

ARE YOU AWARE OF THE CONTRADICTIONS IN THE NEW ANTI-MONEY LAUNDERING LAW?

A critical analysis of the new Anti-Money Laundering Regulations of 2022 and all you need to know about PEPs.

On 11th February 2022, Government published new Regulations to amend the Anti-Money Laundering Regulations of 2015. Under these new regulations, all the additional due diligence measures applicable to Politically Exposed Persons have been extended to also be applicable in equal measure to their respective family members and close associates.

You might be wondering who a “Politically Exposed Person (PEP)” is, and what’s all the fuss about Anti-Money Laundering Law (also simply called, AML law)? Don’t worry, this article will surely this down. World over, AML law is designed to ensure that financial systems are not used by criminals like corrupt public officials, drug-dealers, human traffickers, terrorists and people of that caliber to conceal or disguise the proceeds of their criminal activities. In Uganda, Parliament enacted the Anti-Money Laundering Act in 2013 as the principal law for this purpose. This Law tasked all those businesses and professionals involved in financial transactions to be accountable persons with broad obligations to constantly conduct special due diligence on their customers and clients, and accordingly cooperate with the Financial Intelligence Authority. This Law also deemed certain clients/customers to be Politically Exposed Persons who require extra due diligence measures. But then, who is a Politically Exposed Person (or simply, PEP)?

Wondering who a PEP is? Well, just think about every individual whom you can legitimately call a ***Gamba-Nogu*** in our local parlance. PEPs are those persons with influence in public offices and therefore capable of using financial institutions and the real estate sector to conceal or disguise transactions of their ill-gotten wealth. Under our AML law of 2013, the family members and close associates of such influential public officials were also regarded as PEPs on account of their proximity to power and influence. The rule therefore was that, *once a family or close associate of a PEP, always a PEP*. They too had to be treated as PEPs wherever they engaged in a financial transaction.

However, Parliament amended this law in 2017 and excluded those family members and close associates from the bracket of persons to be treated as PEPs, except for those associated with heads of International organizations like Oxfam, UNAIDS and the like. The net effect of this AML law of 2017 is that these family members and close associates of our senior politicians, senior military, judicial and public officials should not be treated as persons influential and privileged enough to conceal or disguise ill-gotten wealth.

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It is this position that Government is trying to reverse again under the new AML Regulations of 2022, to once again treat them as PEPs. We must note that this is a very welcome development because it realigns our AML law with international AML standards. Under the International AML standards, our Government is dutybound to take effective measures against Money Laundering and illicit financing by, among others, treating the family members and close associates of PEPs equally as PEPs in all their financial activities. Short of this, the integrity of our financial and associated sectors would be at stake in the eyes of our international Partners like genuine foreign Investors, IMF and the World Bank. No genuine player would have the appetite to do business with a system so susceptible to being misused by financial criminals without adequate safeguards. In this regard, the new AML Regulations of 2022 are very welcome, at least for the sake of the integrity of our financial and associated sectors internationally, if we don't care enough locally.

That said, it is noteworthy that these new AML Regulations of 2022 also have a crucial legal dilemma, in as far as they recreate the position of the 2013 AML law in clear contradiction of the current substantive AML law which is the AML Act of 2017. This course of action by Government amounts to roofing a non-existent house. The Legislative shelter of 2013 recognizing family members and close associates of PEPs as PEPs was demolished by Parliament in 2017 by the AML Act of 2017 as noted above.

Upon this background, it is our considered view that unless the substantive provisions of our AML Act of 2017 are themselves amended to generally re-introduce all these family members and close associates in the bracket of PEPs, the new AML Regulations of 2022 do not have legs on which to stand, and shall be liable to collapse at the slightest winds of legality questions.

Off record in some quarters, it has been said that the new AML Regulations were needed as a visible step towards aligning with International Anti-Money Laundering Standards. That on account of the undeniably long and tedious process of amending an Act of Parliament, Government chose the forbidden shortcut of doing so by these Regulations which are passed by the Minister of Finance. Well, we take it that the new AML Regulations are well-intended and don't have to be "hot air". It is therefore advisable that the review and eventual amendment of the substantive law, the AML Act, 2017, be expedited to avoid the uncertainties surrounding Regulations which contradict their parent law. For any stake-holder contribution which may be necessary, the authors of this article shall be pleased to contribute a perspective or two.

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