



CAYMAN ISLANDS

# Registrar of Non-Profit Organizations

## General Guidance and Best Practices for the Non-Profit Organization Sector

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Creator: Cayman Islands General Registry, Compliance Unit  
Approver: Cindy Jefferson-Bulgin

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## **1. STATUTORY FUNCTIONS OF THE REGISTRAR OF NON-PROFIT ORGANIZATIONS**

- 1.1. The Cayman Islands General Registry and Registrar General, which have been appointed as the Registrar of Non-Profit Organizations (“Registrar”) by way of gazette dated 17 May 2017, are responsible for supervising the Non-Profit Organization (“NPO”) Sector. Therefore, the Registrar is uniquely placed to protect the NPO Sector and address matters related to breaches of the NPO Law (2017), Fraud, Money Laundering (“ML”), Terrorism and Extremism, Targeted Financial Sanctions (“TFS”), and Proliferation Financing (“PF”).
- 1.2. Pursuant to section four of the NPO Law, the Registrar is empowered to:
  - 1.2.1. receive and process NPO registration applications;
  - 1.2.2. obtain and review annual returns;
  - 1.2.3. obtain and review annual financial statements (where appropriate);
  - 1.2.4. ensure that NPOs have appropriate internal controls in place to mitigate the risk of TF;
  - 1.2.5. ensure that financial records are maintained for a minimum of five years;
  - 1.2.6. conduct or authorize investigations;
  - 1.2.7. guide NPOs with regard to best practices; and
  - 1.2.8. carry out any other direction from the Minister.
- 1.3. In addition, as per gazette dated 13 September 2018, the Registrar has the authority to conduct onsite inspections of registered NPOs in order to determine compliance with sections 4(1)(d) and 4(1)(e) of the NPO Law.

## **2. SUPERVISORY APPROACH**

- 2.1. The Registrar has adopted a risk and principles based approach to supervision. In other words, taking into consideration all relevant factors, NPOs are assigned a risk rating and the degree of supervision is tailored proportionally; at the same time, the Registrar will continue to publish guidance in relation to best practices and set its minimum expectations commensurate with the scale, complexity, and activities of NPOs. This Supervisory Approach was founded on the pioneering objective to supervise and protect the NPO sector from abuse in such a delicate and non-onerous way so as not to discourage charitable efforts, whether by monies or deed.
- 2.2. For example, NPOs with a high risk rating will likely be subject to more frequent onsite inspections and enhanced offsite monitoring. Moreover, although the risk of terrorist financing (“TF”) and extremism in the NPO sector and Cayman Islands is low, the Registrar endeavors to regularly educate and sensitize NPOs through published guidance and outreach regarding continued best practices associated with mitigating the risk of TF, TFS, and PF. Due to the inherent nature of best practices and internal, it follows that the risk of fraud, theft, and money laundering in the NPO sector will also be decreased.



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- 2.3. Where there are concerns about suspected terrorist abuse or criminal offences connected to a NPO, the Registrar will always liaise, share intelligence, and work closely with enforcement agencies (e.g. Cayman Islands Police Service) and other competent authorities. In essence, a fundamental role of the Registrar is to complement the work of incumbent regimes and initiatives (e.g. terrorist asset freezing) to combat financial crimes.

### **3. DEFINITION OF A NPO**

- 3.1. Section two of the NPO Law defines a NPO as a “*company, body of persons, whether incorporated or unincorporated, or a trust 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 programs, for the public benefit or a section of the public within the [Cayman] Islands or elsewhere; and which solicits contributions from the public or a section of the public within the [Cayman] Islands or elsewhere.*”
- 3.2. For the purpose of the NPO Law, solicitation includes:
- 3.2.1. advertisement in electronic (e.g. email, social media, radio, and television) or physical formats (e.g. sign board, banner, or printed media), which results in cash or in kind donations (i.e. other types of liquid and illiquid assets) being collected by the NPO;
  - 3.2.2. collection of cash, cheques, bearer negotiable instruments, corporate sponsorship, bank drafts, debit card payments, or other monetary instruments (e.g. crypto currency) from the public or a section of the public located in the Cayman Islands or elsewhere; and
  - 3.2.3. collection of funds generated from fund raising events.
  - 3.2.4. A contribution from members only is not defined as solicitation from the public for the purpose of the NPO Law. Accordingly, entities whose only source of income is derived from members are not defined as NPOs and would not be required to register as an NPO.
- 3.3. Generally, the following entities meet the legal definition of a NPO and are legally required, as per section 6(2) of the NPO Law, to register as a NPO with the Registrar.
- 3.3.1. Charities;
  - 3.3.2. Sporting associations;
  - 3.3.3. Philanthropic organizations;
  - 3.3.4. Religious organizations - churches, synagogues, religious groups, etc.;
  - 3.3.5. Community groups or organizations established for the benefit of the community;
  - 3.3.6. Professional associations (i.e. organizations established for continued professional development);
  - 3.3.7. Sporting organizations - all sport teams/clubs that solicit or raise funds from the public or received sponsorship from corporate bodies; and



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3.3.8. Community groups - includes parent teachers associations, community groups, and neighborhood watch committees.

#### **4. PROCEDURE TO REGISTER A NPO**

- 4.1. The Controller of a NPO can complete registration online at the Cayman Business Portal ("CBP"), which is available via <https://www.cbp.ky/>.
- 4.2. In accordance with the Schedule of the NPO Law, sections 3 - 5 of the NPO (Registration Application) Regulations (2017), and Registrar's internal procedures, Controllers are required to provide the following for a NPO in the NPO registration application:
  - 4.2.1. name of the NPO, as indicated in the constitutional document;
  - 4.2.2. physical address, to include building numbers;
  - 4.2.3. postal address;
  - 4.2.4. establishment type;
  - 4.2.5. telephone number(s);
  - 4.2.6. email address;
  - 4.2.7. website, where available;
  - 4.2.8. detailed statement of purpose and objectives; this is pivotal to the application process as it allows the Registrar to understand the nature, scope, and purpose of the NPO's activities;
  - 4.2.9. formation date;
  - 4.2.10. projected details of contributions and application of contributions;
  - 4.2.11. estimated annual sum (CI\$) to be remitted overseas and the associated jurisdictions;
  - 4.2.12. domestic banking arrangement; the Registrar is cognizant that newly established entities will likely not yet have a bank account with a local regulated retail bank; in these situations, the NPO registration application will be accepted for approval, barring any discrepancies or insufficiencies, after which the Controller will have a maximum of thirty days to provide the banking details to the Registrar; failure to provide this information may result in the suspension of the NPO's registration until said details are provided;
  - 4.2.13. constitutional document; for example, memorandum and articles of association, bye laws or constitution, trust deed, or partnership agreement;
  - 4.2.14. the controllers', senior officers', and management personnel's details which includes:
    - 4.2.14.1. legal name(s), as displayed on a government issued identification;
    - 4.2.14.2. position;
    - 4.2.14.3. appointment date;
    - 4.2.14.4. email address;
    - 4.2.14.5. postal address;
    - 4.2.14.6. physical address;



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- 4.2.14.7. telephone number;
  - 4.2.14.8. certified copy of a government issued identification, preferably a certified color copy of passport;
  - 4.2.14.9. executed Acknowledgement Form, which can be downloaded from CBP; and
  - 4.2.15. registration fee, were applicable, in accordance with the Non-Profit Organizations (Registration Application) (Amendment) Regulations (2019).
- 4.3. Unless otherwise stated, the information and documents set forth in 4.2 above must be populated and updated to CBP prior to submitting the NPO registration application.
- 4.4. At minimum, certifications must include the date as well as the printed name and signature of the Certifier.
- 4.5. Section seven of the NPO Law stipulates that the Registrar shall conclude the registration process within thirty days of receiving a registration application. Recent amendments to the NPO Law allow for an express application process within fifteen days for a cost of CI\$500.00 as opposed to the normal registration fee of CI\$300.00.

## **5. USE OF THE REGULATED BANKING SECTOR**

- 5.1. All registered NPOs are required to establish a bank account with a retail bank in the Cayman Islands. It is mandatory for all licensed banks in the Cayman Islands to comply with the Banks and Trust Companies Law (2018), Anti-Money Laundering Regulations (2018), Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands (2017), Proceeds of Crime Law (2019), Terrorism Law (2018) ("TL"), Anti-Corruption Law (2019), and Proliferation Financing (Prohibition) (Amendment) Law (2017) ("PFPL"), amongst others.
- 5.2. Thus, the requirement for registered NPOs to use a domestic retail bank serves as an additional preventative tool to mitigate the risk of TF, ML, PF, as well as sanctions and reputational risk on a micro and macro level. NPOs should not, under any circumstances, use any alternative banking arrangements/services or unregulated and unlicensed money service businesses to remit funds overseas (e.g. via the Hawala money transfer system). NPOs found to be in contravention of the former will be penalized to the full extent of the Cayman Islands' legal framework and may be subject to deregistration, forfeiture of assets, and criminal investigation.



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## **6. INTERNAL CONTROLS**

### **6.1. Internal Controls Defined**

- 6.1.1. Internal controls, which are typically categorized into preventative, detective, and corrective measures, can be defined as "*the policies, processes, tasks, behaviors, attitudes, and other aspects of a NPO that, taken together, facilitate effective operations by enabling it to respond in an appropriate manner to significant business, financial, operational, compliance, and other risks in order to achieve its objectives. This includes safeguarding of assets and ensuring that liabilities are identified and managed*"<sup>1</sup>.
- 6.1.2. Simply put, internal controls are important to help ensure the longevity of a NPO's operations by protecting the organization from various risks, including compliance risk, and reducing risk exposures. In addition, proper internal controls enhance the confidence of donors and other stakeholders (e.g. regulators, governments, general public, beneficiaries, employees, suppliers, customers, the community, and environment).
- 6.1.3. There are many different types of internal controls, with no one size fit all approach, and the degree of sophistication depends on the NPO's activities and purpose as well as its size and complexity of operations. For instance,
- 6.1.4. Senior Management has the responsibility to set the tone of internal controls within the NPO by implementing comprehensive written policies, procedures, charters, mandates, employee handbooks et cetera, including reference to the top down organizational culture, and ensuring adherence to the before-mentioned. It is required that Senior Management regularly deliberate and be informed and updated during Board/Management Committee meetings through which the NPO is managed. The decisions and/or outcomes of these meetings must be legibly documented and executed by way of minutes and resolutions, as appropriate. Minutes serve as the official record of meetings held by Controllers whilst resolutions evidence decisions made by the Board/Management Committee. Larger NPOs, unlike smaller NPOs, will more likely have systems in place which define the specific roles and functions of Members (e.g. Secretary or Treasurer). Differences aside, at all times, NPOs must demonstrate prudent management and evidence of good internal controls must be exhibited.
- 6.1.5. Internal controls must be effectively communicated to all parties involved in the organization, together with the reasons for and importance of compliance with the said controls as well as the consequences for non-compliance. Effective and tactful communication, whether verbal or non-

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<sup>1</sup> <https://www.accaglobal.com/ca/en/student/exam-support-resources/fundamentals-exams-study-resources/f1/technical-articles/internal-controls.html>



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verbal, is extremely crucial to avoid duplication of effort as well as to facilitate efficiency and staff morale, therein abating operational risk.

## 6.2. Governance

- 6.2.1. Governance refers to the way in which NPOs are directed/managed/administered; it is comprised of established Board/Management Committee approved policies and procedures which outlines operational rules and processes; identifies power holders (i.e. parties which can make decisions and the decision-making processes); and establishes accountability; it is, in essence, a toolkit that enables management and front line staff to effectively deal with the challenges of running the NPO.
- 6.2.2. Members of Senior Management are ultimately responsible for the proper running of the NPO and by virtue of their appointment have a fiduciary duty to act honestly, in good faith, and in the best interest of the NPO. They must exercise care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances. Thus, it is imperative that effective governance is in place in order to safeguard the interests of all stakeholders.
- 6.2.3. The effectiveness of the NPO's Board/Management Committee has a powerful impact on the long term success and sustainability of the NPO. The governing body has a responsibility to:
  - 6.2.3.1. explicitly and clearly outline its accountability to the NPO, indicating that in performing its duties, all decisions will be made within the best interest of the NPO; and
  - 6.2.3.2. set, with contributions from management, and approve the objectives, strategy (including short and long term growth plans and strategic initiatives), risk management and oversight framework, values, codes of ethics and conduct, and operational policies and procedures (e.g. regarding document retention and storage) of the NPO, as well as constantly review the same to ensure that desired outcomes are being met<sup>2</sup>.
- 6.2.4. As a best practice, Controllers should implement acceptable methods (e.g. comprehensive self-assessments or independent, external reviews) to assess the effectiveness of board. This assessment can include evaluations with respect to two aspects - attributes and processes. Attributes speaks to the role of each Controller in terms of their respective level of independence in decision making, skill sets, diversity, and other characteristics that adds value to the composition of the Board/Management Committee. On the other hand, processes consider whether performance evaluation and feedback are used to consider future needs or the direction of the NPO, as well as the process to nominate, select, and resign a Controller.

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<sup>2</sup> Committee of Sponsoring Organization of Treadway Commission



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### **6.3. Risk Management**

- 6.3.1. Risk of a systemic nature (i.e. risks at the NPO's level) can be defined as the possibility of monetary or non-monetary losses as a result of an event. There are many different types of risks<sup>3</sup> and the onus is on Senior Management to implement a robust risk management framework to understand and identify, prioritize, and mitigate risks. Written action plans and/or a risk register should be developed for significant risks and shared with key operational personnel for consultative and training purposes.
- 6.3.2. Proper risk management is crucial because unchecked risk will more likely adversely affect the NPO's short, medium, and long term objectives (i.e. operations, tactics, and strategy). Therefore, it must be recognized that risk management is not a static process; in fact, risk registers must be monitored and updated carefully and frequently, at least annually or as required due to a substantial change.
- 6.3.3. It is important to emphasize that the risk management process is neither a static nor copy and paste exercise. Risks will vary across NPOs depending on the nature of activities and purpose, scale of operations, as well as the type of internal controls implemented.
- 6.3.4. Equally, it is important to highlight that proper risk management is pivotal in protecting NPOs from misuse by terrorist or terrorist organizations attempting to raise, store, move, or use funds<sup>4</sup>. Terrorism can be financed using the proceeds derived from predicate offences (e.g. theft and fraud) or legitimate earnings. NPOs can also be used to commit money laundering (e.g. use of criminal proceeds to acquire other assets or benefits).
- 6.3.5. NPOs which raise, store, move, and use funds only in the Cayman Islands will have less exposure to the risk of TF, but will still be at risk for theft or fraud. On the other hand, NPOs with international connections where money is remitted overseas, especially to high risk jurisdictions, will have a higher exposure to TF. Where funds are sent to high risk jurisdictions, NPOs are required to know the identity of beneficiaries and the purpose for donated funds, as well as have a system to obtain evidence that funding was used for the intended purpose. Consideration should be given to the use of a reputable intermediary with sound local knowledge of the high risk jurisdiction and the intended beneficiary.
- 6.3.6. On a similar note, PF refers to the act of providing funds or financial services which are used, in whole or part, for the manufacture, development acquisition, possession, , export, trans-

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<sup>3</sup> E.g. Theft, fraud, terrorist financing, proliferation financing, sanctions, regulatory, legal, reputational, operational, and money laundering risks.

<sup>4</sup> International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, Financial Action Task Force (2019)



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shipment, brokering, transport, transfer, stockpiling, or use of nuclear, chemical or biological weapons and their means of delivery and related materials ( including both technological and dual use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations. NPOs which operate exclusively in the Cayman Islands will have minimal risk exposure to PF. Contrarily, NPOs which engage in activities resulting in money being sent abroad should ensure that it knows the identity of business partners and, prior to commencing any dealings, conduct the requisite due diligence to identify any relevant risk factors and mitigate the same where the risk posed is within the NPO's risk appetite.

- 6.3.7. Consequently, as mentioned above, it is important that NPOs conduct a basic and comprehensive internal risk assessment to understand and identify, prioritise, and mitigate the risk of TF amongst other relevant risks. This basic risk assessment should consider the following non-exhaustive areas, where appropriate:
- 6.3.7.1. reputation;
  - 6.3.7.2. governance
  - 6.3.7.3. legal issues;
  - 6.3.7.4. fiscal oversight;
  - 6.3.7.5. fraud protection;
  - 6.3.7.6. insurance coverage;
  - 6.3.7.7. youth protection policy and procedures;
  - 6.3.7.8. employee or volunteer recruitment and training practices;
  - 6.3.7.9. work place or physical location safety (i.e. potential hazards in the work place or outdoors);
  - 6.3.7.10. data protection (i.e. the way in which confidential information is collected, maintained, and shared);

#### **6.4. Governance, Risk, and Compliance**

- 6.4.1. In light of the legal obligations and regulatory requirements that NPOs are subject to, as well as the importance of risk management and governance ("GRC"), it is crucial to highlight that while governance, risk, and compliance are distinct disciplines, they are intrinsically intertwined and should not be approached independently in order to prevent duplications and omissions. Effective GRC is a plaited system which acts as the pioneer to the NPO's sustainable and continuous operations as well as its ability to appropriately respond in an increasingly dynamic and globalized world economy and society.



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### 6.5. Examples of NPOs Being Misused

Form of Abuse	Preventative Internal Controls
<p><b>Theft of Cash</b></p> <p>Historically, and nowadays, there have been multiple instances of theft from non-profit organizations, often where employees and volunteers abuse their position, using a variety of techniques such as stealing cash from fundraising events (e.g. raffle ticket theft - obtaining extra raffle ticket books and stealing money raised from ticket sales), sale of donated goods, monthly/annual subscriptions, and bank deposits.</p>	<ul style="list-style-type: none"><li>▪ Separation of duties at all stages of the cash flow cycle (i.e. <i>collection, storage, counting, reconsolidating and recording, and banking</i>).</li><li>▪ Proper record keeping of all transactions, to include the date of receipt, amount, source of contributions, and the relevant account.</li><li>▪ Adoption of safeguard measures to restrict physical access to the account systems.</li><li>▪ Independent, continuous monitoring of all areas where cash is handled.</li><li>▪ Performing independent reconciliations, as well as internal verification, of ledger accounts</li><li>▪ Surprise audits or reconciliations; these are very useful in situations where the NPO is small and, due to resource constraints, one person is required to perform multiple roles.</li></ul>
<p><b>Fraudulent Disbursements</b></p> <p>Fraudulent disbursement occurs when an employee or volunteer uses false information (e.g. false billing/invoicing, payroll, and expense reimbursement schemes) to misguide the NPO into making a payment for a seemingly appropriate purpose. The perpetrator will use every effort to give the falsified information a veil of legitimacy through, for instance, the use of Internet downloaded images, scanners, desktop-publishing software, shell/fictitious companies/traders and other computer-based tools as well as non-accomplice vendors, where the perpetrator uses invoices for legitimate vendors, who are not privy to the fraud scheme, and double pays or overpays; for instance, a clerk might intentionally pay an</p>	<ul style="list-style-type: none"><li>▪ Monthly reconciliation of disbursements and payables with reference to evidence of service, product/inventories, or expense.</li><li>▪ Implementing an authorization rule such that payouts in excess of a particular threshold require approval form the Board/Management Committee prior to any disbursements (e.g. small NPOs may set such a threshold at CI\$200.00, whereas larger NPOs will set a high threshold).</li><li>▪ Enforcing a list of approve vendors. Where a non-approved vendor is proposed, written approval should be required from the Board/Management Committee and this information must be tabled in the reconciliation or financial report for further deliberation by the governing body at the</li></ul>



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Form of Abuse	Preventative Internal Controls
invoice twice and then call the vendor and request that one of the cheques be returned and intercepts delivery. Further, a clerk might make a payment to the wrong vendor and then request refund.	next scheduled meeting.
<b><u>Overspending Volunteers or Employees</u></b> This occurs where NPOs pay excessive salaries and/or benefits to employees or contractual counterparts of the NPO, resulting in a significant portion of the NPO's assets being used for salaries, with minor contributions being allocated towards its purpose and objectives. Red flags also include payments or salaries which are unusually above market value for comparable goods or services rendered.	<ul style="list-style-type: none"><li>▪ Salaries and other forms of compensation should be subjected to oversight by the Board/Management Committee. When compiling salary packages, the governing body should take into consideration the financial position of the NPO and its sustainability as well as market value of position.</li></ul>
<b><u>Personal Purchases Using NPO's Assets</u></b> Employees with purchasing authority may exploit their position by using the NPO's funds for personal benefit. These schemes can be committed in different ways; for example, an employee may make a personal purchase and send the invoice to the NPO's accounts payable department or treasurer for reimbursement; alternatively, the employee might use the NPO's credit card or chequing account to make a personal purchase.	<ul style="list-style-type: none"><li>▪ Separation of duties within the procurement process (i.e. prohibit employees from originating/identifying/sourcing goods to be bought and approving the same purchase, especially for larger NPOs).</li><li>▪ Implement a policy for the post-review of small purchases in order to validate authenticity and reasonableness.</li><li>▪ Establish maximum purchasing limits for employees and an authorizing procedure once limits have been exceeded.</li><li>▪ Monthly special reconciliation related to such expenditures.</li></ul>
<b>Other red flags include:</b> <ul style="list-style-type: none"><li>▪ an employee making an unusually high or unexplained volume of purchases which could be used for resale or personal purposes;</li><li>▪ an employee making significant purchases from a retail vendor;</li><li>▪ an employee, who is involved with an external firm, is suspected of selling the NPO's inventory;</li><li>▪ consumer items are purchased, but need replacement in a relatively short amount of time;</li><li>▪ items suitable for personal use or</li></ul>	



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Form of Abuse	Preventative Internal Controls
resale are absent or unaccounted from inventory; and ▪ purchased items are returned to a vendor without vendor credit or refund documentation.	

## 6.6. Record Retention

6.6.1. NPOs must have good record retention practices, which includes maintaining copies of Board/Management Committee minutes and resolutions, invoices, bank statements, receipts, contracts related to the NPO's operations, volunteer agreements, and Board/Management Committee compensation. All records should be maintained for a minimum of five years or longer until any legal, regulatory, or social investigation is concluded. Please note that record retention practices will be a focal point during onsite inspections of NPOs by the Registrar.

## 6.7. Internal and External Reporting

- 6.7.1. Proper internal controls facilitate proper record keeping practices and ensure that the quality of information flowing to internal and external stakeholders is accurate, timely, and reliable.
- 6.7.2. In addition, NPOs must create a procedure for filing suspicious activities to the Financial Reporting Authority ("FRA") in the prescribed format, which is available via <http://www.fra.gov.ky/contents/page/4>.

## 6.8. Due Diligence

- 6.8.1. **Due Diligence Defined**
- 6.8.1.1. Due diligence refers to the collection, analysis, and evaluation of information and documentation obtained during the course of forming a relationship, an investigation, and a complaint that a reasonable entity is expected to complete prior to entering into a contract or other dealing with another party.
- 6.8.1.2. Due diligence must be completed, commensurate with risk levels, at the onset of any relationships/dealings as well as continuously thereafter.
- 6.8.1.3. As a part of implementing internal controls, including a system to identify TF and other illegal acts pursuant to the NPO Law, NPOs are required to conduct some level of due diligence to related parties, including owners, controllers, employees, volunteers, and business partners.



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#### 6.8.2. **Sanctions**

- 6.8.2.1. At times, a key indication of high risk relating to money laundering, TF, PF, human smuggling and trafficking, and financial crimes is sanctioned entities. Sanctions are prohibitions and restrictions imposed, by courts and reputable international standard setting and/or social welfare bodies, on entities to prevent and condemn a particular inhumane and/or negative behavior or policy as well as to encourage corrective action that facilitates prudent risk management, therein mitigating contagion risk as well as maintaining and restoring world peace and security. Sanctions can be comprehensive or targeted in nature. Comprehensive sanctions prohibit all dealings with a particular jurisdiction, whereas targeted sanctions restrict and/or prohibit dealings with particular individuals, firms, organizations, vessels, goods (e.g. trade in arms and weaponry), and services (e.g. financial services and assets).
- 6.8.2.2. The imposition and enforcement of sanctions in the Cayman Islands is derived from several authorities.
- 6.8.2.2.1. Given that the Cayman Islands is a British Overseas Territory, the United Kingdom's Overseas Orders in Council requires the application of sanctions issued by the United Nations ("UN") and European Union ("EU");
- 6.8.2.2.2. Specific sanctions are implemented directly in the Cayman Islands pursuant to the provisions of the TL, including the EU's and UK's Terrorism and Terrorist Financing Regimes, and the PFPL; and
- 6.8.2.2.3. The Cayman Islands can also impose its own domestic financial sanctions in certain circumstances under the TL and PFPL. The FRA, which is a part of the Cayman Islands Government's Portfolio of Legal Affairs, administers and coordinates the implementation of, as well as raises awareness with respect to, financial sanctions in the Cayman Islands, albeit the local competent authority for financial sanctions is the Governor<sup>5</sup>. The most common types of financial sanctions are asset freezes, which prohibits dealings with a sanctioned party's liquid or illiquid assets and the provision of funds or goods (directly and indirectly) to sanctioned entities, and restrictions on access to financial services and markets. The purpose of financial sanctions is to:
- 6.8.2.2.3.1. coerce those under sanctions to change their actions;
- 6.8.2.2.3.2. send broader political messages, locally and internationally;
- 6.8.2.2.3.3. signal disapproval, stigmatize and potentially isolate those under sanctions;

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<sup>5</sup> <http://fra.gov.ky/app/webroot/files/FRA%20-%20Quick%20Guide%20to%20Financial%20Sanctions%20in%20the%20Cayman%20Islands.pdf>



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- 6.8.2.2.3.4. block access to finance and other economic resources that would allow those under sanctions to finance their actions; and
- 6.8.2.2.3.5. protect an economic agent's personal, business, or charitable assets until misappropriated assets are returned.

6.8.2.3. All Caymanian and non-Caymanian individuals as well as Cayman Islands registered businesses and NPOs, carrying out operations in the Cayman Islands or overseas, are required to comply with all sanctions imposed on the Cayman Islands (i.e. sanctions issued by the EU, UN, FRA, and other sanctions issued by the Cayman Islands Government). Non-compliance with the relevant sanctions constitutes an offence, carrying upon conviction on indictment a maximum of seven years imprisonment, a fine, or both. All Caymanian and non-Caymanian individuals as well as Cayman Islands registered businesses and NPOs, carrying out operations in the Cayman Islands or overseas, have a duty to adhere to all relevant sanctions which greatly helps maintain the integrity of the Cayman Islands' economy.

- 6.8.2.4. Where an entity discovers that it is dealing with a Sanctioned Target ("Target"), all reasonable and relevant steps must be taken and documented as soon as possible, including but not limited to:
  - 6.8.2.4.1. review all known information about the Target, including ownership structure where applicable;
  - 6.8.2.4.2. verify whether the Target is on:
    - 6.8.2.4.2.1. the Consolidated List of Designated Persons<sup>6</sup> issued by the UK's Office of Financial Sanctions Implementation;
    - 6.8.2.4.2.2. any financial sanction notices<sup>7</sup> published by the FRA;
    - 6.8.2.4.2.3. the Consolidated List published by the UN, which is available via <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>;
    - 6.8.2.4.2.4. the Consolidated List published by the EU, which is available via [https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidated-list-sanctions\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidated-list-sanctions_en);
  - 6.8.2.4.3. upon reviewing all relevant information, evaluate the nature of the relationship with the Target, discontinuing as appropriate, and submit a duly completed Compliance Reporting Form to the Sanctions Coordinator at the FRA (via email or hand – particulars thereof are included on the Compliance

<sup>6</sup> <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>

<sup>7</sup> <http://www.fra.gov.ky/contents/page/1>



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Reporting Form), which can be found via  
<http://www.fra.gov.ky/contents/page/1>.

- 6.8.2.5. Hence, NPOs' internal controls must include satisfactory reference to all relevant sanctions as well as detailed procedures for:
- 6.8.2.5.1. keeping abreast with updated sanctions;
  - 6.8.2.5.2. conducting due diligence and scrubbing all relevant parties against said lists once a thorough assessment of projects have been completed to identify all entities involved in operations (e.g. suppliers, contractors, couriers, airlines, employees, volunteers, financial institutions, et cetera); and
  - 6.8.2.5.3. steps to be taken in the event of a breach.

6.8.3. ***Conducting Due Diligence***

- 6.8.3.1. Due diligence can be conducted using either closed data (i.e. subscription base) sets like World Check, Lexis Nexus Bridger or Regulatory DataCorp. Checks can also be made via the Internet, utilizing a method known as open source intelligence processes, which uses free search engines like Google, Internet Explorer, or [www.duckduck.com](http://www.duckduck.com)<sup>8</sup>.

- 6.8.3.2. NPOs are encouraged to conduct due diligence when:

- 6.8.3.2.1. providing funding or service to other NPOs, especially NPO's based outside the Cayman Islands and in high risk jurisdictions;
- 6.8.3.2.2. providing support to individuals domestically or internationally based; and
- 6.8.3.2.3. accepting new membership to determine fitness and propriety, especially capacities which will be closely involved with funding cycle or sensitive areas.

## 7. RELEVANT FINANCIAL BUSINESS

- 7.1.1. Part 1 of the Proceeds of Crime Law (2019) defines relevant financial business as the business of engaging in any activity as duly permitted under the Banks and Trust Law (2018), Building Societies Law (2014), Cooperative Societies Law (2001), Insurance Law (2010), Mutual Funds Law (2019), Companies Management Law (2018) as well as any activity set out in Schedule 6, which includes the activity of lending.
- 7.1.2. NPOs which engage in relevant financial business should have a basic, yet sound know-your-client framework in place to ensure that: the NPO is dealing with persons of integrity, repayments are not from proceeds of crime, and the inherent risk associated with lending is appropriately managed. The

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<sup>8</sup> For further details, see the Registry's guidance on open source intelligence.



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compliance program must include identity, address, source of funds and wealth verifications, enhanced measures, and on-going monitoring.