Terrorist Financing Risk Assessment for the NPO Sector in the Cayman Islands

Cayman Islands General Registry

Contents

Acknowledgments

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A: Context and Methodology

Context for this Risk Assessment

1. The ongoing international campaign against terrorist financing identified typologies where terrorists and terrorist organizations exploit the NPO sector through: collection, consolidation/ aggregation, transfer, dissemination and use of funds raised (what is also known as the funding cycle); providing logistical support; encouraging terrorist recruitment; otherwise supporting terrorist organizations and operations; creating sham charities; or engaging in fraudulent fundraising for these purposes.

2. The Financial Action Task Force (FATF) is the international standard setter in the area of Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT). Two parts of the FATF standards refer directly to NPOs - these are Recommendation 8 and Immediate Outcome 10.

3. Both FATF Recommendation 8 and FATF Immediate Outcome 10 require that countries, as a first step, identify the subset of organizations that fall under the FATF's definition of NPOs, and use all relevant sources of information in order to identify the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse.

4. In 2015, the Cayman Islands undertook its first National Risk Assessment of Money Laundering and Terrorist Financing (NRA). In 2017 the NPO Law established the Registrar of NPOs and an NPO Supervisory Regime in the Cayman Islands This was followed by a provisional NPO TF Risk Assessment. No NPO was identified at that time as having a high TF vulnerability.

5. In 2017, the Cayman Islands was assessed by the Caribbean Financial Action Task Force (CFATF) against the FATF standards. The Cayman Islands AML/CFT Mutual Evaluation Report (MER) was published in March 2019. CFATF assessors found that the embryonic stage of NPO regulation resulted in insufficient data being available to come to an informed determination on the level of risk associated with the NPO sector. The MER identified the need for the Registrar of NPOs to complete a more comprehensive risk assessment of the NPO sector and to develop and implement processes and procedures for a risk-based supervisory approach. The purpose of this risk assessment exercise is to implement the recommendations made by the CFATF in the context of the 2017 MER and to create a basis for a more targeted risk-based approach to NPO oversight.

Methodology and Data Sources

6. The FATF standards "*do not prescribe a particular method or format for assessing risk*".[1] Some general best practices for risk assessments of the NPO sector are included in FATF's *Terrorist Financing Risk Assessment Guidance* (FATF, 2019). Additionally, *FATF Guidance: National Money Laundering and Terrorist Financing Risk Assessment (*FATF, 2013) provides guidance on risk assessments in general. Both documents have informed the risk assessment methodology used here, particularly in relation to the use of qualitative and quantitative information.

7. The NPO risk assessment exercise was conducted under the leadership of the General Registry, with guidance by an international consulting firm and contributions by the Department of Customs and Border Control, the Financial Reporting Authority, the Anti-Money Laundering Unit, the Royal Cayman Islands Police Service Financial Crimes Unit, the Department of International Tax Cooperation, the Anti-Corruption Commission, the Department of Commerce

[1] *Terrorist Financing Risk Assessment Guidance* (FATF, 2019)

and Investment, the Ministry of Financial Services and the Office of the Director of Public Prosecutions.

8. The group of stakeholders comprising representatives from the Financial Reporting Authority, Cayman Islands Monetary Authority, Royal Cayman Islands Police Service, The Ministry of Financial Services and Home Affairs, Department of International Tax Cooperation, Department of Commerce and Investment, the department of Customs and Border Control, the Anti-Money Laundering Unit and General Registry reviewed the sources, available evidence and guidance and considered different approaches to risk assessments.[2] The following methodological approaches for the exercise were proposed:

   I. **The Case Analysis model:** Analysing data on TF events to identify patterns or commonalities in the practices or characteristics of NPOs involved (inherent risk). High-risk features are identified, and the effectiveness of mitigating measures in relation to these high-risk features alone is then analysed. Any gaps or outstanding vulnerabilities indicate residual risk.

   II. **Threat Intelligence model / Gap Analysis:** As above, the first stage is analysing data on TF events to identify patterns or commonalities in the practices or characteristics of NPOs involved (inherent risk). This model is used instead if there is insufficient data to identify patterns or commonalities of inherent risk with sufficient confidence to be able to identify specific high-risk features. The effectiveness of mitigating measures across the entire sector is therefore assessed (as opposed to just the high risk features) to identify any vulnerabilities which a known threat could exploit.

   III. **Descriptive research model:** Describe the available historical, qualitative and quantitative data and record any insights which the assessors' have.

9. The group of stakeholders determined that the primary challenge for the NPO risk assessment was the limited quantitative data available on TF abuse of the NPO sector. Accordingly, the group of stakeholders agreed on the adoption of the *Threat Intelligence Model* methodology to conduct the NPO risk assessment.

10. The 'threat intelligence' model assesses risk in two stages. Stage One involves an assessment of inherent risk based on an analysis of primary and secondary sources to identify the activities and characteristics of NPOs that are likely to be at risk of terrorist financing abuse. The inherent risk assessment is primarily qualitative in nature. Primary (i.e. Cayman Islands) sources are given significantly more weight than secondary (i.e. off-Islands) sources.

11. During Stage Two the assessment undertakes a qualitative assessment of the adequacy of laws, regulations, policy measures, outreach, and self-regulatory and self-governance measures in mitigating potential TF risks to identify any gaps and inadequacies in the mitigating measures and determine the residual risk.

12. The assessment is based as closely as possible on FATF requirements and guidance. The metrics used to make the assessment are taken from R8 and other FATF documents. The primary tests are that the measures are 'risk-based' and 'effective'. Where there is no relevant FATF guidance on an issue, assessments are made based on the expertise and experience of contributing stakeholders and the international consulting firm.

13. One case study involving TF in the NPO sector was identified after the stakeholder workshop. Whilst this case influenced the identification of potentially 'at risk' NPOs, it did not support the

[2] Examples from the UK, Canada, Australia, Saudi Arabia, Indonesia and the Philippines were considered.

adoption of a 'case analysis' model as one case would not allow for an identification of general trends and patterns.

14. The following primary information and data sources were used in this assessment (more detail can be found in *Section C* below):

    1. The General Registry (including data from registration and Annual Returns);

    2. Data collected from a survey of NPOs and consultations with NPOs;

    3. Submissions provided by:

        a. The Financial Reporting Authority ("FRA");

        b. The Royal Cayman Islands Police (the Joint Intelligence and Financial Crimes Units);

        c. The Cayman Islands Monetary Authority ("CIMA");

        d. The Department of Commerce and Investment ("DCI");

        e. The Department of Customs and Border Control ("CBC");

        f. The Anti-Corruption Commission("ACC"); and

        g. The Office of the Director of Public Prosecutions ("ODPP").

15. The following secondary information and data sources guided the process and the methodology and the typologies outlined in the listed papers were relied upon in instances where primary data was not available:

    - *The Interpretive Note to Recommendation 8* (see *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – the FATF Recommendations* (2012, updated 2016)).
    - *The Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems* (FATF (2013)).
    - The *International Best Practices: Combating the Abuse of Non-Profit Organisations* (FATF (2015)).
    - *The Risk of Terrorist Abuse in Non-Profit Organisations* (FATF, 2014).
    - *The Terrorist Financing Risk Assessment Guidance* (FATF, 2019).
    - The FATF Mutual Evaluation Reports of Canada,[3] the United Kingdom[4] and Hong Kong, China;[5]
    - Feedback from the FATF Private Sector Consultative Forum (Vienna, March 2016);
    - The National Risk Assessments and/or NPO TF Risk Assessments of the Cayman Islands, UK, Canada, Australia, and the Philippines; and
    - The Cayman Islands Mutual Evaluation Report of March 2019.

16. The Cayman Islands also recently undertook a national TF Risk Assessment and concluded that the Cayman Islands faces **a medium risk of the Cayman Islands being misused for TF purposes,**

[3] Mutual Evaluation Report for Canada: September 2016
[4] Mutual Evaluation Report for the United Kingdom: December 2018
[5] Mutual Evaluation Report for Hong Kong, China: September 2019

due chiefly to the high volume of cross-border transactions. The risks associated with funds being collected or used in the Cayman Islands for the purpose of terrorism were assessed as being low. The outcome of this national risk assessment was taken into account for purpose of the NPO risk assessment as well. The risk assessment determined that the risk of TF in the NPO sector is low.

B: Cayman Islands and the FATF Definition of NPOs

17. The primary relevant legislation for NPOs in the Cayman Islands is the Non-Profit Organisations Law 2017 (Law 37 of 2017) as amended by The Non-Profits Organisations (Amendment) Law 2018 (Law 38 of 2018), hereinafter referred to as the NPO Law. Also relevant is the Companies (Amendment) Law 2018 (Law 33 of 2018). Responsibility for applying both laws rests with the General Registry of the Ministry of Financial Services.

18. The NPO Law makes registration and reporting mandatory for companies, trusts and unincorporated associations that meet the following definition:

    "A company or body of persons, whether incorporated or unincorporated, or a trust

    (a) established or which identifies itself as established primarily for the promotion of charitable, philanthropic, religious, cultural, educational, social or fraternal purposes, or other activities or programmes for the public benefit or a section of the public within the Islands or elsewhere; and
    (b) which solicits contributions or raises funds from the public or a section of the public within the Islands or elsewhere."[6]

19. NPOs that fall under the definition under the NPO law but meet any of the following three criteria qualify as "*exempt NPOs."* Exempt NPOs are excluded from the provisions of the NPO Law, including mandatory registration and reporting[7]:

    1. 21(a)(b) and (c) NPO Law: NPOs that are already subject to supervision by either the Caymans Islands Monetary Authority (CIMA)[8] or the Department of Commerce and Investment[9]. In this case, the supervisory regime is stricter than for NPOs, and exceeds the FATF requirements;

    2. 21(d) NPO Law: government entities, such as the National Trust. These are established by statutes which also set out the oversight mechanisms. Five of these entities have however opted to register.

    3. 21(e) and (f) NPO Law: entities which are exempted by Cabinet. No such entities currently exist.

    4. NPOs incorporated under the Churches Incorporations Law 2007 are also created by statute and meet the definition of NPOs under the NPO Law.

20. FATF Recommendation 8 requires countries to determine as a first step which subset of NPOs in the country even fall under the FATF's definition of NPOs. The FATF defined the term NPO to cover "*a legal person or arrangement or organization that primarily engages in raising or disbursing of funds for purposes such as charitable, religious, cultural, educational, social or*

[6] s.2 NPO Law, as amended in 2018.
[7] *ibid,* s.21.(2) as amended (2018). Notwithstanding their exemption, the NPOs listed in s.21 may elect to register pursuant to Section 21.(2) of the NPO Law.
[8] This covers a range of financial and banking institutions, including trust companies and their subsidiaries, and co-operatives. Trust companies provide trust management services and are not in themselves NPOs – but the trusts they manage sometimes are. Co-operatives may also be NPOs. All such entities (including subsidiaries) are regulated by CIMA to the same standard as banking or financial institutions. The number of trusts or co-operatives that are NPOs is not known.
[9] Specifically, designated non-financial professions, which are regulated by DCI under the Anti-Money Laundering Regulations (2018 Revision).

fraternal purposes, or for the carrying out of other types of "good works." As such, legal persons or arrangements or organizations that are set up for such purposes but without having the raising or disbursing of funds as a main purpose would not be covered by the FATF standards. Examples of organisations outside the scope of the FATF definition would be sports clubs, social associations or religious groups that do not or only incidentally engage in the raising or disbursing of funds.

21. FATF provides the following graph[10] to illustrate which NPOs should be covered by the risk assessment.

22. The government stakeholder workshop[11] in July 2019 examined the FATF guidance on '*FATF NPOs*', the criticism expressed by the CFATF assessors with regards to the 2017 Risk Assessment for failure to include unincorporated organisations, and extracts from the Mutual Evaluation Reports from Canada, the UK and Hong Kong.[12] The following paragraphs reflect the discussions and conclusions from this workshop unless otherwise stated.

23. The Cayman Islands is a common law country with freedom of association. There is no restriction on citizens forming associations for legal purposes, and the total number of informal entities in the Cayman Islands that serve charitable, religious, cultural, educational, social or fraternal purposes is not known. The NPO Law establishes that such entities need to register if *(a)* [it is] *established or which identifies itself as established primarily for the promotion of charitable, philanthropic, religious, cultural, educational, social or fraternal purposes, or other activities or programmes for the public benefit or a section of the public within the Islands or elsewhere; and which solicits contributions or raises funds from the public or a section of the public within the Islands or elsewhere."*[13] The scope of the NPO Law is very similar to, but slightly broader than the definition of NPOs by FATF. Accordingly, all those Cayman Islands charities covered by the FATF Definition are required by law to register with the Cayman Islands General Registry. As of November 2019, there were 485 NPOs registered with the General

[10] Figure 4.1, *Terrorist Financing Risk Assessment Guidance*, (FATF, 2019)
[11] See paragraph 7 for a list of the agencies represented.
[12] At the time of writing, Canada, the UK and Hong Kong were the only countries 'Compliant' with FATF R8. Each concluded that not all non-profit organisations met the FATF definition, but that the NPOs that met the FATF definition ('FATF NPOs') coincided with the regulated part of their non-profit sector.
[13] s.2 NPO Law, as amended in 2018.

Registry, with analysis of statutory annual returns indicating a gross total revenue of CI$ 22.4m, with gross off-island remittances of CI$573,000, equivalent to 2.54% of total gross NPO revenue.

24. In addition to the 485 NPOs that are registered with the Cayman Islands' General Registry, also exempt NPOs pursuant to Article 21 (a) to (c) of the NPO Law fall under the FATF definition, covering those charities that are exempt from the registration requirement due to their status as a supervised person either by the Cayman Islands Monetary Authority (CIMA)[14] or the Department of Commerce and Investment[15]. As of September 2019, three NPOs were recorded to fall under this category.

25. In total, 488 NPOs in the Cayman Islands fall under the definition of NPOs, which are the focus of this assessment and comprise the following three categories:

Identification of FATF NPOs in the Cayman Islands		
'FATF NPOs'	**Notes**	
Registered NPOs	Includes ordinary and limited companies, trusts and unincorporated associations that meet the definition under s.2 of the NPO Law 2017.[16]	475
Exempt NPOs under s.21 (a),(b) or (c) of the NPO Law.[17]	These NPOs meet the s.2 definition, but are exempt from certain provisions as they are already subject to sufficient supervision by either the Cayman Islands Monetary Authority (CIMA) or the Department of Commerce and Investment (DCI).	3
Churches Incorporations Law	The NPOs were given legal personality under this legislation. It also serves as the constitutional document for these entities	5
Government owned entities	NPO created by virtue of some statue i.e. National Gallery and National Trust	5

26. The government stakeholder workshop further confirmed certain following types of organisations that exist in the Cayman Islands do not fall under the FATF definition of NPOs and thus are not subject to the FATF standards or the scope of this risk assessment exercise. They are listed in the table below.

27. Particular note should be made of companies organized under section 80 of the Companies Law ("section 80 companies"), of which 107 are FATF NPOs and 52 are not. S.80 companies are

[14] This covers a range of financial and banking institutions, including trust companies and their subsidiaries, and co-operatives. Trust companies provide trust management services and are not in themselves NPOs – but the trusts they manage sometimes are. Co-operatives may also be NPOs. All such entities (including subsidiaries) are regulated by CIMA to the same standard as banking or financial institutions. The number of trusts or co-operatives that are NPOs is not known.

[15] Specifically, designated non-financial professions, which are regulated by DCI under the Anti-Money Laundering Regulations (2018 Revision).

[16] *"A company or body of persons, whether incorporated or unincorporated, or a trust*
(a) established or which identifies itself as established primarily for the promotion of charitable, philanthropic, religious, cultural, educational, social or fraternal purposes, or other activities or programmes for the public benefit or a section of the public within the Islands or elsewhere; and
(b) which solicits contributions or raises funds from the public or a section of the public within the Islands or elsewhere"

[17] This covers a range of financial and banking institutions, including trust companies and their subsidiaries, co-operatives and organisations identified as designated non-financial professions (DNFPs). Trust companies provide trust management services and are not in themselves NPOs – but the trusts they manage sometimes are. Some co-operatives are also NPOs. All such entities (including subsidiaries) are regulated by DCI under the Anti-Money Laundering Regulations (2018 Revision) or by CIMA. The number of trusts, co-operatives or DNFPs that are also NPOs is not known.

ordinary companies or companies limited by guarantee with beneficial purposes that are registered under s.80 of the Companies (Amendment) Act 2018. The 107 engaged in raising or disbursing funds and as such are required to register under the NPO Law and are regulated as such – these are considered FATF NPOs, and are included in the figures for FATF NPOs above. The Other 52 s.80 companies are not engaged in raising or disbursing funds, and are therefore not 'NPOs' under the NPO law, nor FATF NPOs under the FATF definition. These entities do not meet the definition of an NPO but are still supervised by the Registrar of Companies for CFT purposes under the Companies (Amendment) Law 2018.

Not 'FATF NPOs'	Notes
Political parties, trade unions, professional associations, credit unions, advocacy and campaigning groups.	Civil society organisations which do not meet the 'good causes' requirement.
NPOs exempt under s.21(d) of the NPO law.	This covers government entities, such as the National Trust. These are established by statutes which also set-out oversight mechanisms
NPOs exempt under s.21(e) and (f) of the NPO law.	Entities which are exempted by Cabinet. No such entities currently exist.
s.80 NPOs.[18]	Not primarily engaged in raising or disbursing funds.
Informal national and religious groups	Not primarily engaged in raising or disbursing funds.
One-off fundraising drives and appeals.	Temporary activities which do not meet the test for legal person, arrangement or organisation.

[18] Excluding those also registered as NPOs.

C: Assessing Inherent Risks of NPOs in the Cayman Islands

28. FATF requires that within the subset of NPOs that fall within the FATF definition, jurisdictions "*use all relevant sources of information, in order to identify the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse*."[19]

29. The methodology adopted for the assessment of inherent risks follows this guidance and conducts the analysis in two stages:

    1. First, data was collected on 'FATF NPOs' by way of a detailed survey, through query of the General Registry's NPO database,[20] and from the FRA and law enforcement authorities.

    2. Secondly, the collected data was analysed to (i) assess the level of inherent risk of TF abuse to FATF NPOs; and (ii) identify which of the 485 NPOs within the scope of the FATF standards in the Cayman Islands, by virtue of their activities or characteristics, are likely to be 'at risk' of terrorist financing abuse.

Primary data and information sources

30. 485 NPOs were registered as of September 2019. An analysis of statutory registration and annual return data revealed that the **religious organizations are the most numerous in the Cayman Islands**, followed by sporting and community organizations and associations.

Type or organisation	No.	Type of organisation	No.
Religious organisations	131	Charities	67
Educational organisations	28	Community organisations	95
Professional associations	35	Sporting associations (federations)	28
Sporting organisations (teams/clubs)	54	Philanthropic organisations	20
Government own entities	5		

31. **Approximately half of the registered NPOs are unincorporated associations**, with just over half as a company or other form of legal entity. Only 2 NPOs are established as trusts.

Legal Structure	No.
Companies	230
Unincorporated associations	243
Trusts	2
Legislative (churches Incorporations Law) Incorporations	5
Government owned entities	5

[19] Criterion 8.1(a) of the FATF Methodology.

[20] For the 485 registered NPOs, the following were taken into account: NPOs per entity type (companies, trust, unincorporated association of persons and sole traders); NPOs that are registered with a CSP, with no other physical presence here in island; NPOs that are housed with licensed trust entities which are subject to exemptions under the NPO law; Composition of the Board of Directors (professionals; nationalities); Purpose and objectives; Annual returns; Remission of funds off island, in particular remission of funds to high risk jurisdictions (as defined by the Terrorism Index, subject to EU, UN, OFSI and OFAC Sanctions); Solicitation or disposal of funds through social media connections.

32. In July 2019 a **Government Workshop on TF in the NPO Sector** was held to source information from stakeholders on the activities of NPOs operating in the Cayman Islands, on the different risk factors and vulnerabilities facing the sector, and to identify any indications of abuse through the sector. The General Registry subsequently requested and obtained both **qualitative and quantitative data from the relevant government agencies** as indicated in the context and methodology section above. Little data was identified as being related to NPOs. One relevant case study was identified.

> The RCIPS received intelligence from a local resident amid concerns that individual 'A' holds extremist views and is at risk of being radicalised through online content.
>
> As part of the RCIPS response, the FCU conducted a parallel financial investigation that identified that individual 'A' demonstrated an unexplained pattern of regional and international travel that included journeys to jurisdictions that has a history of radicalisation and quasi-military training.
>
> Liaison with relevant overseas jurisdictions sought to build on the initial intelligence. The results of these enquiries revealed that that individual 'A' had historically received military training from suspected radicals in another regional jurisdiction, had historically received funds from numerous third parties via a Cayman Islands NPO, some of which originated from an individual located in Middle East via a European Offshore jurisdiction.
>
> A substantial amount of overseas liaison has been conducted as part of this investigation. Differing multi-jurisdiction intelligence has been shared between several relevant stakeholders throughout the Caribbean region and beyond.

33. Feedback from the sector was sourced through **70 consultation sessions with NPOs** held between January 2018 and August 2019; and **a risk assessment survey** distributed to all registered NPOs with responses having been received from 119 NPOs. The survey collected data on corporate governance, internal controls, purpose and activities, threats and vulnerabilities, assessment on operational processes, NPO risk appetite and views on the level of TF risk in the sector. In response to the risk assessment survey, over 90% of participants indicated that the overall risk of TF abuse posed to *their specific NPO* would be low.

Q15 Please rank the following risks to your NPO in order, with 1 being the highest risk and 4 the lowest risk.

Answered: 102 Skipped: 19

	1	2	3	4	TOTAL	SCORE
Money Laundering	10.00% 7	24.29% 17	58.57% 41	7.14% 5	70	2.37
Terrorist Financing	6.85% 5	0.00% 0	5.48% 4	87.67% 64	73	1.26
Fraud	51.32% 39	27.63% 21	18.42% 14	2.63% 2	76	3.28
Corruption	18.09% 17	32.98% 31	19.15% 18	29.79% 28	94	2.39

34. An analysis of the 485 NPOs on the register in December 2019 revealed that **300 were primarily service provision NPOs, and 185 primarily expressive.**

35. The analysis of Annual Returns revealed a **gross total revenue of CI$22,460,124.80 and gross off-island remittances of CI$572,535.83, equivalent to 2.54%** of total gross NPO revenue. Analysis of Annual Returns found **3 NPOs remitted funds to a high-risk jurisdiction** (Tier 1 of ten tiers ranked by risk in the Cayman Islands Terrorism Financing Risk Assessment).[21] No remittances were found to Tier 2 or 3 countries.

36. The NPO survey questioned respondents on foreign links. Response rates to questions on these topics were low, which limits the confidence with which we can draw conclusions from the data. The responses do suggest that NPOs are more likely to send funds than to run projects overseas, and that the destination of funds are largely within the region. Only 1 NPO reported sums in excess of CI$150,000 having been sent off-islands. Just over half of the respondents reported gross off-islands transfers of less than CI$5000.

Q26 How has your NPO dealt with overseas-related resources?

37. Answered: 66 Skipped: 55

ANSWER CHOICES	RESPONSES	
Our NPO has received funds, goods or services from other countries	43.75%	28
Our NPO has sent money or goods directly to people in need in other countries	20.31%	13
Our NPO has provided services or runs projects in other countries	14.06%	9
Our NPO has worked in partnership with NGOs in other countries, to help them fund their work, or by helping them to run their projects or provide services	10.94%	7
Our NPO was/is established, overseen and/or managed by foreign citizens (fully or in part)	9.38%	6
Our NPO employs or has obtained work permits for foreign citizens	42.19%	27
Total Respondents: 64		

Q31 Where was the money sent?

Answered: 32 Skipped: 89

ANSWER CHOICES	RESPONSES	
Caribbean	27.59%	8
North America	44.83%	13
Central America	3.45%	1
South America	3.45%	1
Africa	0.00%	0
Europe	3.45%	1
Middle East	0.00%	0
UK	6.90%	2
Asia	10.34%	3
TOTAL		29

[21] The *Cayman Islands Terrorist Financing Risk Assessment* classified jurisdictions into ten tiers of high-risk of terrorism based on publicly available information such as the FATF list of high-risk and other monitored jurisdictions and the Global Terrorism Index 2018. The top two tier are considered high risk. These are: Tier 1: Iraq, Afghanistan, Nigeria, Somalia, Syria, Pakistan, India, Yemen, Egypt, the Philippines; Tier 2: Democratic Republic of Congo, Turkey, Libya, South Sudan, Central African Republic, Cameroon, Thailand, Sudan, and Kenya.

Q30 What is the gross amount that was sent off island per year?

Answered: 32 Skipped: 89

ANSWER CHOICES	RESPONSES	
$500-$5,000	51.72%	15
$5,000-$15,000	17.24%	5
$15,000-$50,000	17.24%	5
$50,000-$150,000	10.34%	3
$150,000-$250,000	0.00%	0
$250,000-$500,000	3.45%	1
$500,000-$1,000,000	0.00%	0
Over $1,000,000	0.00%	0
TOTAL		29

38. Board members of Cayman Islands NPOs come from a wide-range of jurisdictions. **Analysis of the register revealed that 5 NPOs are controlled by nationals from high risk jurisdictions.** Only 5% of respondents to the survey indicated that there are no Board Members from the Cayman Islands, but a large number of non-Caymanian citizens are also reported. This suggests that most NPOs have both local and foreign Board Members. A strong representation by the USA, Jamaica, the UK and Canada was identified in regards to the control structure of Cayman Islands NPOs.

Q4 Where are your board members from?

Answered: 119 Skipped: 2

Cayman Islands	94.96%	113
USA	26.03%	31
Jamaica	15.97%	19
UK	12.61%	15
Canada	12.61%	15
Philippines	4.20%	5
Honduras	2.52%	3
Ireland	2.52%	3
India	2.52%	3
New Zealand	2.52%	3
South Africa	1.68%	2
Australia	1.68%	2
Trinidad and Tobago	1.68%	2
Nicaragua	0.84%	1
Zimbabwe	0.84%	1
Mexico	0.84%	1
Dominican Republic	0.84%	1
Rwanda	0.84%	1
‘Africa’	0.84%	1
Barbados	0.84%	1

Secondary information and data sources

39. Secondary sources utilized for the purposes of the inherent risk analysis are identified in the Context and Methodology Section above. The analysis of these secondary sources identified four common risk factors:

- *Proximity to terrorist groups or communities sympathetic to extremist causes*: There are no 'high risk' domestic communities within Cayman Islands. As noted above, three NPOs reported the remittance of funds to a high-risk jurisdiction as defined by the Cayman Islands Terrorism Financing Risk Assessment.[22] This risk factor is therefore of marginal relevance to the great majority of FATF NPOs in the Cayman Islands. However, any NPO with financial or control connections to high risk jurisdictions should be considered to have a higher TF risk.

- *Low governance standards in the NPO:* This was noted as a factor in reported cases in the Typologies Report and the UK. As noted in Section D, most NPOs reported high governance standards in the sector survey. However, further research is needed to verify this.

- *Service provision.* The Typologies report noted that all observed cases of FT through the NPO sector involved 'service' provision NPOs, as opposed to 'expressive' NPOs. However, it does not draw the conclusion that 'service provision' is a risk indicator, given that they make up much more than half of all NPOs. Instead, the conclusion it supports is that 'expressive NPOs' (which include sports, arts, culture and missionary work) should almost always be considered low risk. Expressive activities make up one-third of NPO activity (see para 34), and missionary work constitutes a significant proportion of Caymanian NPOs' overseas activities (Q32 of the Survey showed that 11 of 31 NPOs sending funds overseas support missionary work).

- *Unregulated.* Secondary sources suggest that unregulated NPOs may bear a higher inherent risk than regulated ones. All NPOs in the Cayman Islands falling under the *FATF definition of NPOs* are regulated, so this risk factor is not relevant.

Analysis and conclusions

40. There is little specific or relevant evidence of TF abuse of FATF-covered NPOs in the Cayman Islands. All possible sources for terrorist financing abuse of NPOs have been reviewed and analysed. No investigations, prosecutions or suspicions of terrorist financing abuse of NPOs have been reported by authorities. Similarly, there have been no suspicions or concerns generated from foreign jurisdictions or international requests for mutual legal assistance. One intelligence report was identified linking a Cayman Islands NPO with potential terrorism financing but no allegations were substantiated and to date no enforcement action has been taken.

41. Qualitative evidence supports a 'low' assessment of inherent risk. Interviews have been conducted with supervisory agencies and all levels of law enforcement from RCIPS, JIU and FCU to community police officers. As part of this exercise multiple outreach events with NPOs and

[22] The *Cayman Islands Terrorist Financing Risk Assessment* classified jurisdictions into two tiers of high-risk of terrorism based on publicly available information such as the FATF list of high-risk and other monitored jurisdictions and the Global Terrorism Index 2018. High risk jurisdictions are: Tier 1: Iraq, Afghanistan, Nigeria, Somalia, Syria, Pakistan, India, Yemen, Egypt, the Philippines; Tier 2: Democratic Republic of Congo, Turkey, Libya, South Sudan, Central African Republic, Cameroon, Thailand, Sudan, and Kenya.

financial institutions were also conducted. A survey was conducted and the responses from the NPO sector were analysed in detail. No respondents raised serious or substantiated concerns about TF abuse.

42. The assessment of the TF threat in the Cayman Islands concurs that the threat of funds being collected or used in the Cayman Islands for terrorism purposes is low but concludes that the size of the financial sector and its openness to international financial networks increase the inherent risk of funds being moved through the Cayman Islands for terrorism financing purposes. There are no specific controls which limit the exposure of the NPO sector to international networks, and where funding, dispersal or control occurs off-Islands it is necessarily more difficult for supervisors to verify the validity of the activity.

43. Whilst the possibility of undetected abuse of the sector cannot be discounted, the qualitative and quantitative evidence suggests that the most likely reason for a lack of evidence is that there has been little or no TF abuse of NPOs. Analysis of the data, the qualitative assessments and secondary sources supports the conclusion **that two categories of NPOs can be immediately assessed as low risk:** These are:

    1. **Jurisdictional NPOs.** These are NPOs which have no extra-jurisdictional element in their activities or control. Specifically, they do not raise or disburse funds off-islands; nor do they have board members or controllers who are outside of the jurisdiction of the Cayman Islands. (Note – foreign nationals legally resident in the Cayman Islands are considered 'domestic' in this definition). This conclusion is based on the data, and on the assessment of threat by the Cayman Islands government and Mutual Evaluation Report.

    2. **Expressive NPOs.** These are NPOs involved in sports, art, culture, advocacy or religious activities linked to worship or proselytization. This conclusion is based on an analysis of the data and the sector in the context of NPO vulnerabilities identified in the FATF Typologies report and other NPO Sector TF risk assessments.

44. Registration information reveals that about 200 registered NPOs have foreign links of some kind; meaning approximately 260 NPOs are purely domestic. Registration data suggests that two-thirds of NPOs are primarily engaged in service provision, and one-third primarily engaged in expressive activities. It is not possible based on the information available to identify the precise number of NPOs that combine the characteristics of service-provision with an extra-jurisdictional element. Assuming the proportion of service-provision NPOs is equal for all NPOs regardless of foreign links, this would give an estimate of 135 NPOs in this category.

45. It can be concluded that any TF risk that exists will most likely be present within those 135 service providing NPOs with an extra-jurisdictional element in its funding, activities or control. However, the presence of these characteristics alone does not indicate an actual TF risk in an NPO or suggest a TF risk in all 135. One of the unique features of The Cayman Islands is its high expatriate work force; and it is a norm for these residents to get involved with the operations of NPOs. As such there is a need for further analysis of the data and information in regard to this sub-group of the sector.

46. Extra-jurisdictional funding, activity or control is risky as the integrity of these activities cannot be easily verified or supervised. The one known report involving TF and NPOs had a number of extra-jurisdictional elements: the alleged terrorist links occurred overseas; the suspicious

funding source was overseas; and the suspect individual was a foreign national who now lives overseas.[23]

47. Mitigating this, annual returns and the survey suggest that off-island remittances by Cayman Islands NPOs are small in both absolute and relative terms. Only three NPOs reported sending funds to a high-risk jurisdiction. A significant proportion of funds sent overseas is sent to affiliate NPOs, and can be considered low risk[24].

48. Almost all NPO activity has a strong domestic element in at least one stage of the process. An analysis by the General Registry revealed just one out of the 135 identified NPOs where all three elements (income, expenditure, control) are extra-jurisdictional. Only 5% of NPO survey respondents lack a Caymanian national on the Board.

49. Analysis of secondary sources revealed little overlap between commonly observed risk factors in other jurisdictions and the known features of NPOs in the Cayman Islands. There is little exposure to high risk jurisdictions or high risk populations; perhaps a third of overseas activities are linked to 'expressive' activities and can be considered low risk;[25] and survey data suggests governance standards are good.[26]

50. Based on this analysis, this risk assessment identifies **three specific characteristics as associated with service providing NPOs likely to be 'at risk' of terrorist financing:**

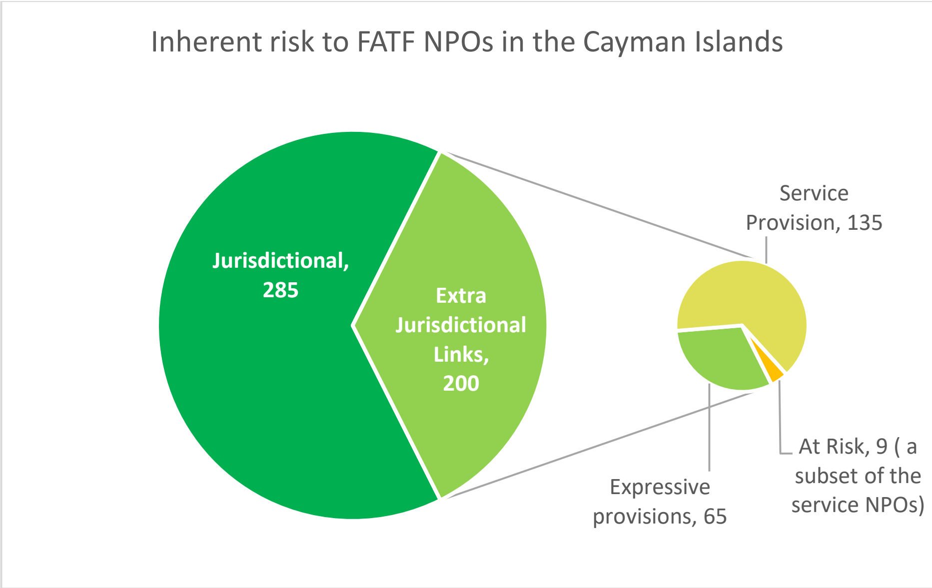
    1. NPOs that send or receive funds to/from high risk jurisdictions;

    2. NPOs that are managed or controlled by foreign national(s) from a high-risk jurisdiction;

    3. NPOs that have no clear link with the Cayman Islands (i.e. the source of income, activities/expenditure and control of the NPO are all predominantly off-island).

51. Registration information and other best information available suggests that in the last financial year, **3 (three) NPO met criterion (a); 5 (five) met criterion (b); and 1 (one) met criterion (c), resulting in a total of 9 NPOs in the Cayman Islands that are likely to be at risk of terrorist financing.** Most activity is therefore low risk; and the very riskiest activities (involving significant extra-jurisdictional activity and/or high-risk jurisdictions) are rare. **The inherent risk of service-provision NPOs with extra-jurisdictional characteristics is assessed as low-medium.**

[23] The named controller of the NPO was Caymanian, and the senior officer on a work permit from the UK and Canada.
[24] According to the 2017 NPO Risk Assessment and MER.
[25] Although precise data is lacking – see above, and recommendations on changes to registration and annual return data suggested in section D.
[26] Although again the data is limited, and further research is recommended in Section D.


Inherent risk to FATF NPOs in the Cayman Islands
Jurisdictional, 285
Extra Jurisdictional Links, 200
Service Provision, 135
Expressive provisions, 65
At Risk, 9 (a subset of the service NPOs)

D: Assessing Mitigating Measures and Residual Risk

52. This Section of the Risk Assessment considers mitigating measures and residual risk, in line with 8.1(c) to '*review the adequacy of measures, including laws and regulation, that relate to the subset of the NPO sector that may be abused for terrorism financing support'*. The measures to be assessed are (a) laws and regulation; (b) policy and outreach; and (c) measures taken by NPOs.

53. **This risk assessment adopts a threat intelligence / gap analysis model for the assessment of residual risk**. It analyses the effectiveness of mitigating measures as they apply to all NPOs, with a particular focus on measures which apply to service provision NPOs with extra-jurisdictional characteristics. This assessment will be a qualitative assessment of the effectiveness of laws, regulations, policy measures, outreach, and self-regulatory and self-governance measures.

54. The assessment is based as closely as possible on FATF requirements and guidance, which are referenced where relevant. Where there is no relevant FATF guidance on an issue, assessments are made based on the expertise and experience of the authors.

55. The metrics being used to make the assessment are taken from R8 and other FATF documents. The primary tests are that the measures are 'risk-based'[27] and 'effective.'[28] In addition, and in accordance with FATF principles, the assessment also considers where relevant whether the measures disrupt legitimate NPO activity; [29] whether they are adapted to local circumstances;[30] whether they are consistent with international human rights obligations;[31] and whether authorities are provided with appropriate resources.[32]

56. This is a qualitative assessment, based on testimonies from local and international experts and from sector representatives on the effectiveness of the measures in place in mitigating terrorist financing risks in those NPOs identified to be potentially 'at risk' of abused for terrorist financing.

[27] The Interpretive Note (paragraph 4) "*requires*" countries to adopt "proportionate measures", and adds that "*A risk-based approach applying focused measures in dealing with identified threats of terrorist financing abuse to NPOs is essential*." This principle is reiterated in paragraphs 19, 21, 23, 24, 29, 32 and 35 of the Best Practices Paper.

[28] The Immediate Outcomes are an assessment of the 'effectiveness' of AML/CFT measures. The Interpretive Note (INR8) requires countries to adopt "*effective measures*" to counter terrorist financing (paragraph 4(c)).

[29] "*To what extent, **without disrupting legitimate NPO activities**, has the country implemented a targeted approach, conducted outreach, and exercised oversight in dealing with NPOs that are at risk from the threat of terrorist abuse?*" Immediate Outcome 10, 10.2 (see Annex 1). See also INR8 paragraphs 4(a), 4(d) and 4(e), and Best Practices Paper paragraph 32(a).

[30] The Best Practices Paper repeatedly states that there is no 'one size fits all' approach to TF measures in the NPO Sector. See paragraphs 7(b), 18, 23(c), 29, 32(a) and 32(e).

[31] Implementation of R8 must be *"consistent with countries' obligations to respect freedom of association, assembly, expression, religion or belief, and international humanitarian law"*.6, Best Practices Paper. See also ibid 22, and Typologies 28.

[32] "*Countries should provide their appropriate authorities, which are responsible for supervision, monitoring and investigation of their NPO sector, with adequate financial, human and technical resources*".7, Interpretive Note

Laws and Regulation

57. Laws and regulations are central to FATF's determination of the effectiveness of measures to mitigate terrorist financing risks[33]. FATF states that "*state-based oversight and its capabilities [are] a necessary element to detecting the most sophisticated terrorist threats to the NPO sector*."[34] Indeed, regulatory measures to enhance the transparency and integrity of the NPO sector play an important role, even when they are not specifically focused on mitigating the terrorist financing risk.[35]

58. However, this emphasis needs to be understood in the context of the risk-based, targeted approach that Immediate Outcome 10 mandates. In practice, this means that the requirement for oversight only apply insofar as they help to effectively mitigate an identified terrorist financing risk.

59. The Non-Profit Organisations Law requires the Registrar of NPOs to, inter alia, ensure that all non-profit organisations have appropriate internal controls in place including an appropriate system to identify conduct which may involve the financing of terrorism. In addition, the Registrar of NPOs by virtue of section 3 of The Non-Profit Organisations (Amendment) Law, 2018 has been empowered to periodically assess the characteristics and activities of the NPO sector in order to identify vulnerabilities associated with Terrorist Financing.

Assessing the effectiveness of the laws and regulations as they relate to 'at risk' NPOs

60. **Targeted Risk-Based Supervision**: Most countries use comprehensive registration and monitoring systems of their formal NPO sector which allow supervisors to identify which NPOs may need to be subject to additional risk-based supervision. The fundamentals of such a comprehensive system are in place in the Cayman Islands.

61. **Registration**: NPOs as defined by s.2 of the NPO Law (as amended) are required to register if they wish to solicit contributions or raise funds from the public within the Cayman Islands or elsewhere.[36] Registration is with the General Registry.[37]

62. Registration is mandatory. The registration form obtains information on:

- The name and contact details for the organisation;
- Identification of the controller and other senior officers;
- Details of income and expenditure to date, or anticipated income or expenditure;

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[33] Three of the six assessment categories in the R8 Assessment Methodology relate to regulatory measures (See 8.3, 8.4a, 8.4b, 8.5b, 8.5c, and 8.5d of the Methodology). Immediate Outcome 10 also focusses on the need for effective oversight. Paragraphs 6(b)(i) – 6(b)(vi) of the Interpretive Note to Recommendation 8 establish further detailed requirements on oversight.

[34] "*Well-planned deceptions by terrorists abusing the NPO sector are difficult to penetrate with the resources available to non-governmental actors, making state-based oversight and its capabilities [are] necessary element to detecting the most sophisticated terrorist threats to the NPO sector… Government authorities should have the ability to take action when TF threats are identified.*" 5, Best Practices Paper. See also 67, Typologies.

[35] *Although many of the measures noted above may primarily be aimed at combating fraud, tax evasion, embezzlement, money laundering, and other financial crimes in the NPO sector, they can also help mitigate terrorist abuse by enhancing the transparency and integrity of the NPO sector in its operations and flow of funds. The same can be said of government initiatives to enhance transparency and integrity of the NPO sector, even if they are not primarily aimed at combating terrorist abuse of the NPOs."* 63, Best Practices Paper

[36] s.6.(1) of the NPO Law. Failure to register is an administrative offence punishable by a fine on the controller of the NPO (s.16(a)). Certain NPOs are exempted from the registration requirement (s.6(2)).

[37] *ibid* ,s.4.1.(a) and s.5(1)

- The banking arrangements.

63. The General Registry exercises significant additional powers at registration using authority granted under s.4 of the NPO Law. In practice, this consists of individual scrutiny of registration applications by case officers, with issues of concern followed up through individual contact by email, telephone or meetings. Registration also involves vetting of controllers and senior officers (see below for more detail). Entities are required to provide all relevant details associated with the entity, jurisdiction of operation, purpose and activities, type of fund-raising ventures and use of resources. They also are required to provide full details on those persons who own, control or direct these organisations. This information is used to risk rate the NPO which forms the basis for the Registry's targeted risk-based supervisory approach. It also allows the Registrar to understand the nature of the threats and vulnerabilities associated with the sector.

64. Whilst the collected information is available to competent authorities and law enforcement, the public registry only provides information on the NPO's name, registration date, type (from a list of nine) and contact details. Information on purpose and objectives and of key persons within the NPO are not publicly available.

65. Exempt NPOs must provide documentation to the registrar on request that reflects that the entity is acting in compliance with licensing, registration and accounting requirements.[38]

66. Incentives to register as an NPO under the NPO Law exist in the form of lower administrative fees, and the right to apply for exemption from certain customs duties and other fees (such as business licenses and work permit fees). Registered NPOs are also given a unique number which identifies them as NPOs to the public.

67. There are also significant legal and social pressures encouraging registration: The Cayman Islands is a small jurisdiction with a strong rule of law; proof of registration is a pre-requisite of opening a bank account (banks are actively monitoring for NPO activity, and advise organisations that haven't registered as NPOs that they should);[39] and it is the norm for corporations to check an NPO's registered status before associating with it. The General Registry launched an awareness raising campaign following the changes to the registration process with the introduction of the 2017 NPO Law. This involved multiple newspaper articles, radio and television interviews and 70 sessions with NPOs (including individual meetings).[40]

68. The authorities recognise that there may still be some s.80 or other companies which should register under the NPO Law but which to date have not due to the embryonic stage of the supervision process. No investigation has yet been undertaken into the scale of this possible issue although, as noted above, such entities will still be subject to AML/CFT supervision by the General Registry.

69. **Maintenance and publication of information**: For 'Registered NPOs', the requirements on the provision, maintenance and publication of accurate and up-to-date information on NPOs is set out in the NPO Law (as amended) and the NPO Law Implementing Regulations. Receiving and publishing this information in the registry is the responsibility of the General Registry.[41]

[38] *ibid,* s.21.(2) and (3) as amended (2018).

[39] The Proceeds of Crime Law and the Anti Money Laundering Regulations oblige financial institutions to ensure that their clients are appropriately registered. Guidance Notes produced by CIMA specifically mention this under due diligence requirements.

[40] Between January 2018 and August 2019, 70 events (including one-on-one meetings) were held.

[41] s.5(2) of the NPO Law 2017.

70. The information is collected at three stages. Registration requires NPOs to submit the name and contact details of the NPO; its purpose and activities; and the identity of the person who owns controls or directs the NPO.[42] As permitted by s.5(2)(e) of the NPO Law, the NPO Law Implementing Regulations set out additional information that must be submitted at registration, including: identifying information on controllers, senior officers and management; sources of income (or anticipated income); application of funds (or planned application of funds); and banking details. This information is routinely asked for.

71. Each registered NPO is required to submit an Annual Return within six months of its financial year end,[43] and to prepare annual financial statements.[44] A template for the Annual Return is included in the NPO Law Implementing Regulations. It requires: confirmation of details collected at registration; a balance sheet; an income statement; data on funds sent overseas (including the ten countries which received the most funds); the ten largest sources of funds; the ten largest application of funds; and the ten largest property sales or purchases.

72. Financial statements should cover: income and expenditure; all property transactions; all sums raised through fundraising; non-monetary transactions; a balance sheet (record of assets and liabilities; and any other prescribed information).[45] NPOs with an income in excess of CI$250,000 and which remit 30% or more of its gross income overseas must have a review by a licensed accountant to international auditing standards.[46] The General Registry may also decree that any other registered NPO have a review if deemed necessary, although this power has not been used to date.[47] Copies of reviews must be provided to the General Registry.[48]

73. Finally, each Registered NPO must within 30 days notify the Registry of any changes to specified information, which covers changes to its name, the objectives or activities,[49] or when an NPO ceases operations or ceases to exist.[50]

74. The information collected is recorded on the (non-public) database, along with the date of registration and the date of cancellation (where applicable).[51] Financial statements must be preserved for five years.[52]

75. NPOs which fail to maintain proper financial statements or submit annual returns may have their registration suspended or cancelled[53] and the controller subject to a fine[54]. At the time of writing, no such fines had been imposed. NPOs which fail to inform the Registry of changes to specified information do not face any penalties, and the Registry reports that NPOs are routinely failing to provide such information within the required time period.

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[42] *ibid,* s.5(2)(a-c).
[43] *ibid,* s.4.(1)(b) and s.15.(15).
[44] *ibid,* s.4.(1)(c).
[45] *ibid,* s.12.(1).
[46] *ibid,* s.12.(2).
[47] *ibid,* s.12.(3).
[48] *ibid,* s.12.(5).
[49] *ibid,* s.7(5).
[50] *ibid,* s.7(6).
[51] *ibid,* s.5(2)(d).
[52] *ibid,* s.4.(1)(e) and s.13.(9).
[53] *ibid,* s8(1)(b)(ii-iii).
[54] *ibid,* s16(b)

76. As noted above, Exempt NPOs must, if requested, provide the General Registry with documentation demonstrating their compliance with relevant audit, licensing, and registration requirements and with terrorism legislation (government entities excepted).[55]

77. s.80 Companies must file an annual return in a specified form, which confirms the objects and activities of the company. They must inform the registrar of any changes to the objects, activities or address, or any change in the controllers of the company. Finally, they must maintain proper books of accounts for at least five years, and establish and maintain appropriate internal controls for identifying potential terrorist financing.[56]

78. **Monitoring**: Annual returns and financial statements are reviewed by General Registry staff when received. There is no formal procedure for ensuring extra scrutiny of higher risk entities.

79. There is no formal or risk-based programme of regulatory inspections. The General Registry does undertake inspections of higher risk entities on an ad hoc basis through on-going monitoring processes. The inspection combines desk analysis and visits, evaluating internal financial controls, governance, key policies and procedures as well as obtaining or sharing information with law enforcement agencies.

80. **Internal controls**: s.4 of the NPO Law provides the General Registry with powers to ensure that NPOs have appropriate internal controls (including appropriate systems to deal with TF risks)[57]; and to guide NPOs with regards to best practices.[58] An analysis of activities in this area can be found in the 'Policy and Outreach' section below.

81. **Fund-raising**: Fund-raising for NPOs is largely unregulated. Gambling and lotteries are prohibited by law,[59] but the law is silent on all other forms of fundraising other than regulatory requirements relating to short-term appeals and trading.[60] Known forms of fundraising include fundraising events, sponsorships, cash collections, newspaper appeals and corporate partnerships. NPOs can employ people to collect funds. There is no known use of professional fund-raising firms, although an entity offering fund-raising services attempted to register as an NPO. Telephone (cold calling) and appeal by mail have not been observed.

82. There is limited information on what fund-raising methods are used in practice or of the total amounts raised. The Annual Returns provide some data but no analysis has been done.

83. **Capacity of regulatory bodies**. The General Registry has two full-time equivalent posts dedicated to NPO oversight, and has recently hired two additional compliance officers whose tasks will include NPO oversight. Officials are trained internally. Registration and submission of documents is online, using the Cayman Business Portal.

84. **Vetting and due diligence**. FATF does not require vetting of NPO officers, nor does it require NPOs to operate according to the 'Know Your Customer' principle for donors, beneficiaries or donors. Furthermore, FATF recognizes that international human rights obligations must be observed by signatory countries, including the freedom of association.

85. The General Registry routinely applies a 'fit and proper' test for the controller, senior employees and trustees of a registering NPO. Passport information provided at registration is

[55] *ibid,* s21.(4) as amended.
[56] All under s.80B of the Companies (Amendment) Law 2018.
[57] s.4(e) of the NPO Law 2017.
[58] *ibid,* s.4(g).
[59] Gambling is illegal in the Cayman Islands.
[60] Trading by NPOs is permitted with a trading licence.

entered into a commercial database which checks against criminal records, list of Politically Exposed Persons and lists of designated terrorists. Positive responses are checked against local records, including the immigration database, and with the Police. 'Tip-offs' from the local community or authorities may also lead to additional scrutiny. Minor suspicions are usually dealt with through face-to-face meetings.

86. In practice, there has only been one minor issue identified by the 'fit and proper' test. The General Registry indicated that serious concerns would result in a refusal of the registration application. Any links to terrorism would result in an immediate referral to the FRA and police.

87. **Intelligence and Investigations.** Section 4(1)(f) of the NPO law tasks the General Registry with the function of "investigating or authorizing the investigation of a non-profit organisation that is suspected of operating illegally". The General Registry or Attorney General can determine that an inquiry is warranted, to be conducted by the AG.[61] This includes a specific power to investigate any NPO suspected of committing an offence under the Terrorism Law (2015 Revision) or the Proceeds of Crime Law (2016 Revision).[62] The General Registry may suspend the NPO for the duration of the investigation.[63]

88. Under the Confidential Information Disclosure law, the General Registry as the 'competent authority' on TF matters can write to any financial institution requiring disclosure of information if they suspect a relationship with a terrorist financer. Information obtained can be shared with other competent authorities.

89. During an inquiry, the AG has the power to compel the controller of an NPO to: provide financial statements, verbal or written answers, statutory declarations, and copies of all books, records, papers or documents under their control; and to attend at a specified time or place to give answers and provide documents, under oath if required[64].

90. The AG may obtain public or court documents or records in the course of an inquiry[65]. This can all be shared with the General Registry.

91. The RCIPS Financial Crimes Unit has the power to obtain information from government and private sector sources under the Police Investigatory Powers and Proceeds of Crime Law. There are real time investigative/information sharing processes in place. More information is provided in the Terrorism Financing Risk Assessment.

92. At the time of writing, the General Registry had three on-going investigations for relatively minor issues. No investigations had been completed. General Registry officials explained that they would anticipate referring serious matters to the Attorney General or, for more serious matters like terrorist financing, to the FRA and police, as these agencies had greater sanction and investigatory powers. More detail on the effectiveness of terrorist financing investigations by these agencies can be found in the separate Terrorist Financing Risk Assessment.

93. **Protection of Assets**: The Registry may cancel or suspend the registration of an NPO proven after an investigation to be engaged in wrong-doing[66], and recommend that the Attorney

[61] s.10.(1) of the NPO Law 2017.
[62] *ibid,* s.10.(2)
[63] *ibid,* s.8.(2)
[64] *ibid,* s.10.(4) and s.10.(7)
[65] *ibid,* s.(10)(5)
[66] *ibid,* s.8.(1)(b)(i)

General apply to the court for an order to freeze the NPOs funds and property[67] or, in the event of a cancellation, find other means for ensuring the proper disposal of the funds or property[68].

94. **Sanctions**: As noted above, the General Registry may impose penalties on controllers of NPOs which fail to register, submit annual returns or prepare financial statements[69]; and similarly impose penalties on controllers of exempt NPOs which do not submit evidence of their compliance with relevant licensing, registration, accounting and auditing requirements[70].The AG may refer the NPO to the DPP to consider prosecution[71]. s.8(1)(b)(i) of the NPO law gives the General Registry a broad power to cancel or suspend the registration of an NPO "engaged in or engaging in wrong-doing".

95. **Inter-agency cooperation**. As noted above, agencies which are named as 'competent authorities' for AML/CFT purposes are empowered to obtain and share information on AML/CFT issues. The General Registry is the competent authority for CFT in relation to NPOs. All AML/CFT competent authorities, including the General Registry, also meet and share information through the IACC. Officials were satisfied that it enables them to cooperate effectively

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67 *ibid,* s.8.(4)(ii)

68 *ibid,* s.(8).(4)(ii) and s.10(11). The latter clause provides a range of powers, including powers to prevent named individuals from taking roles within the NPO; appointing new controllers or receivers to the NPOs; and establishing schemes to direct how funds can be used.

69 *ibid,* s16(a) and (b).

70 *ibid,* s16(c) and s.21(4) as amended.

71 *ibid,* s.(10).(10).

Policy and outreach

96. Outreach is a core element of FATF's recommendations for combatting terrorist financing risks in the NPO sector,[72] and one of the priority areas of Mutual Evaluations. The range of topics covered in the Outreach section of the Interpretive Note and Methodology is broad, covering awareness raising efforts, the general policy approach,[73] joint-measures with NPOs to develop best practices, and encouraging NPOs to use formal financial channels.

Assessing the effectiveness of outreach and policy measures as they apply to 'at risk' NPOs

97. <u>Outreach and best practices</u>: 4(1)(g) of the NPO Law 2017 states that the functions of the General Registry include "guiding non-profit organisations with regard to best practices."

98. The introduction of the NPO Law 2017 was a significant change in the oversight of NPOs, and was accompanied by a comprehensive programme of outreach. As noted above, this involved multiple newspaper articles, radio and television interviews and 70 sessions with NPOs (including individual meetings). This is ongoing, with awareness-raising and training events continuing, but with the focus switched to broader issues.

99. Most of the outreach and training is targeted at the general NPO population. It covers TF-relevant issues (such as internal controls and good corporate governance) as well as TF-specific issues (such as raising awareness of FATF, TF risks and NPO's obligations in relation to TF legislation, and the need to use formal financial channels). The government launched the first of a series of TF-specific outreach events in September 2019, targeted at higher risk NPOs (those that operate overseas). The outreach included contributions from the FRA, Royal Cayman Islands Police Service and General Registry.

100. The outreach programme is supported by ad hoc meetings between officials and individual NPOs to discuss best practices issues. NPOs can request meetings with officials at any time without appointment, and are accommodated in most cases. As with the outreach, the topics discussed include both TF-relevant and TF-specific issues.

101. There is currently limited official guidance or written advice for NPOs on best practices. Draft guidance has been prepared, including: guidance on best practices for NPOs (which covers TF-relevant and TF-specific issues, including the need to use regulated banking channels); guidance on TF risk to NPOs; and guidance on investigations.

102. The NPO Sector Survey undertaken by the General Registry in 2019 suggests that there is good awareness of TF measures that were implemented by government. Asked 'Are you aware of any Government measures to reduce terrorist financing risks for NPOs?', 78 answered 'Yes' and 36 'No' or 'Don't know'.74 Respondents were then asked to name specific measures they were aware of. The results are in the table below.

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[72] See paragraphs 11, 146, 148 and 185 of the Typologies and Paragraphs 25-27 and Annex 1, Boxes 8-11 of the Best Practices Paper

[73] *"a) clear policies to promote accountability, integrity, and public confidence in the administration and management of NPO"*

[74] From 114 answers. 5 respondents did not answer.

ANSWER CHOICES	RESPONSES	
Specific laws or policies for all NPOs	57.53%	42
General laws or policies that may apply to my NPO	79.45%	58
Rules on government funding or other support for my NPO (which include provisions to reduce the terrorist financing risk)	17.81%	13
Laws on funding or fundraising by my NPO (which address terrorist financing)	39.73%	29
Rules on terrorist financing for banks or financial institutions	36.99%	27
Restrictions on the transfer of funds or assets abroad	39.73%	29
Investigations of NPOs or NPO officials for terrorist financing offences	16.44%	12
Administrative sanctions of NPOs or NPO officials under investigation for terrorist financing offences	23.29%	17
Prosecutions of NPOs or NPO officials for terrorist financing offences	19.18%	14
Convictions of NPOs or NPO officials for terrorist financing offences	30.14%	22
Government specifically made my NPO aware of a potential risk of terrorist financing	24.66%	18
Government has provided my NPO with advice or guidance	43.84%	32
Other (please specify)	4.11%	3

103. It should be noted that a number of respondents claimed to be aware of measures that do not exist: for example, there have been no investigations, sanctions, prosecutions or convictions of NPOs or NPO officials for terrorist financing offences.

104. Just 32% of respondents reported having received advice or guidance from government relating to terrorist financing. This number is lower than expected given the significant outreach undertaken. It could be speculated that because the outreach was TF-relevant rather than TF-specific, respondents were not conscious of the TF element in the outreach.

105. Use of regulated financial channels: As noted above, proof of registration is a pre-requisite of opening a bank account (banks are actively monitoring for NPO activity, and advise organisations that haven't registered as NPOs that they should).[75] The outreach sessions and draft guidance for NPOs both remind NPOs that they should as a matter of course used regulated financial channels, particularly for off-islands transactions. The use of regulated financial channels is a crucial component of risk-based supervision, as it is far more thoroughly supervised than other forms of cash transfer, and NPOs that remit funds off-islands have been identified as higher risk.

106. Using non-regulated channels for remitting funds off-islands is a clear vulnerability. In the NPO Survey conducted by the General Registry in 2019, 28 out of 96 NPOs who answered the question stated that they remitted funds off island. Of those, 8 (27%) reported using cash remittance services. Most NPOs sent relatively small amounts off-islands (half sent less than $500; only one sent more than $150,000); and none reported sending funds to the Middle East or Africa. The General Registry should further analyze this data to identify any risky patterns of behaviour amongst those NPOs who reported remitting money off-islands using money remittance services, and consider undertaking further research into the circumstances surrounding this practice.

[75] The Proceeds of Crime Law and the Anti Money Laundering Regulations oblige financial institutions to ensure that their clients are appropriately registered. Guidance Notes produced by CIMA specifically mention this under due diligence requirements.

Mitigating measures by the NPO sector

107. FATF's requirements do not relate directly to NPOs, but to governments. Nevertheless, it is recognised by all, including FATF, that many of the most important measures to protect or mitigate against terrorist financing risks are measures that are taken by NPOs themselves. These measures may be taken by individual NPOs or may be the product of broader self-regulatory initiatives amongst the sector, or a part of the sector. These measures may not be terrorist financing-specific but, as noted above, general best practice measures often have a significant impact upon reducing terrorist financing risks and vulnerabilities too.

Assessing the effectiveness of mitigating measures by 'at risk' NPOs

108. The NPO Sector Survey conducted by the General Registry in 2019 asked a series of questions on the practice of NPO respondents. The data suggests a pattern of good practice within NPOs. A large majority of NPOs report that they review their internal procedures, and that they have formal record keeping policies in place. Two-thirds report that they subscribe to or follow some form of external best practice code.

109. Similarly, the levels of due diligence on partners, donors and beneficiaries is high. It should be noted that FATF encourages NPOs to undertake appropriate due diligence where necessary, as set out in the Interpretive Note[76]. However, it is clear that 'Know Your Customer' (KYC) requirements similar to those expected for financial institutions or DNFBPs[77] should not be imposed on NPOs[78].

110. The relevant responses are summarized in the table below:

Question	**Yes**		**No**	*Total responses*	*No answer*
	routinely	***as necessary***			
*Do you review the way your NPO **operates** to ensure you follow best practices?*	99		4	*103*	*16*
*Do you review the way your NPO handles its **finances** to ensure you follow best practices?*	98		5	*103*	*16*
*Do you review the way your NPO **manages projects** to ensure you follow best practices?*	92		9	*101*	*18*
*Do you have **formal record-keeping** policies and procedures in place?*	99		14	*113*	*6*
*Do you write down an **assessment of the risks** involved with your projects or activities?*	11	32	59	*102*	*17*
*Do you **train staff to** be aware of, identify, limit and **prevent risk**?*	22	42	19	*100*	*19*
*Do you **check the backgrounds of your partners** (including contractors and sub-grantees)?*	28	51	22	*101*	*18*
*Do you **check the backgrounds of your donors**?*	24	46	30	*100*	*19*

[76] Paragraph 6(b)(v) of INR8.
[77] Designated non-financial businesses and professions.
[78] *"NPOs are not considered designated non-financial businesses and professions (DNFBPs) and should therefore not be subject to the FATF requirements for DNFBPs."* 35, *Best Practices Paper.*

Do you ***check the backgrounds of your beneficiaries****?*	38	34	27	*99*	*20*
Do you subscribe to or follow ***third-party best practices/professional standards*** *(e.g. voluntary codes of conduct)?*	68		33	*101*	*18*

E: Analysis of Mitigating Measures and Recommendations

Laws and Regulation

111. The registration and information requirements for 'Registered NPOs', 'Exempt NPOs' and 's.80 Companies' are largely in line with the recommendations of parts 8.3 and 8.4 of the FATF Methodology, and with paragraph 6(b)(i),(ii),(iii), (iv) and (vi) of the Interpretive Note. Specifically, 'Registered NPOs', 'Exempt NPOs' and 's.80 Companies' are required to:

- to maintain information on the purpose and objectives of their stated activities[79];
- maintain information on "*the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees*"[80];
- have appropriate controls in place to ensure that all funds are fully accounted for, including appropriate systems for combatting terrorism (registered NPOs only);[81]
- Section 80 companies are required to file annual returns that provide detailed breakdowns of incomes and expenditures;[82]
- maintain sufficiently detailed financial records for a period of at least five years.[83]

112. <u>Risk based supervision</u>: Risk-based supervision currently exists through a statutory audit mechanism for certain NPOs, and an operational mechanism based on individual risk analysis during routine regulatory procedures. The primary mechanism is the vetting of senior officials at registration, although informal risk analysis also occurs when reviewing annual returns and whenever a regulatory intervention is necessary.

113. With the exception of the auditing and vetting, the analysis is informal and anecdotal in nature. There is no system for identifying or scoring risk, nor for ensuring higher risk entities face additional scrutiny. It is understood that the General Registry is actively considering how to introduce a more coherent and rigorous system.

114. Individual recommendations are made below in relation to financial reporting, monitoring, inspection visits and fundraising which all contain elements of risk-based supervision. It is recommended that a strategic risk assessment system is introduced to underpin and cohere these individual interventions. This will require:

- A system for identifying at registration those NPOs that display the characteristics identified in Section C (above) as likely to be at risk of terrorist financing;
- A system for identifying from Annual Returns those NPOs that have adopted activities or characteristics identified in Section C (above) as potentially at risk;
- A system of appropriate additional measures for potentially at risk NPOs (e.g. enhanced analysis of annual returns; additional monitoring; mandatory inclusion in inspection visits);
- A feedback mechanism, so that intelligence gained through additional monitoring is used to fine-tune the risk indicators.

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[79] 6(b)(i) and (ii), of the Interpretive Note to Recommendation 8.
[80] *ibid,* 6(b)(ii).
[81] *ibid,* 6(b)(iv).
[82] *ibid,* 6(b)(iii).
[83] *ibid,* 6(b)(vi).

115. Registration: The combination of legal requirements, incentives and social norms create an environment which make it likely that compliance with the registration requirements is very high. There is no reason to believe that there are significant numbers of organisations which are not correctly registered. However, it is conceivable that some NPO companies or unincorporated associations have failed to register. In the former case, such organisations would be registered and monitored as NPOs. In the latter case, such organisations would be limited to very informal activities before their non-compliance became apparent to the authorities. The potential vulnerability here is therefore likely to be low. Nevertheless, this report suggests that **the General Registry considers conducting an audit of s.80 and other companies on its books to ascertain whether significant numbers of NPOs have failed to register under the NPO Law**.

116. Transparency: It is noted that FATF 'encourages' (but does not require)[84] the publication of information on an NPOs purposes and activities; and on the identity of controllers, senior offices and trustees. This report recognizes that respect for corporate and personal privacy are governing principles of the government of the Cayman Islands. Nevertheless, many jurisdictions routinely make public information on NPO activities and the identify of their controllers. They argue that NPOs are essentially public entities, operating with public money and for the public benefit, and are therefore obliged to accept greater public scrutiny. They assert that NPOs should be accountable to the public which constitute many NPOs' main donors, supporters and beneficiaries. Further, members of the public raising concerns when they are unable to verify an NPO's activities provide a valuable and irreplaceable source of intelligence for authorities.

117. In the light of the above considerations, **this report recommends that a consultation and review is undertaken on transparency in the NPO sector.** The review should consider what information should be made public; it should include representations from local NPOs, law enforcement and regulators; and should consider submissions from local and international experts on FATF, terrorist financing, NPO regulation, transparency and privacy.

118. Financial reporting: Some deficiencies in the financial reporting practices were noted which could undermine the overall effectiveness of the system. Specifically:

- The Annual Return lacks detail on income and expenditure, particularly for larger organisations with multiple or complex activities;
- The Annual Return as currently formatted does not facilitate the identification of the potentially risky activities or characteristics identified in Section C, above;
- Officials expressed concerns about the quality of the annual returns received, with even large NPOs submitting returns with multiple omissions or errors;
- Most NPOs are not required to have any form of independent verification of the financial statements;
- The range of sanctions available for non-compliance with these requirements are limited and blunt.

119. Noting the need for a comprehensive supervisory system augmented by additional targeted supervision for potentially at risk NPOs, the recommendations are in two parts.

120. Firstly, in relation to potentially at risk NPOs, it is recommended that:

[84] *ibid,* 6(b)(i) and 6(b)(ii).

- **These NPOs complete a more detailed annual return**.
- **The General Registry routinely reviews the annual returns and financial statements, and prioritizes these organisations for monitoring support and or advice**.
- **The General Registry conduct Onsite inspections as part of the targeted risk based supervisory approach to ensure that policies and procedures are in place to mitigate potential TF risk.**
- **The General Registry conduct specific outreach sessions geared towards those potentially higher risk NPOs to continually educate them on measures to mitigate the potential risk.**

121. Secondly, it is recommended that:

- **The Annual Return is amended to require more detail on income and expenditure, particularly where it relates to overseas transactions.** All larger NPOs, (whether domestic or foreign in operation) should be required to submit a more detailed annual return;
- **All NPOs continue to provide annual returns. Where applicable as per the NPO Law, financial statements should be reviewed and signed off by an independent reviewer**;[85]
- **Consideration should be given to measures to improve the quality and timeliness of annual returns and of other submissions**. Options include:
    i. Additional awareness raising, guidance and support for NPOs on completing annual returns and financial statements (see also the next section);
    ii. Publicly naming larger NPOs which consistently fail to report on time;
    iii. Introducing sanctions for controllers of larger NPOs which fail to update their register information on time.

122. Monitoring: **The General Registry should develop and implement a formalized and standardized system for monitoring annual returns**. The systems employed should ensure that potentially at risk entities are prioritized for detailed monitoring; and that the metrics used to assess NPOs are consistently applied.

123. Inspection visits: **The General Registry should develop and implement a formalized inspection visit programme using standardized systems**. The systems employed should ensure that potentially at risk entities are prioritized for inspection visits; and that the metrics used to assess NPOs are consistently applied, allow comparison between entities, and allow tracking of progress to ensure NPOs take steps to make required or recommended improvements.

124. Fund-raising: Analysis of typologies globally suggests that the collection of funds is the most vulnerable NPO activity. The lack of rules for fund-raising in the Cayman Islands is therefore a vulnerability.

125. Regulating fundraising in a proportionate and effective way requires carefully designed, locally appropriate solutions. Cash fundraising is by its nature informal and anonymous. Disaster appeals, by their nature, are not planned in advance. Regulations must accept the nature (and risks) of certain fundraising methods, and not render them impotent. Solutions will need to be

[85] See England and Wales for an example. The following guidance on the topic is provided by the Charity Commission for England and Wales. https://www.gov.uk/government/publications/independent-examination-of-charity-accounts-trustees-cc31/independent-examination-of-charity-accounts-trustees.

tailored to the needs of the Cayman Islands and be developed in consensus with the sector. It will likely require a package of measures, buttressing some carefully targeted regulatory requirements with softer measures, such as codes of conducts, hallmarking, best practices and awareness raising campaigns. Different measures will be needed for the different forms of fundraising (cash collections; appeals; advertising; postal appeals; use of professional fundraisers; corporate partnerships; sponsorships; trading etc). From a TF perspective, some of these forms of fundraising are more vulnerable than others. Special attention should be paid to collections where funds go off island, as the TF risk is significantly greater, and it is much harder to verify the end use of funds through either formal or informal channels.

126. Given the lack of information, the range of issues involved and the complexity of the potential solutions, it is recommended that **a separate review is conducted into fundraising practices and their oversight in the Cayman Islands**. The review should research current fundraising practices and levels; identify any criminality or other misconduct; consider developments in fundraising and its regulation from other jurisdictions; and propose a package of measures to mitigate potential risks.

127. Investigations: The Mutual Evaluation Report of 2017 cited "*adequate mechanisms for the coordination, cooperation and information sharing among all authorities that may hold information on NPOs*". This assessment concurs that the FATF requirements set out in criteria 8.4(b) and 8.5 of the FATF Methodology are met, with the caveat that the lack of TF cases makes it impossible to assess whether the system is also effective in practice.

128. The small size of the Cayman Islands provides opportunities for informal intelligence analysis, investigations and interventions which can be particularly effective. Officials are strongly connected to the community through personal relationships, which facilitates the reporting of concerns from within the sector, and allows for many issues to be effectively and quickly dealt with through face-to-face meetings. The small number of NPOs in absolute terms means it is possible for responsible officials in the General Registry to engage in 'cradle to grave' oversight of the sector, allowing them to personally identify unusual or concerning behaviours. It also allows responsible officials to be aware of all significant developments within the sector. Every official interviewed was able to speak with personal knowledge of every current case of concern. This is a significant advantage.

129. Vetting: As noted, FATF does not require the vetting of NPO officials, but does note the obligations of signatories of relevant human rights legislation to observe the principle of freedom of association. To date, the General Registry has not exercised its authority to refuse a registration in the light of concerns raised in the 'fit and proper' test. **The government should ensure that the exercise of vetting procedures follows due process and does not inadvertently restrict citizens' right to associate.**

130. Intervention powers: The General Registry has broad powers in relation to NPOs. However, it is somewhat limited in its powers to intervene in NPOs where there is poor administration or potential conflicts of interest, but no clear evidence of 'wrong-doing'. This is a potentially serious weakness if an NPO of concern does not voluntarily comply with the General Registry's inquiries or recommendations. FATF Typologies and experience from other countries demonstrate that wrong-doing is universally accompanied by governance or administrative failures.[86] The most gratuitous crimes are often accompanied by conflicts of interest. NPOs which are cautioned about such behaviour but which refuse to apply recommended remedies present a very high risk. s.4(1)(i) of the NPO Law 2017 allows the Registrar to "perform any

[86] See the FATF Typologies report; or *Tackling Abuse and Mismanagement: Report of the Charity Commission's investigations and compliance case work, 2013-14.*

other function conferred by this Law or that the Minister, after consultation with the Cabinet, may direct the Registrar to perform". It is recommended that **the General Registry should propose an extension of its powers to the Minister to enable it to more robustly enforce remedies on non-compliant NPOs where there are serious concerns which do not meet the threshold of 'wrong doing'.**

131. Institutional Capacity: The General Registry is well a resourced agency with responsibility for oversight of companies, a strategic priority of the Islands' government. NPO supervision benefits from this repository of institutional expertise. However, with the NPO regulatory system in its infancy, and whilst many good practices by officials were noted, these are not formalised in an employee manual. It is recommended that **an employee manual is developed to minimize the risk that institutional knowledge is lost** if key individuals leave.[87]

132. Consultation: As noted above, FATF requires government to consult with NPOs over best practices for mitigating potential TF risks. As such, **the General Registry should consult with NPOs over the details of all of the above proposals.**

Policy and outreach

133. The General Registry's ongoing awareness raising and guidance events are comprehensive and well-received by the NPO sector. However, with the survey responses showing relatively low awareness of TF measures and confusion over what measures have been taken by government, it is recommended that the **authorities continue with their awareness raising events.**

134. Other areas of outreach and guidance are nascent, examples being the TF-specific NPO outreach, and the written advice and guidance materials. It is too early to assess their effectiveness. It is important that they are fully implemented, and that materials are targeted at higher risk NPOs.

135. Some areas need more focus. **It is recommended that specific outreach and guidance programmes are developed in relation to**:

- **Fundraising**, with separate awareness raising campaigns and guidance provided for NPOs, donors and the public. Activities should be tailored to factors which may create greater risks, such as cash collections, raising funds for use overseas, or peak appeal times (e.g. Christmas);
- **Completing Annual Returns and financial statements to the required standard**. Again, this should be targeted at higher risk NPOs;
- **Best practices when sending or receiving funds off-islands**.

136. The authorities are reminded of criterion 8.2(c) of the FATF Methodology, which requires government to work with NPOs and other stakeholders to identify and develop best practices for mitigating terrorist financing risks. **Full engagement and consultation with NPOs on developing best practice guidance is encouraged**.

NPO Measures

137. The survey results suggest widespread good practices in the NPO Sector. However, there is a lack of data on practice in the NPO sector which one self-reported online survey cannot remedy alone. **More research is needed into practices within the sector, particularly into practice amongst those NPOs potentially at risk or engaging in higher risk activities.** The General

[87] The Charity Commission for England and Wales publishes its internal staff manual online. It can be found by following this link: https://www.gov.uk/government/publications/charity-commission-operational-guidance

Registry could start by examining if the survey data identifies any correlation between potentially at risk NPOs and particular good or bad practices reported.

F: Conclusion: Assessment of Residual Risk

138. Residual Risk is any risk that remains from an inherent risk after mitigating measures have been taken into account.

139. Mitigating measures fall into four categories:

    1. **TF-relevant regulatory measures**.[88] Most regulatory measures contribute to the mitigating of TF risk, even if it is not their primary purpose. These systems are necessary as a basis for TF-specific measures, as they provide a mechanisms for understanding the sector and identifying potentially at risk NPOs which may then need additional targeted supervision.

    2. **TF-specific regulatory measures**: Mitigating measures specifically tasked with mitigating TF risks. It may include enhanced and targeted support, supervision or monitoring of NPOs assessed as likely to be at risk of terrorist financing.

    3. **Preventative measures**. Mitigating measures by governments and NPOs to reduce potential vulnerabilities within individual NPOs.

    4. **Enforcement measures**: Mitigating measures to identify, investigate and prosecute TF incidents which occur.

140. **TF-relevant regulatory measures**. The reforms to NPO oversight in recent years have contributed to a much less risky environment for NPOs overall, and the authorities can interrogate data to identify those features or characteristics of NPOs that make them likelier to be at risk of terrorist financing. However, there may be some gaps in the system, particularly in relation to the comprehensiveness and accuracy of annual return data, and there is no systematic process for identifying potential higher risk NPOs for targeted supervision. The new regulatory system means that these problems should be fairly easy to solve. However, until such improvements are implemented, **the impact of TF-relevant regulatory measures in reducing residual risk for 'at risk NPOs' is low**.

141. **TF-specific regulatory measures.** There is no formal system for enhanced support, supervision or monitoring of higher risk NPOs. This has been recognized by the authorities, who are actively considering ways to address this issue. Specific recommendations are made above which will help address this. For now, **the impact of TF-specific regulatory measures in reducing residual risk for 'at risk NPOs' is low.**

142. **Preventative Measures**: Outreach measures have been implemented, with a focus of late on higher risk NPOs. NPOs self-report a number of good practices in their management operations, although there is a need for more reliable data on NPO's practices, particularly in relation to potentially at risk NPOs. Continued and sustained outreach is necessary. The **impact of preventative measures in reducing residual risk for 'at risk NPOs' is moderate.**

143. **Enforcement measures:** The General Registry is the competent authority for TF purposes in the NPO sector, and links up well with the broader TF architecture. The separate Terrorist Financing

[88] In practice, a generally-applied regulatory system for NPOs focused on eligibility for tax benefits, ensuring transparency, or promoting public trust in the accountability and integrity of the sector could ensure compliance with the requirements relating to registration or reporting without additional TF-specific measures, so long as it encompasses all NPOs that are potentially 'at risk'. However, some additional monitoring or outreach measures may be needed for those NPOs or activities that are identified as potentially being 'at risk' of TF abuse.

Risk Assessment is better placed to comment on effectiveness of these mitigating measures once a suspicion is identified, but insofar as it is relevant to this assessment, the **impact of enforcement measures in reducing residual risk for 'at risk NPOs' is medium-high.**

144. The significant improvement to regulation of NPOs is recognized in this report, and these improvements have created a sound regulatory basis for mitigating TF risks. Simple targeted measures, particularly in relation to annual returns, systematic identification of potential risk, and targeted support and monitoring for NPOs likely to be at risk would have a significant impact on inherent risk. **As the time of writing, the impact of mitigating measures on reducing the inherent risk is assessed as moderate. The residual TF risk to service-provision NPOs with extra-jurisdictional characteristics remains low-medium.**