other public trustee to take care and control of property under restraint.

(3) A restraining order against a person's property may be granted subject to such conditions as the court thinks fit and may make provisions for meeting out of the property:

- (a) that person's reasonable living expenses,
- (b) reasonable living expenses of his dependents and reasonable business expenses;
- (c) that person's reasonable expenses in defending a criminal charge; and
- (d) a specified debt incurred by that person in good faith, being a debt to which neither paragraph (a) nor (b) applies.

(4) A court shall not make any provision referred to in subsection (3) of this section, unless it is satisfied that the respondent cannot meet the expense or debt concerned out of property that is not subject to the interdict.

(5) Where a trustee takes charge of any property in terms of this section, he may do anything that is reasonably necessary for the purpose of preserving the property, including:

- (a) becoming a party to any civil proceedings affecting the property;
- (b) ensuring that the property is insured; and
- (c) if the property consists, in whole or in part, of a business, employing or terminating the employment of persons in the business.

(6) In appointing a trustee in terms of paragraph (b) of subsection (2) of this section, the court shall have regard to the qualifications of a trustee of the property which is under restraining order.

(7) In addition to the order granted under subsection (2) of this section, the court may order:

- (a) disposal of any property under restraint which is subject to natural decay, wear and tear, depreciation or whose maintenance may cause substantial expenses; or
- (b) proceeds of sale of the property disposed to be kept in a special interim management account until forfeiture application in respect of that property is concluded or the court orders otherwise.”

34. Section 49 of the Principal Act is repealed and replaced with a new section 49 as follows:

Repeal and replacement of section 49.

“Grounds for issuing restraining order.

49. – (1) Where an application for a restraining order is made against a property, the court shall, subject to this section, issue a restraining order against the property.

(2) Where the application is made before a person is charged, the court shall not issue a restraining order unless the court is satisfied, having regard to the matters contained in the affidavit, that reasonable steps have been taken to investigate

the offence and the person is likely to be charged with the offence.

(3) Where the respondent has not been convicted, the court shall not issue a restraining order unless the court is satisfied that:

- (a) there are reasonable grounds to believe that the respondent committed the offence; and
- (b) the property is tainted or the respondent derived benefit from the commission of the offence.

(4) Where the respondent has been convicted, the court shall not issue the restraining order unless:

- (a) it is satisfied that the respondent has been convicted of a serious offence; and
- (b) the respondent derived a benefit, directly or indirectly from the commission of the offence.

(5) Where a restraining order is sought against property of a person other than the respondent, the court shall not issue the restraining order unless there are reasonable grounds to believe that:

- (a) the property is tainted; or
- (b) the respondent has an interest in the property or the property is under control or direction of the respondent who derived a benefit, directly or indirectly, from the commission of a serious offence.

(6) Where a restraining order is sought against property of a person who cannot be brought to court, the court shall not issue the restraining order unless there are reasonable grounds to believe that the property shall be forfeited under this Act or any other law.

(7) A restraining order shall be granted in respect of property whether or not there is any risk of the property being disposed of or otherwise dealt with in a manner that would defeat the operation of any forfeiture or pecuniary penalty order made under this Act.

(8) A restraining order issued before charging under subsection (2) of this section, shall operate for twelve months provided that the court may extend the period of twelve months upon application by the Director of Public Prosecutions.

(9) Where a person is charged within the period of six months or time so extended, the restraining order shall remain in force until it ceases to have effect in terms of the provisions of section 62 of this Act.

(10) An application for a restraining order shall be supported by an affidavit of the investigator setting out grounds of his belief under subsections (2), (3) and (4) of this section.”

35. Section 52 of the Principal Act is amended by adding new subsection (3) immediately after subsection (2) as follows:

Amendment
of section
52.

“(3) Any person affected by the restraining order may, within fourteen days after being served with notice of the restraining order, apply to court for variation or rescission of the restraining order or any other order which the court may issue under section 53 of this Act”.

36. Section 53 of the Principal Act is amended by repealing subsection (3) and replacing it with the following new subsection (3):

Amendment
of section
53.

“(3) The court may, upon application by a person affected by the restraining order, vary or rescind a restraining order where it is satisfied that the:

- (a) property involved is not tainted; or
- (b) interest in the property was acquired for sufficient value, without knowledge, and in circumstances such as not to arouse suspicion that the property was tainted.”

Amendment
of section
60.

37. Section 60 of the Principal Act is amended by inserting the words “qualifications, supervision,” between the words “the remuneration” and “and” appearing in subsection (2).

Repealing
of section
66.

38. Section 66 of the Principal Act is repealed.

Addition of
a new
section
72A.

39. The Principal Act is amended by adding a new section 72A immediately after section 72 as follows:

“Disclosure
of informa-
tion about
property.

72A.-(1) An investigation officer may, by notice in writing, require any person under investigation or suspected to have committed a serious offence to furnish, within such time and in such manner as may be specified in the notice, a full and true account of all or any property which he:

- (a) possesses, controls, directs or is entitled to the benefit from; or
- (b) had in his possession, control, direction or is entitled to the benefit from.

(2) A person who is required to furnish information pursuant to the provisions of subsection (1) of this section may, in addition to the requested information, provide details of the basis upon which he asserts that the property is not the benefit of criminal activity.

(3) A person responding to a request under subsection (1) of this section shall provide the information requested to the investigation officer within thirty days from the date of request unless he satisfies the investigation officer that more time is required to comply with the request.

(4) In any application for a confiscation order under this Act a response to a request under subsection (1) of this section may be admitted in evidence to the confiscation proceedings.

(5) A person who in compliance with a request under subsection (1) of this section gives false information commits an offence and upon conviction shall be dealt with in accordance to the provisions of section 97 of the Penal Act.”

40. The Principal Act is amended by adding a new section 78A immediately after section 78 as follows:

Addition of a new section 78A.

“Obstruction of Justice prohibited.

78A. Any person who uses physical force, threat, intimidation, promises, offers or gives an undue advantage in order to:

- (a) induce false testimony;
- (b) interfere with the giving of testimony or the production of evidence in a proceeding; or
- (c) interfere with the exercise of official duties by a magistrate, judge, public prosecutor, state attorney or any law enforcement official in relation to the commission of offences under this Act,

commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than five years.”

41. Section 82 of the Principal Act is repealed and replaced with a new section 82 as follows:

Repeal and replacement of section 82.

“Appeal.

82.-(1) Any person aggrieved by the order of the Court made under this Act may appeal against that order.

(2) Where an appeal is preferred under subsection (1) of this section, the execution of the order shall be stayed until the appeal is determined.

(3) The appeal under this Act shall be governed by the provisions of the Criminal Procedure Act.”

Amendment
of section
85.

42. Section 85 of the Principal Act is amended by:

- (a) deleting the words “a police officer of the rank of assistant superintendent of police” and substituting them for the words “an investigation officer”;
- (b) adding a new paragraph (e) immediately after paragraph (d) as follows:

“(e) use controlled delivery techniques.”

Addition of
a new
section 86A.

43. The Principal Act is amended by adding a new section 86A immediately after section 86 as follows:

“Court
jurisdiction
over
foreigner.

86A.-(1) Subject to the provisions of the Mutual Assistance Act, the High Court shall have jurisdiction to try a person from a foreign country for an offence committed outside Zanzibar which would constitute an offence under this Act.

(2) A person from a foreign country shall not be prosecuted except with the consent of the Director of Public Prosecutions.

(3) For the purpose of subsection (1) of this section, prosecution against a person who commits an offence outside Zanzibar shall only be conducted where that person cannot be extradited to a foreign country where the offence was committed.”

OBJECTS AND REASONS

The purpose of this Bill for an Act to amend the Anti Money Laundering and Proceeds of Crime Act, No. 10 of 2009 is to eliminate the gaps that were identified in the Act. As a result of a Mutual Evaluation Report of the United Republic of Tanzania of 2021, Tanzania was found to have strategic deficiencies in its anti-money laundering, counter terrorist financing and counter proliferation financing measures.

This situation led the United Republic of Tanzania to be placed under observation of Financial Action Task Force (FATF) for a period of one year from June, 2021 to June, 2022 in order to rectify the deficiencies identified, including amendment of the Anti Money Laundering and Proceeds of Crime Act, No. 10 of 2009.

This Bill comprise of two parts as follows:

Part One: This part deals with Preliminary Provisions which include short title and commencement, and construction.

Part Two: This Part constitutes amendment provisions from section 3 to 46 which includes, conducting risk assessments, applying mitigation measures and allocation of resources; determination of beneficial owners; conducting customer due diligence, establishing and maintaining records and internal reporting procedures; regulator and FIU obligations; confiscation, forfeiture and restraining orders.

(JAMAL KASSIM ALI)
*Minister of State, President's Office,
Finance and Planning*

