

NON-PROFIT ORGANISATIONS ("NPOs")



BEST PRACTICES MANUAL



Office of the
Attorney-
General &
Ministry of
Legal Affairs
**COMPLIANCE
UNIT**

Table of Contents

	Page
TABLE OF ACRONYMS.....	2
Purpose.....	3
Introduction.....	4
Financial Action Task Force Recommendation 8.....	4
Understanding the Risk.....	5
Mitigating the Risk.....	6
Best Practices.....	6
Use of Regulated Financial Channels.....	6
Financial Accounting.....	7
Financial Transparency.....	7
Audited Financial Accounts.....	8
Verification of NPO Activities.....	8
Solicitation of Donations.....	8
Foreign Operations.....	9
Policy Controls.....	9
Suspicious Reporting Transactions.....	10
Oversight and Supervision.....	11
Sanctions.....	12
Conclusion.....	12
Checklist.....	13

TABLE OF ACRONYMS

AML	–	Anti-money laundering
CFT	–	Countering the financing of terrorism
DNFBP	–	Designated non-financial businesses and professions
FATF	–	Financial Action Task Force
FIU	–	Financial Intelligence Unit
ML	–	Money laundering
NPO	–	Non-Profit Organisation
RBA	–	Risk-based approach
TF	–	Terrorist financing
UNSCR	–	United Nations Security Council Resolution

PURPOSE

The purpose of this Non-Profit Organisations Best Practices Manual (“Manual”) to provide examples of good practices in order to:

- i. provide NPOs with valuable information to consider when determining how best to prevent and mitigate terrorist financing (“TF”) abuse.
- ii. assist with the implementation of the Financial Action Task Force (“FATF”) Recommendation 8 on Non-Profit Organisations while balancing the vital role NPOs play in The Bahamas.
- iii. assist NPOs which fall within the scope of the FATF definition of a NPO meeting the objectives of Recommendation 8 and mitigating TF threats they may face.
- iv. aid financial institutions in the proper implementation of a risk-based approach when providing financial services to NPOs; and
- v. guide donors who are providing donations and funding to NPOs.

The best practices are helpful indicators and provide illustrations of the types of measures that, depending on the circumstances, are good steps towards ensuring NPOs are not misused by terrorist organisations.

1. Introduction

1.1 Non-Profit Organisations Act, 2019

Section 2 of the NPO Act defines an NPO as:

“a body of persons whether incorporated or unincorporated, formed and established for the purpose of promoting public policies or objects that are religious, charitable, educational, scientific, environmental, historical, cultural, fraternal, literary, sporting, artistic, athletic or promoting health, and whose gross annual income or any part thereof, if any, and other income are applied to the promotion of those objects, and there is a prohibition of any dividend or refund of contributions to its members, but excludes a religious or charitably founded school registered with the Ministry of Education, and any organisation with political objectives”.

The Non-Profit Organisations Act, 2019 (S.I. No. 25 of 2019) and the Non-Profit (Amendment) Act (S.I. No. 28 of 2019) came into force on 30th August, 2019 in order to regulate NPOs and implement the requirements of the Financial Action Task Force (“FATF”) Recommendation 8.

2. Financial Action Task Force Recommendation 8

Recommendation 8, requires that countries review the adequacy of laws and regulations that relate to its NPO sector in order to protect the sector from being abused for TF. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (a) by terrorist organisations posing as legitimate entities;
- (b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- (c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations¹.

The objective of Recommendation 8 and its Interpretative Note is to ensure that **NPOs are not misused by terrorist organisations** for the purposes of:

- (i) posing as legitimate entities;
- (ii) exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or
- (iii) concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes.

Recommendation 8 only applies to those NPOs which fall within the FATF definition of a non-profit organisation. These are NPOs which:

¹ Interpretative Note to Recommendation 8

“primarily engaged in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or other types of “good works”.

3. Understanding the Risk

In order to comply with the requirements of Recommendation 8, it is important to understand the entire domestic NPO sector and the TF risks that NPOs may face. A risk assessment exercise enables the identification and assessment of those NPOs which may be at risk for TF.

The risk-based approach provides the foundation for the proper assessment of the level of TF risks and determination of how best to mitigate these risks.

As a preliminary assessment the risk profiles of NPO are reviewed at the point of registration. NPOs are assigned a risk rating based on one or more of the following criteria:

- (1) annual turnover \$75,000 and over;
- (2) Directors residing in a foreign jurisdiction other than The Bahamas; and
- (3) Cross border movement of cash and activities (overseas branches/affiliation).

This preliminary assessment enabled the Office of the Attorney-General and Ministry of Legal Affairs to:

- a) better understand the domestic NPO sector, including size, type, locations and activities of NPOs;
- b) identify which NPOs in The Bahamas fall within the scope of the FATF definition of a Non-Profit Organisation and to which NPOs the country’s terrorist financing mitigation measures should apply;
- c) understand the TF risks facing the NPO sector, and determine which laws, regulations, and other measures are already in place which might help to mitigate those risks, in line with Recommendation 8.

There are five categories of abuse or risk facing NPOs:

- i) The diversion of funds is a significant method that focused on the substantial financial resources within the sector. Actors inside an NPO, or external actors such as foreign partners, tend to be responsible for the diversion;
- ii) NPOs or directing officials maintained an affiliation with a terrorist entity, either knowingly or unknowingly. In these instances, an NPO could be abused for multiple purposes, including general logistical support to the terrorist entity;
- iii) NPOs could be abused to provide support to recruitment efforts by terrorist entities;

- iv) NPOs are also targeted for abuse of programming. The flow of resources is legitimate, but NPO programmes could be abused at the point of delivery;
- v) terrorist entities abuse the NPO sector through false representation. In these instances, terrorist entities started ‘sham’ NPOs or falsely represented themselves as the agents of ‘good works’ in order to deceive donors into providing support.

4. Mitigating the Risk

The best practice for NPOs to ensure that they are not misused for terrorist financing purposes is to put in place:

- a) good governance; and
- b) strong financial management, including implementing robust internal and financial controls and risk management procedures.

In addition, NPOs should carry out proper due diligence on those individuals and organisations that the NPO works closely with, receive donations including monetary funds from and give donations and monetary funds to.

Proper due diligence is dependent upon the circumstances and context of each organisation and the environment in which it operates.

Due diligence is a range of practical steps that need to be taken by NPOs so that they:

- (a) are reasonably assured of the provenance of the funds given to the NPO;
- (b) confident that they know the people and organisations the NPO works with; and
- (c) able to identify and manage associated risks.

NPOs should also undertake their own internal risk analysis to help better understand the risks they face in their operations and design appropriate risk mitigation and due diligence measures.

5. BEST PRACTICES

Some practices which have been found to enhance an NPO’s ability to identify and take action against terrorist abuse of NPOs include the following:

5.1 Use of Regulated Financial Channels

All registered NPOs are **encouraged** to establish a facility (bank account, credit union account, money transmission account, etc.) with a regulated entity licensed and supervised by the Central Bank of The Bahamas (see sections 3 & 4 FTRA, 2018).

It is mandatory for all licensed banks, credit unions and money transmission service providers in The Bahamas to comply with the Banks and Trust Companies Regulations Act, 2020 and amendments, all Banks and Trust Companies Regulations, Proceeds of Crime Act, 2018 and amendments, Anti-Terrorism Act, 2018 and amendments, The Financial Transactions Reporting Act, 2018 and amendments and all regulations issued pursuant to the FTRA. 2018, Guidelines for Supervised Financial Institutions on the Prevention of Money Laundering, Countering the Financing of Terrorism & Proliferation Financing (2018) and amendments, amongst others.

The use of a licensed and regulated entity which is supervised by the Central Bank of The Bahamas serves as an additional preventative tool to mitigate the risk of TF, ML, PF, as well as sanctions and reputational risk on a micro and macro level.

NPOs should not, under any circumstances, use any alternative arrangements/services or unregulated and unlicensed service provider to remit funds overseas (e.g. via the Hawala money transfer system).

NPOs found to be in contravention of the former will be penalized to the full extent of The Bahamas' legal framework and may be subject to deregistration, forfeiture of assets, criminal investigation and prosecution.

5.2 Financial Accounting

NPOs should maintain and be able to present comprehensive financial records inclusive of financial statements – balance sheet, income statement, files on receipts (donations, government interventions, grants, etc.) and expenses (disbursements, grants, donations, etc.).

There should be preparations of budgets for yearly operations segregated into the NPO's programmes for proper accounting and record keeping purposes.

The budget files should indicate the identity of recipients and purpose for the disbursement.

Establishment of proper accounting and records will assist the NPO in adequately overseeing its operations and to avoid diversion of its resources.

5.3 Financial Transparency

NPOs collect a considerable amount of funds from donors for distribution to beneficiaries. Transparency is in the interest of the donors, organisations, and authorities. If an NPO is engaged in activities that are identified risks, the Registrar General shall, by written order, request the NPOs to produce bank records or other information that show its financial status. In addition, NPO should be in a position if called upon to produce bank records or other information that show its financial status.

Further, NPOs should be aware that the Registrar General may require a bank or financial institution where the NPO has an account to submit any financial records in respect of the NPO.

Financial records should be kept for a minimum of five years from the date of the transaction to which the record relates and available for verification purposes.

5.4 Audited Financial Accounts

Financial auditing is a recognised method of ensuring that the accounts of an organisation accurately reflect the reality of its finances.

NPOs should undergo audits to retain donor confidence and in other jurisdictions, regulatory authorities require them for NPOs.

Although it is not a requirement under the NPO Act, financial audits should be conducted by a certified auditor, to ensure that the organisation's resources and disbursements are being properly accounted for and beneficiaries are reasonably known and verified to avoid connections to terrorism. The latter is specifically important where the NPO is disbursing funds cross-borders.

However, if it is not feasible for the NPO to have a financial audit conducted by a certified auditor, the NPO should be in a position to produce unaudited financial accounts.

It should be noted that financial auditing does not guarantee that funds donated to the non-profit organisation are actually reaching the intended beneficiaries. In some cases, financial accounting and auditing might be insufficient protection against the abuse of non-profit organisations.

5.5 Verification of NPO Activities

NPOs who are involved in cross border activities and / or have foreign directors or controllers should be in a position to know and to verify that funds have been received from or disbursed to entities or individuals not sanctioned by the United Nations, international agencies or other countries

The need to verify adequately the activities of a non-profit organisation is important. NPOs that are affiliated with an overseas branch or is itself a branch of an overseas organization should verify that the NPO's programmes are being implemented as represented and funds not being diverted to terrorist organisations.

NPOs are established and operate in accordance with a governing document, such as, Memorandum and Articles of Association, Constitution, or Bylaws which outline the purposes, structure, reporting practices, and guidelines for complying with local laws. As such, NPOs should exercise organisational integrity.

5.6 Solicitation of Donations

Solicitations for donations from public or parties unrelated to the NPO should accurately and transparently inform donors about the purpose(s) for which donations are being collected and how

such donations will be disbursed. The NPO should then ensure that such funds are used for the purpose stated and report back to donors via a published report or proper medium regarding the disbursement to beneficiaries. These NPOs are also required to maintain proper records in accordance with the NPO Act as amended.

5.7 Foreign Operations

If the NPOs head office is located in a jurisdiction other than The Bahamas or the home office of the non-profit organisation is located in a different country and the beneficent operations take place in another country, there should be effective capacity to respond to Registrar General's and law enforcement requests, as necessary, for information about their operations.

The International Legal Cooperation Unit of the Office of the Attorney General currently handles all international requests for legal assistance. If an international request is received, then the Unit will deal with the request under the appropriate legislation in order to facilitate such request. NPOs will be contacted by this Unit as necessary.

5.8 Policy Controls

NPOs should be able to document their administrative, managerial, and policy controls over their operations. The role of the Board of Directors, or its equivalent, or controller (s) is key.

The Boards of Directors or controller (s) play an important role in the operations of the NPO. The Directors or controller (s) are responsible for the direction and control of the management and operations of the NPO.

The Directors or controller (s) have a responsibility to act with due diligence and care so that the organisation operates in a healthy and ethical manner. These individuals ought to be aware of who is working on behalf of the organisation, in particular, responsible parties such as officers including those with signing authority and fiduciaries.

The Directors or controller(s) should exercise reasonable care by taking proactive verification measures to ensure their organisation and affiliate organisations (if any) and those to which they provide funding, services, or material support, are not being penetrated or manipulated by terrorists.

Directors or controller(s) should act with diligence and probity in carrying out their duties.

A lack of knowledge or passive involvement in the organisation's affairs does not absolve a director or controller(s) of a non-profit organisation of responsibility and obligations under the NPO Act, 2019 as amended or related regulations or legally enforceable guidelines.

In this vein, Directors have a responsibility to:

- the NPO and its members to ensure the financial health of the organisation and that it focuses on its stated mandate;
- those with whom the NPO interacts with, like donors, clients, suppliers; and
- government and agencies that regulate the NPO.

Further, if a Non-Profit Organisation has a board of directors, the board of directors should be able to:

- identify each member of the board and each executive member;
- meet on a regular basis and keep Minutes of the meetings including the decisions taken at these meetings;
- conduct formal elections for the board of directors as well as the procedures for the effective removal of a director;
- ensure that there is an annual independent audit of the finances and accounts of the NPO;
- ensure that there are appropriate financial controls over program spending, including programs undertaken through agreements with other organisations;
- ensure an appropriate balance between spending on direct programme delivery and administration;
- ensure that processes and procedures are in place to prevent the use of the organisation's facilities or assets to support or condone terrorist activities.

If there are controller (s), then those individuals are responsible for keeping files notes explaining any decisions taken in respect of the disbursements and payments of the NPO for the proper record keeping and transparency purposes.

5.9 Suspicious Transaction Reports

NPOs should designate an officer of the NPO organisation as its senior officer (whether or not the person is a non-profit organisation trustee of the NPO) to be the person responsible for overseeing compliance by the NPO in accordance with the NPO Act and its Regulations

The senior officer should ensure that he/she and any other relevant officer receive such AML and CTF training as may be required by the Registrar.

Further, the senior officer has a duty to report any suspicious transaction relating to money laundering or terrorist financing to the Financial Intelligence Unit and keep a record of all such suspicious transactions.

The NPO should require its officers to disclose any previous convictions for ML or TF offences.

5.10 Oversight and Supervision

Oversight and supervision of NPOs assures that the controllers of these entities are complying with the provisions and obligations pursuant to the NPO Act as amended, related regulations and legally enforceable guidelines.

Oversight and supervision of NPOs are conducted by the Registrar General's Department. Section 16 of the NPO Act, 2019, empowers the Registrar General to conduct onsite inspections of an NPOs' facilities and operations to ensure that the NPO is in compliance with the provisions of the Act and any regulations made pursuant to the Act.

The main purpose of the onsite inspections is to enable the Registrar General to give guidance and feedback to NPOs on how their AML/CTF systems and controls can be improved and to assure that NPOs are complying with the laws and guidelines.

This is in line with the Registrar's functions under section 4 of the NPO Act which requires the Registrar to ensure that all NPOs have appropriate internal controls in place, including an appropriate system to identify conduct which may involve identified risks.

In preparation for an **on-site examination**, Non-Profit Organisations the Registrar General or his/her agents may ask the following general questions:

- What are your current projects and what is the status of each project?
- Have you taken any measures to verify beneficiaries?
- Please give a synopsis for the program and the success of each program?
- Can you give us a copy of the unaudited or audited financials for the NPO which includes funds received, funds disbursed, expenses, assets and liabilities?
- List of large donors - \$50,000 and over;
- Describe your verification process for donors, beneficiaries, etc., inclusive of documents requested (if any); and

- List of programs or projects.

5.11 Sanctions

Non-Profit Organisations should always adhere to existing laws and regulations which govern and relate to NPOs, identified risks and terrorist financing. As such, any Notices posted on the Registrar General's Department website on these areas should be carefully reviewed and appropriate action taken as necessary.

NPOs should be aware that effective, dissuasive and proportionate administrative, civil, or criminal penalties will be applied and enforced against those who misuse NPOs for terrorist financing.

6. Conclusion

Full implementation of the Financial Action Task Force Recommendation 8 and its Interpretive Note will promote accountability, integrity and confidence in the vibrant NPO sector. The international best practices mentioned above is by no means an exhaustive list. International Best Practices are always developing and evolving in a changing world. However, by non-profit organisations adopting and applying international best practices to their operations of their NPO, operations misuse of the sector, including terrorist financing, such application will assist in prevention of such activities.

NPO BEST PRACTICES CHECKLIST

Non-Profit Organisations are advised to develop and implement sound internal governance and accountability procedures, financial controls, risk management systems, and transparent reporting, in order to protect themselves against actual or alleged abuse of any kind, including allegations of fraud, money laundering, or support for terrorism.

The following checklist has been posted to the Registrar General's Department and Office of the Attorney-General's website to help non-profit organisations identify vulnerabilities to terrorist abuse.

- ✓ Have you reviewed the notices published on the RGD's website regarding the individuals and entities associated with terrorism, which are listed in United Nations Security Council Resolutions?
- ✓ Are you aware of the Anti-Terrorism Act, 2018 provisions on financing and supporting terrorism—and the consequences of breaching the provisions?
- ✓ Do you have a good understanding of the background and affiliations of your board members, employees, fundraisers, and volunteers?
- ✓ Do you have appropriate, sound, internal financial and other oversight and verification controls—for example, appropriate delegations and separations of authority over the NPO's programs, collection, handling, and depositing of cash and the issuing of receipts?
- ✓ Do you transfer money using normal banking mechanisms, wherever possible? When it is not, do you use reputable alternative systems, and have strong additional controls and audit trails to protect your charity's funds and show how and when they were used?
- ✓ Do you know who uses your facilities and for what purpose—for example, your office or meeting space, name, bank account, credit cards, website, computer system, telephone or fax—what they are saying, and what materials they are distributing or leaving behind?
- ✓ Do you try to find out who else might be supporting a person or cause that you are endorsing in public statements, and who uses your name as a supporter?
- ✓ Do you take reasonable steps to verify and know your donors (specially large donors and donors from high risk countries or regions), beneficiaries of disbursements (especially large disbursements, disbursements to high risk countries or regions)?
- ✓ Do you know who has ultimate control over the project that your NPO's money and resources are benefiting, and what the money and resources are used for?

- ✓ Do you know your partners (especially cross border partners) in delivering the work you are doing, and their affiliations to other organisations?
- ✓ Do you have clear written agreements with agents/contractors/other partners, in The Bahamas and abroad, covering what activities will be undertaken and how they will be monitored and accounted for?
- ✓ Do you check that the obligations of the agreements are being complied with?
- ✓ Are financial records being kept for a minimum of five years from the date of the transaction to which the record relates and available for verification purposes?
- ✓ Does the NPOs have a designated officer within the organisation as its senior officer (whether or not the person is a non-profit organisation trustee of the NPO)?
- ✓ Is the designated senior officer responsible for overseeing compliance by the NPO in accordance with the NPO Act and its Regulations?
- ✓ Does the senior officer ensure that he/she and any other relevant officer receive AML and CTF training as required by the Registrar?
- ✓ Does the senior officer report any suspicious transaction relating to money laundering or terrorist financing to the Financial Intelligence Unit?
- ✓ Does the senior officer keep a record of all such suspicious transactions?
- ✓ Does the NPO require its officers to disclose any previous convictions for ML or TF offences?