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THE UNITED REPUBLIC OF TANZANIA  
***SPECIAL BILL SUPPLEMENT***

***No. 1***

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THE ANTI-MONEY LAUNDERING (AMENDMENT) ACT, 2012

ARRANGEMENT OF SECTIONS

<i>Section</i>	<i>Title</i>
1.	Short title.
2.	Amendment of section 2.
3.	Amendment of section 3.
4.	Amendment of section 4.
5.	Amendment of section 5.
6.	Amendment of section 6.
7.	Amendment of section 7.
8.	Amendment of section 8.
9.	Amendment of section 9.
10.	Amendment of section 13.
11.	Amendment of section 16.
12.	Amendment of section 17.
13.	Addition of section 19A.
14.	Amendment of section 20.
15.	Amendment of section 21.
16.	Amendment of section 22.
17.	Amendment of section 23.
18.	Amendment of section 26.
19.	Addition of new sections; 28A, 28B and 28C.
20.	Amendment of section 29.

**NOTICE**

This Bill to be submitted to the National Assembly is published for the general information to the public together with a statement of its objects and reasons.

Dar es Salaam,  
11<sup>th</sup> January, 2012

OMBENI Y. SEFUE  
*Secretary to the Cabinet*

**A BILL**  
*for*

**An Act to amend the Anti-Money Laundering Act.**

**ENACTED** by Parliament of the United Republic of Tanzania.

Short title  
Cap.423

1. This Act may be cited as the Anti-Money Laundering (Amendment) Act, 2012 and shall be read as one with the Anti-Money Laundering Act, hereinafter referred to as the "principal Act."

Amendment  
of section 2

2. The principal Act is amended by repealing section 2 and substituting for it the following provision:

"Application

2.-(1) This Act shall, subject to subsection (2), apply to Mainland Tanzania.

(2) This Act shall apply to Tanzania Zanzibar in respect of Part II which relates to Financial Intelligence Unit and the National Multidisciplinary Committee on Anti-Money Laundering."

Amendment  
of section 3

3. The principal Act is amended in section 3 -

(a) by inserting in its appropriate alphabetical order

the following definition:

“law enforcement agency” means the Police Force, Prevention and Combating of Corruption Bureau, Immigration Services, Tanzania Revenue Authority and any other investigative agency dealing with anti-money laundering and combating the financing of terrorism;”

- (b) by deleting the definition of the word “regulator” and substituting for it the following new definition:

“regulator” includes, the:

- (a) Bank of Tanzania;
- (b) Capital Markets and Securities Authority;
- (c) Tanzania Insurance Regulatory Authority;
- (d) Gaming Board;
- (e) Social Security Regulatory Authority;
- (f) Registrar of Cooperatives,;
- (g) Registrar of Titles;
- (h) Registrar of Non-Governmental Organisation;
- (i) Energy and Water utilities Regulatory Authority;
- (j) Tanzania Communication Regulatory Authority;
- (k) Business Registration and Licensing Agency;
- (l) Tanzania Investment Centre;
- (m) Registration ,Insolvency and Trusteeship Agency; and
- (n) any other regulatory authorities or agencies which the Minister may, by Order published in the Gazzette, specify.”

- (c) in the definition of the term “predicate offences” by-

- (i) deleting paragraphs (h) and (i) and substituting for them following:

“(h) all corruption and related offences

- stipulated under the  
Prevention and  
Combating of  
Corruption Act ;
- (i) counterfeiting of  
currency;
- (ii) inserting immediately after paragraph  
(w) the following new paragraphs:  
“(x) fraud and other related  
offences;  
(y) murder;  
(z) grievous bodily harm;  
(aa) pyramid and other  
similar schemes;  
(bb) piracy and piracy of  
goods;”
- (d) by renumbering paragraphs (x) and (y) as  
paragraphs (cc) and (dd) respectively.
- (c) by deleting paragraph (dd) as renumbered and  
substituting for it the following:  
“(dd) any other offences as the Minister  
may, by notice published in the  
*Gazette*, declare,  
whether committed within or outside the  
boundaries of the United Republic.”
- (f) in the definition of the term “reporting person”  
by-
- (i) inserting immediately after  
paragraph (f) the following:  
“(g) pension funds  
manager,  
securities  
market  
intermediaries,  
financial leasing  
entity, micro-  
financing  
company,  
Savings and

Credit  
Cooperative  
Societies, and  
housing  
financing  
company;"

- (ii) renumbering paragraphs (g) and (h) as paragraphs (h) and (i) respectively.

(g) in the definition of term "terrorist financing" by: -

- (i) deleting the word "or" appearing at the end of paragraph (a);

- (ii) deleting paragraph (b) and substituting for it the following new paragraphs:

"(b) entering into or facilitating directly or indirectly any financial transaction directed to a dealing in property owned or controlled by or on behalf of any terrorist or entity owned or controlled by a terrorist;

- (c) any other terrorist acts as specified in the Prevention of Terrorism Act."

*Anti-Money Laundering (Amendment)*

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Amendment  
of section 4

4. The principal Act is amended in section 4, by-

- (a) inserting the words “currency transaction report, cross border currency reports and electronic fund transfer” between the words “reports” and “and” appearing in subsection (2); and
- (b) adding immediately after subsection(2) the following new subsection:

“(3) The FIU shall enjoy the freedom of operations and budgetary allocation as may be necessary for effective discharge of its functions.”

Amendment  
of section 5

5. The principal Act is amended in section 5, by inserting immediately after subsection (2) the following new subsections:

“(3) The Commissioner shall be the Chief Executive Officer as well as the accounting officer of the FIU and shall perform the functions and exercise powers conferred upon him by this Act.

(4) The Commissioner shall hold office for a term of five years and may be re-appointed for another one term of five years subject to satisfactory performance.

(5) The President may remove the Commissioner from office on the grounds of misconduct, incompetency, or for a ground of mental or physical incapacity.

(6) Where the removal of the Commissioner is in question, the President shall form a Committee to inquiry into and make recommendation to the President on the matter so that where the Commission recommends that the removal of the Commissioner should not be made, the President shall not remove the Commissioner.

(7) The Committee shall consist of:

- (a) a judge of the High Court;
- (b) a senior police officer;
- (c) a senior officer from the Bank of Tanzania; and
- (d) two other prominent persons who have

knowledge and experience on the matter which is the subject of inquiry.

(8) The Committee shall make its own procedure for the conduct of investigation.”

Amendment  
of section 6

6. The principal Act is amended in section 6, by-
- (a) adding immediately after paragraph (h) the following new paragraphs:
    - “(i) request for or have access to information from any reporting person, regulator or law enforcement agency in the manner provided for in the regulations made under this Act;
    - (j) require any reporting person to report to FIU any suspicious transaction or activity where that reporting person suspect that the transaction of activities involves funds that may have been derived from money laundering or terrorism financing activities;
    - (k) in collaboration with the regulator, conduct inspection on the reporting person for the purposes of detection of any money laundering or combating financing of terrorism activities in the manner provided for in the regulations made under this Act;
    - (l) prepare and submit periodic quarterly reports on money laundering typologies and trends in the manner provided for in the regulations made under this Act;”
  - (b) renaming paragraphs (i) and (j) as paragraphs (m) and (n);
  - (c) designating section 6 as section 6(1);
  - (d) adding immediately after the designated subsection (1) the following new subsection:
    - “(2) The Commissioner may, where he has received information

from the reporting person pursuant to section 17 and upon reasonable grounds, suspend a suspicious transaction or activities for a period not exceeding five working days to allow time for investigation on the matter”.

Amendment  
of section 7

7. The principal Act is amended in section 7, by adding immediately after subsection (4) the following new subsections:

“(5) Every employee of the FIU shall be under the general obligation to keep all information that comes to his knowledge as confidential during his employment and after termination of employment.

(6) A person who contravenes the provisions of subsection (5) commits an offence and shall be liable:

- (a) in the case of an employee, to administrative actions or any other sanctions which may be imposed under section 28B; and
- (b) in the case of former employee, a fine of five million shillings or imprisonment for a term of three years or to both.”

Amendment  
of section 8

8. The principal Act is amended in section 8(1), by -

- (a) deleting the word “and” appearing at the end of paragraph (i) and adding the word “and” at the end of paragraph (j);
- (b) adding immediately after paragraph (j) the following new paragraph:
  - “(k) one representative from the Prevention and Combating of Corruption Bureau”.

Amendment  
of section 9

9. The principal Act is amended in section 9, by adding immediately after the word “laundering” appearing at the end of paragraph (a) the phrase “and financing of terrorism”.

*Anti-Money Laundering (Amendment)*

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Amendment  
of section 13

10. The principal Act is amended in section 13, by-
- (a) designating section 13 as section 13(1);
  - (b) adding immediately after the designated subsection (1) the following new subsection :

“(2) Notwithstanding the provisions of subsection (1), the Financial Intelligence Unit or regulator may apply to the court for an order against a body corporate that has been convicted of an offence under this section, namely -

- (a) barring that body corporate from carrying on business directly or indirectly for a period not exceeding three years;
- (b) placing that body corporate under supervision of the regulator; or
- (c) permanently barring that body corporate from carrying on business in respect of which the offence was committed directly or indirectly.”

Amendment  
of section 16

11. The principal Act is amended in section 16, by -
- (a) deleting paragraph (a) appearing in subsection (1), and substituting for it the following new paragraph:

“(a) records of all transactions, accounts, files and business correspondence carried out by that person;”

- (b) repealing subsection (3) and substituting for it the following:

“(3) Records maintained pursuant to this section shall be made available on timely basis to FIU upon request.”

- (c) adding immediately after subsection (4), the

following subsection:

“(5) Any reporting person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to:

- (a) administrative actions as prescribed in the regulations made under section 19A of this Act; or
- (b) criminal sanctions as provided for under this Act.”

Amendment  
of section 17

12. The principal Act is amended in section 17, by -

- (a) inserting between the figure “(1)” and the word “shall” appearing in subsection (4) the phrase “commits an offence and”;
- (b) inserting immediately after subsection (4) the following new subsection:

“(5) Notwithstanding the provisions of subsection (3), the records of other transactions shall be kept in the manner as prescribed in the regulations.”

Addition of  
section 19A

13. The principal Act is amended by adding immediately after section 19, the following new section:

“Administrative  
sanctions

19A. Where any reporting person fails to comply with the provision of sections 15, 16, 17 or 18 of this Act, the FIU or regulator shall impose administrative actions against that person as prescribed in the regulations made under this Act.”

Amendment  
of section 20

14. The principal Act is amended in section 20, by-

- (a) deleting the words “shall, on conviction” appearing in subsection (2) and substituting for them the words “commits an offence, and shall on

*Anti-Money Laundering (Amendment)*

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- conviction”; and  
(b) deleting subsection (3).

Amendment  
of section 21

15. The principal Act is amended in section 21, by-
- (a) designating section 21 as subsection (1) of that section;
  - (b) adding immediately after the designated subsection (1) the following new subsection:
    - “(2) For the purpose of subsection (1), a bank or financial institution may, during investigation on matters related to money laundering or financing of terrorism, share any information relating to its customers.”

Amendment  
of section 22

16. The principal Act is amended in section 22, by deleting subsection (1) and substituting for it the following:
  - “(1) Notwithstanding any other written law, no criminal, civil or administrative proceedings for breach of banking or professional secrecy or contract shall be instituted against a bank or a financial institution, cash dealer, designated non-financial businesses or professions or their respective staff or partners who, in good faith, submitted a report or supplied information in compliance with this Act.”

Amendment  
of section 23

17. The principal Act is amended in section 23, by-
- (a) deleting the phrase “be subject to customs authorities which” appearing in section (1) and substituting for it the phrase “declare to customs authority such amount of money or a bearer negotiable instrument and the customs authority”;
  - (b) inserting immediately after subsection (2), the following new subsection:
    - “(3) The FIU shall open a special account into which all the seized cash or bearer negotiable instruments shall be kept.”
  - (c) deleting the words “competent authority” appearing in subsection (3) and substituting for

them the words "law enforcement agency;

(d) renumbering subsection (3) as subsection (4)."

(e) adding immediately after section 23 the following new section:

"Regulator's obligation

**23A.** The regulator shall-

- (a) supervise compliance by their regulated entities in accordance with the requirements of this Act;
- (b) conduct onsite and offsite examinations for the purpose of monitoring and ensuring compliance by financial institutions and designated non-financial businesses and professions; and
- (c) impose administrative sanctions for non-compliance."

Amendment of section 26

**18.** The principal Act is amended in section 26, by inserting immediately after the words "on the account" appearing at the end of subsection (2) the following phrase "and submit the report to the Minister, who shall lay it before the National Assembly."

Addition of new sections 28A, 28B and 28C

**19.** The principal Act is amended by adding immediately after section 28, the following new sections:

"Disclosure of information

**28A.** Any person who is or was engaged in the administration of this Act and discloses any information acquired by that person by virtue of his position to unauthorised person, commits an offence.

General  
penalty

**28B.-(1)** Where a person contravenes any provisions of this Act or regulations made under this Act and no specific penalty is stipulated for that offence, that person shall, on conviction:

(a) in case of an individual person, be liable to a fine not exceeding five hundred million shillings and not less than one hundred million shillings or imprisonment for a term not exceeding three years.

(b) in case of a body corporate, be liable to a fine of not less than five hundred million shillings;

(2) For purpose of sub-section (1), every director, manager, controller or principal officer of the company, partner, or a principal officer of the partnership shall be deemed to have committed the offence.

Court  
jurisdiction  
over a  
foreigner

**28C-(1)** The High court shall have jurisdiction to try a person from a foreign state for an offence committed outside the United Republic which would constitute an offence under this Act .

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

(3) For the purpose of subsection (1), prosecution against a person who commits an offence outside the United Republic shall only be conducted where that person cannot be extradited to a

foreign state where the offence was committed.

Amendment  
of section 29

by-

20. The principal Act is amended in section 29(2),

(a) inserting new paragraph (b):

“(b) manner and procedure of carrying out customer due diligence;” and

(b) re-naming paragraph (b) as paragraph (c),

## **OBJECTS AND REASONS**

This Bill makes general legislative proposals for the amendment of the Anti-Money Laundering Act, Cap 423, with a view to removing shortfalls experienced during implementation and making the legal framework for combating money laundering and financing of terrorism compliant to regional and international standards.

Section 2 is intended to limit the scope of application of the Act to Mainland Tanzania, except for matters relating to Financial Intelligence Unit and the National Multi-Disciplinary Committee on Anti-Money Laundering, which matters shall apply to both Tanzania Mainland and Tanzania Zanzibar.

Under section 3, it is proposed to add the definition of the term "law enforcement agency" and redefining the term "regulator" as including other regulatory bodies which were left out of the scope under the original definition. It also widens the scope of the definitions of "predicate offences" and "reporting persons" by including new offences by individuals or body corporate. Under section 4, it is proposed to make provision for enjoyment of freedom of operation and budgetary allocations by the FIU as may be necessary for the purposes of enhancing discharge of its functions and exercise of its powers.

Under section 5, the Commissioner has been alleviated the status of the Chief Executive Officer -cum-the accounting officer of the FIU. Security of tenure of the Commissioner is more secured. Much as the Commissioner may be removed from office for misconduct, incompetency or for grounds of mental or physical

incapacity, the President can only do so upon recommendation by the Committee consisting of a Judge of the High Court, a senior police officer, a senior officer from the Bank of Tanzania and two other prominent persons who have knowledge and experience on the matter which is the subject of inquiry. Section 6 is amended with a view to vesting in the Commissioner powers to suspend the carrying of transactions or activities where he believes that such transactions or activities involve suspicious transactions of financing of terrorism.

Under section 7 it is proposed to impose general obligation on the employees of FIU to keep secret or confidential information that comes to their knowledge in the course of their duty. Under section 8 it is proposed to add a representative of the Prevention and Combating of Corruption Bureau amongst members of the National Multi-Disciplinary Committee on Anti-money Laundering.

Under section 13 it is proposed to re-designate that section as subsection (1) of section 13 and introducing a new subsection (2). Subsection (2) proposes more sanctions which the FIU can take against a body corporate when that body corporate commits an offence under the Act. Under section 16 it is proposed to add to the list, records which a reporting person has to keep and make available such records. The section also creates offences for reporting persons who contravene that provision. Again, the Bill proposes to amend Sections 17 and 20 with a view to prescribing the manner into which records are to be kept. The Bill further proposes the addition of a new section 19A which empowers the FIU to impose administrative sanctions against any person who contravenes the provisions of the Act has been proposed.

Additionally, the Bill proposes to amend section 22 with a view to protecting officials of the banks and financial institutions from criminal, civil and administrative sanction for breach of banking and professional secrecy during performance of their functions in compliance with the Anti-Money Laundering Act,

Cap.423. A new section 23A is proposed to be introduced to state the role of the regulator which entails supervision of the regulated entities, the conduct of onsite and offsite examination for ensuring compliance by financial institutions and impose administrative sanctions for non compliance.

Last, but not least, the Bill proposes to introduce new sections 28A, 28B and 28C, which address the disclosure of information, general penalties and jurisdiction of the High Court over persons from foreign states who commits an offence outside the United Republic.

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## **MADHUMUNI NA SABABU**

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Muswada huu unapendekeza marekebisho katika Sheria ya Kudhibiti Matumizi ya Fedha Haramu, Sura ya 423, kwa madhumuni ya kuondoa upungufu uliyojitokeza wakati wa utekelezaji na uwekaji wa misingi ya kisheria inayowiana na misingi ya kikanda na kimataifa kwa lengo la kupambana na matumizi ya fedha haramu pamoja na ufadhili wa matendo ya kigaidi.

Kifungu cha pili 2 kinakusudia kuweka ukomo wa matumizi ya sheria kwa Tanzania Bara isipokuwa kwa masuala yanayohusu Kitengo cha Kudhibiti Matumizi ya Fedha Haramu (FIU) na Kamati ya Kitaifa ya kudhibiti wa Matumizi ya Fedha Haramu, sheria itatumika kote Tanzania Bara na Zanzibar. Kifungu cha 3 kinapendekezwa kuongeza tafsiri ya maneno ya vyombo vinavyosimamia utekelezaji wa sheria (law enforcement agencies) pamoja na tafsiri mpya ya mamlaka ya usimamizi (regulator) kwa kujumuisha vyombo vingine vya usimamizi ambavyo viliachwa katika tafsiri y hapo awali. Vilevile, kifungu kimpapanua wigo wa tafsiri ya makosa yanayo sababisha matumizi ya fedha haramu

(predicate offences) pamoja na watoa taarifa kwa kujumuisha makosa mapya yanayofanywa na watu binafsi au makampuni.

Katika kifungu cha 4, inapendekezwa kuwepo kwa kifungu kitakachopelekea uhuru wa kiutendaji kazi pamoja na matumizi ya fedha (budgetary allocations) ya Kitengo cha Kudhibiti Matumizi ya Fedha Haramu kwa madhumuni ya kuongeza ufanisi katika utendaji kazi wake. Katika kifungu cha 5 Kamishna wa Kitengo cha Kudhibiti Biashara ya Fedha Haramu amepewa mamlaka ya kuwa Mtendaji Mkuu pamoja na Afisa Masuuli Mkuu wa Kitengo cha Kudhibiti Matumizi ya Fedha Haramu. Marekebisho hayo pia yanalenga kuweka masharti ya kazi ya Kamishna, ikiwa ni pamoja na kipindi chake cha ajra. Kifungu pia kinaweka utaratibu wa kumuondoa Kamishana madarakani kutokana na utovu wa nidhamu, kutokuwa na uwezo wa kutekeleza majukumu yake au kutokana na ugonjwa wa akili. Rais anaweza tu kumuondoa Kamishna madarakani kufuatia mapendekezo ya Kamati inayochunguza suala linalochunguzwa, kushauri hivyo.

Kifungu cha 6 kinampa mamlaka Kamishna kusitisha kwa muda shughuli ambayo inatiliwa shaka kuhusika na matumizi ya fedha haramu au kufadhili vitendo vya kigaidi.

Kifungu cha 7 kinapendekeza kuweka wajibu wa watumishi wa FIU kutunza siri watakazo zifahamu wakati wakiwa kazini na baada ya kuacha kazi. Kifungu cha nane kinapendekeza kuongeza mwakilishi wa Taasisi ya Kupambana na Kuzuia Rushwa kuwa mjumbe wa Kamati ya Kitaifa ya Kudhibiti Matumizi ya Fedha Haramu (National Multi-Disciplinary Committee on Anti-Money Laundering).

Kifungu cha 13 kinapendekeza kuongeza kifungu kidogo cha pili ambacho kinatoa adhabu za kiutawala kwa kampuni itakayo kiuka masharti chini ya sheria. Kifungu cha Kumi na sita kinapendekeza kuongeza idadi na kumbukumbu ambazo mtoa taarifa anatakiwa kutunza. Vile vile, kifungu hicho kinatoa adhabu kwa

mtoa taarifa ambaye atakiuka masharti ya kifungu hicho. Vifungu vya kumi na saba na ishirini vinatoa utaratibu wa kutunza kumbukumbu hizo. Muswada pia unapendekeza kuongeza kifungu cha 19A mabacho kinatoa mamlaka kwa FIU kutoa adhabu za kiutawala dhidi ya mtu ambaye atakiuka masharti ya sheria. Aidha,

Muswada unapendekeza kurekebisha kifungu cha ishirini na mbili kwa lengo la kuwalinda maafisa wa benki pamoja na taasisi za kifedha dhidi ya makosa ya jinai, madai na ya kiutawala kwa kosa la kukiuka au kutoa siri za kibenki na za kitaaluma. Kifungu kipya cha 23A kinampa mdhibiti mamlaka ya kufanya ukaguzi na kuhakikisha asasi zinazosimamiwa zinatekeleza masharti. Vile vile, mdhibiti amepewa mamlaka ya kutoa adhabu za kiutawala kwa watakao kiuka masharti.

Mwisho, Muswada unapendekeza kuongeza vifungu vya 28A, 28B na 28C ili kutoa muongozo kuhusu utoaji wa taarifa, masuala ya adhabu kwa ujumla pamoja na mamlaka ya Mahakama Kuu kuhusiana na mtu asiye raia wa Jamhuri ya Muungano ambaye ametenda kosa chini ya sheria hii akiwa nje ya Jamhuri ya Muungano.

Dar es Salaam  
6 Januari, 2012

**MUSTAFA H. MKULO,**  
*Waziri wa Fedha*