GOVERNMENT OF BERMUDA

MINISTRY OF HOME AFFAIRS

Registry General

Guidance on the

Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014

Issued pursuant to section 11 of the Charities Act 2014 and regulations 3 and 9 of the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014

March 2018

Table of Contents

Guidance for Charities on Anti-Money Laundering & Anti-Terrorist Financing Compliance

A. Introduction

These Guidance Notes aim to assist charity trustees to comply with their legal duties and responsibilities under the *Charities (Anti-Money Laundering , Anti-Terrorist Financing and Reporting) Regulations 2014 ("*the Regulations"*).* These responsibilities include carrying out due diligence and monitoring in relation to the charity's involvement with external bodies and individuals. The Guidance addresses each Regulation in turn, and is designed to help trustees be clear about what their legal duties are and what approach they **must** (legal requirement) or **should** (good practice) take for their charity and its work.

It helps explain trustees' due diligence duties in the form of the 'Know Your' principles and what monitoring responsibilities entail in practice so that trustees comply with legal requirements. The Guidance aims to help trustees to ensure they comply with their duties when working with international partners and for verifying the end use of funds overseas. The Guidance identifies good practice examples and uses case studies to illustrate how the legal duties might apply in practice. Pages 49 to 88 of the Guidance provide **Compliance Tools** which trustees may find particularly helpful. The **Compliance Tools** consist of flow charts and template documents to assist trustees to understand and comply with their Anti-Money Laundering ("AML") and Anti-Terrorist Financing ("ATF") duties.

A1. Registry General Risk Based Supervision

The Charities Act 2014, the Charities Regulations 2014, the Regulations were implemented to bring Bermuda's charitable sector into compliance with the Recommendations issued by the Financial Action Task Force. The primary Recommendation in relation to charities is Recommendation 8, which was revised in June 2016 to require that supervisory agencies take a targeted, risk based approach to supervision. The revised Recommendation 8 states:-

> *Countries should review the adequacy of laws and regulations that relate to non-profit organizations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organizations to protect them from terrorist financing abuse, including:*
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> - *(a) by terrorist organizations posing as legitimate entities;*
> - *(b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and*
> - *(c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.*

In keeping with the principles of risk based supervision, the Registry General has conducted a review of all of Bermuda's registered charities and assigned a risk profile to each, to reflect whether they are high, medium or low risk of being abused for terrorist financing. The criteria used for assessing charities' risk profiles included:

- Size – whether the charity's asset size or income level represent a significant proportion of the total for the charitable sector

- International activities
  - Whether the charity has foreign sources of funding
  - Whether the charity has foreign beneficiaries
  - Whether the charity has an overseas branch or is itself a branch of an overseas organization

- Geographical and other exposures
  - Whether the charity operates in, or has links to, areas known to have terrorist activity
  - Whether the charity has potential exposure to abuse by extremist groups

High Risk Charities

Charities that are assessed as high risk are subject to compliance visits by the Registry General pursuant to section 25A of the Charities Act 2014, which empowers the Registry General to conduct onsite inspections of charities' facilities and operations. Although it is primarily high risk charities that will be subject to compliance visits, they will also be used for other charities about which the Registry have concerns.

Charities that are selected for compliance visits will be notified at least two weeks in advance of the inspection and provided with a list of items that the inspecting officers will be seeking to verify. The main purpose of the compliance visits is to enable the Registry General to give guidance and feedback to charities on how their AML/ATF systems and controls can be improved.

Low Risk Charities

Following a review of the charitable sector, it was determined that charities having an annual income of $50,000 or less should be considered low risk for terrorist financing abuse. Accordingly, section 47F of the Charities Act 2014 now exempts charities with a gross annual income of $50,000 or less from some of the General Duties imposed on charities under regulation 3 of the Regulations. In particular, such charities are no longer required to:

a) Appoint a compliance officer with approved training
b) Establish and implement AML/ATF systems and controls
c) Retain records for the specified period

B. Regulation 3: General Duties of a Registered Charity

Regulation 3 provides an overview of the general AML and ATF duties every registered charity is expected to comply with. These include that every registered charity shall—

a) Designate a person to be its compliance officer, with responsibility for ensuring that the charity complies with the Regulations. Charities with an annual gross income of $50,000 or less are exempt from this requirement, as noted above.
The person selected should be someone who is knowledgeable of the charity's operations and finances. The Treasurer is often a good choice for this role, but it's up to the charity to decide who to appoint. It is not necessary to hire a professional to act as compliance officer but charities are free to do so if they have sufficient resources and believe that their operations are sufficiently complex to justify it. The name of the compliance officer should be indicated in the appropriate section of the charity's Annual Report.

b) Ensure that its compliance officer and any other relevant officer receives the AML and ATF training prepared in consultation with National Anti-Money Laundering Committee ("NAMLC") and the Financial Intelligence Agency ("FIA").
This training is required even for persons who have prior experience in compliance matters, as the requirements for charities differ from those expected of other types of organizations, such as financial institutions.

c) Require its officers to disclose any previous convictions for AML or ATF offences.
This requirement can be satisfied by asking the Bermuda Police Service to perform a criminal records background check on each officer. This service is currently provided free of charge for registered charities.

d) Report any suspicious transactions relating to money laundering or terrorist financing to the FIA.
Suspicious transactions should be reported to the FIA by filing a Suspicious Activity Report ("SAR") online. The FIA will provide training on the electronic filing of SARs to any registered charities who are considered high risk or who regularly engage in overseas financial transactions.

e) Keep a record of all such suspicious transactions.
Charities should protect themselves and assist the FIA by creating a log book in which details of suspicious transactions can be entered as well as by securing any associated evidence. An example of a log for suspicious transactions can be found in **Compliance Tool 7** on page 61.

f) Conduct ongoing monitoring of its relationships with beneficiaries, donors and partners.
Guidance on monitoring can be found on page 33.

g) Take reasonable measures to establish the identity of donors, beneficiaries and partners, where there is a reasonable risk of money laundering or terrorist financing.
Charities must perform effective due diligence. Due diligence is the range of practical steps that need to be taken by trustees so that they are reasonably assured of the provenance of the funds given to the charity, are confident that they know the people and organisations the charity works with, and are able to identify and manage associated risks. A significant aspect of a trustee's legal duty to protect charitable assets means carrying out appropriate **due diligence** on those individuals and organisations that give money to, receive money from, or work closely with, the charity. More details on due diligence can be found on page 11 of the Guidance.

h) Ensure that its payments to beneficiaries and partners are appropriately monitored.
Where charities give money to partners and beneficiaries, especially large amounts of money or in high risk situations, it is crucial to make sure that adequate **monitoring** takes place. This means

verifying that charity funds or property reach their proper destinations and are used as the charity intended. What an individual charity and its trustees must or should do in their charity, and what is a proportionate approach to adopt, will depend on a range of factors. These will include various aspects of the charity's work and the associated risks, how much money is involved, whether the charity works with partners, whether those partners or the charity's funds are overseas, and if so, where.

i) Establish and maintain its AML and ATF systems and controls.
Guidance on maintenance of systems and controls can be found at page 31. Charities with an annual gross income of $50,000 or less are exempt from this requirement, as noted above.

B1. The Risk Based Approach

The duties imposed on trustees under regulations 3(g), 4 and 5, must be complied with on a risk-sensitive basis, or in other words, using a risk based approach. Under the risk-based approach, the greater the risks, the more charity trustees have to do to ensure that they have discharged their duty of care and other legal duties. A risk based and proportionate approach in this context means that actions trustees take to comply with these duties:

a) are designed to help prevent abuse of the charity, its funds and its property from taking place
b) use greater effort and stronger measures for higher risks, meaning for some risks, trustees must take certain action but for other risks, there is greater discretion and flexibility about what to do
c) take account of the amount of money at risk as a significant factor, although this will not and cannot be the only factor – in some cases, where there are very high risks a number of important steps are still required to safeguard what might be a relatively small amount of money from the charity's perspective

and, to the extent that is reasonably possible:

d) are flexible enough to adapt to and complement the charity and its work
e) avoid negative impact on people donating to or benefiting legitimately from the work of the charity
f) do not duplicate the work or responsibilities of others
g) are not unduly costly or administratively burdensome for the charity, although a short term or one-off cost needs to be assessed against the long term benefits, assurances required and donor and public expectations. But trustees should do what is necessary at their discretion even if there are associated costs

What an individual charity and its trustees must or should do in their charity, and what is a reasonable and proportionate approach to adopt when taking action to comply with those legal duties, will depend on a range of factors.

It will, for example, depend on:

a) different aspects of a charity's work and the risks which arise

b) how much money is involved

c) whether partners and funds are overseas and what local problems there are – for example in areas of conflict

All charities must have, as a minimum:

a) some form of appropriate internal and financial controls in place to ensure that all their funds are fully accounted for and are spent in a manner that is consistent with the purpose of the charity. What those controls and measures are and what is appropriate will depend on the risks and the charity

b) proper and adequate financial records for both the receipt and use of all funds together with audit trails of decisions made. Records of both domestic and international transactions must be sufficiently detailed to verify that funds have been spent properly as intended and in a manner consistent with the purpose and objectives of the organisation

c) given careful consideration to what due diligence, monitoring and verification of use of funds they need to carry out to meet their legal duties

d) taken reasonable and appropriate steps to know who their beneficiaries are, at least in broad terms, carried out appropriate checks where the risks are high and have clear beneficiary selection criteria which are consistently applied.

As regards monitoring, in most cases, some form of monitoring is likely to be required. In all cases, the more complex or significant the activity or project for the charity, the more money or the higher the number of transactions involved, the more steps that are likely to be required as reasonable to ensure a trustee complies with their duties, even when balancing this with the volume and cost of administration involved. What is appropriate and proportionate therefore depends on the nature of the risk, its potential impact and likelihood of occurring. What is important is for trustees to be able to show that the action they have taken is reasonable in light of those risks and actions.

The existing requirements for independent examination and audit in larger charities may assist trustees, but they should not be relied on as the only way of ensuring no abuse takes place.

B1.1 The importance of identifying and assessing specific risks

Risk to the charity and its work directly affects what sort of due diligence, monitoring and action the trustees need to take to ensure charitable funds are used properly by the people who receive them. It is vital that trustees identify and assess the risks to the charity because the impact of these risks on the charity's work directly affects:

- what sort of due diligence the charity trustees need to carry out
- what organisations and individuals they need to carry this out on
- what monitoring procedures they need to have and apply

Charities are encouraged to make a risk management statement in their accounts as a matter of good practice.

B1.2 How trustees should identify and assess the risks

Trustees need to be aware that the risks that a charity faces depend very much on the size, nature and complexity of the activities it undertakes, and also on its finances. As a general rule, the larger and more complex or diverse a charity's activities are, the more challenging it will be for the charity to identify the major risks that it faces and put proper systems in place to manage them. This means that formal risk management processes may be necessary to help trustees and these will need to be tailored to fit the circumstances of the individual charity, focusing on identifying the major risks. In most cases, trustees of large, complex charities will need to explore risk more fully than smaller charities.

How trustees identify and assess risk and what tools they use to help them to do so is up to them. We provide a description of some of the tools available which may help trustees, particularly trustees of smaller and medium sized charities, in the **Compliance Tools** at the end of the Guidance.

Most charities are likely to identify and consider risk in the context of their day-to-day activities and incorporate this in their management processes and decision making. Identifying and managing the possible and probable risks that a charity may face is a key part of effective governance for charities of all sizes. Managing risk effectively is essential if charity trustees are to achieve their key objectives and safeguard their charity's funds and other assets. Charity trustees need to identify risks that the charity faces and decide whether the systems and procedures they have in place to address them are adequate, reasonable and proportionate. Risks may take a number of forms, including:

a) Operational
b) Financial
c) Reputational
d) External and
e) Compliance with the law and regulations in Bermuda and, if applicable, internationally.

Smaller charities with simple activities and facing low risks, may need to do nothing more than ensure they are aware of the risks and take them into account in decision making. However, in more complex situations, having a structured process or methodology may be helpful for ensuring key areas of risk arising from both internal and external factors are considered and identified and the trustees can demonstrate that this has been done.

Some charities find carrying out a formal written risk assessment, either relating to their work as a whole or to specific projects or work streams, helps trustees make informed decisions in relation to the charity's operation. It also highlights any gaps where further scrutiny may be needed, and procedures developed. There are a number of models and frameworks which may be helpful, some of which are provided as **Compliance Tools** for trustees at the end of this Guidance.

B1.3 Risk management strategy

If trustees do not have a formal risk management strategy, they will need to be able to show how they are meeting their legal duty to protect the funds and property of the charity and applying them properly by considering and managing risks in a realistic and reasonable way. If they do have a risk management strategy, this needs to be reasonable in light of the size of the charity and relevant to its activities and the nature and extent of its operation.

B1.4 Responsibility of management, staff and volunteers

The responsibility for the management and control of a charity rests with the trustees and therefore their involvement in the key aspects of the risk management process is essential, particularly in setting the parameters of the process and reviewing and considering the results. This should not be interpreted as meaning that the trustees must undertake each aspect of the process themselves. In all but the smallest charities, the trustees are likely to delegate elements of the risk management process to staff or professional advisers, but they do not delegate their responsibilities for it. The trustees should review and consider the key aspects of the process and results to ensure that they are properly informed of relevant risks before important operational decisions are made.

B1.5 The risk management process

Reporting in the Annual Report on the steps a charity has taken to manage risk helps to demonstrate the charity's accountability to its stakeholders including beneficiaries, donors, funders, employees and the general public. Risk management is a dynamic process ensuring that new risks are addressed as they arise. It should also be cyclical to establish how previously identified risks may have changed. Risk management is not a one-off event and should be seen as a process that will require monitoring and assessment. Risk reviews should be periodic and the length of time between reviews will depend on whether the charity's activities are high, medium or low risk. Extraneous circumstances could require risk reviews to be conducted more frequently.

It needs to be clear who has responsibility for implementation of the risk management process. If a charity has staff there should be communication with them (and, where appropriate, volunteers) at all levels to ensure that individual and group responsibilities are understood and embedded into the culture of the charity. A successful process will usually involve ensuring that:

a) new risks are properly reported and evaluated
b) risk aspects of significant new projects are considered as part of project appraisals
c) any significant failures of control systems are properly reported and actioned
d) there is an adequate level of understanding of individual responsibilities for both implementation and monitoring of the control systems
e) any further actions required are identified
f) trustees consider and review the annual process
g) trustees are provided with relevant and timely interim reports.

The **Compliance Tools** at the end of this Guidance provide assistance to trustees in assessing risks that affect a charity's due diligence, and on monitoring of the end use of charitable funds.

B1.6 Factors likely to affect the level of risk for due diligence and monitoring

In the context of trustees' due diligence and monitoring responsibilities, the risks are affected by a number of factors. These centre on what activities the charity undertakes, where, how and by whom. For example:

a) **What** activities are being carried out?

b) **How** are activities going to be delivered, and the timelines involved?

c) **Who** will carry them out? Will it be staff controlled and supervised by the charity? If a charity is using other organisations as partners or agents, this may or may not increase the risks. By using third parties, trustees may manage the risks to their staff and to the charity, but only as long as the trustees put in place good monitoring and reporting arrangements and formalise the relationship to protect the charity.

d) **Where** will the project be based? The risks may increase where it is in a conflict zone or within a local community under the influence of individuals linked to terrorism, or where criminals are known to operate. The risk will vary if it is in a region or country which is currently unstable or where the infrastructure is poor.

e) There may be additional factors to consider in respect of risks because of **local issues**. Are there local disputes which will affect delivery of the project? For example, will the local dispute mean certain people may be excluded from participating in the charitable activity or that certain people will be given preference or only allowed to participate, whether or not they have charitable needs? Or, for example, do the partners or beneficiaries who may operate in a different regulatory system understand what they need to do for the charity?

f) What **methods** are used to safeguard charity funds? In order to operate effectively and transparently when delivering aid or undertaking other charitable work, every charity should have access to formal banking facilities. It is a decision for the charity as to which bank or organization they choose to hold their account. However, the Registrar General and the Charity Commissioners would have serious concerns if a charity were not able to operate because of a lack of banking services. If financial services are declined or withdrawn from a charity, harm could result to its ability to operate transparently and ensure it can safeguard its funds. If the charity or a local partner has to use cash, or alternative money systems and payment mechanisms, such as Money Service Businesses (MSBs) or cash couriers, then they will need to take extra precautions to protect the funds and ensure close monitoring of their use.

g) The **public profile** of the proposed work and the likely media and/or local or public interest in it

h) Where **third parties** may be involved, what degree of influence or control does the charity exert? For example, is the charity able to carry out adequate monitoring? Trustees also need to bear in mind that some risks may only become evident once a relationship with a donor, beneficiary or partner has begun. As these materialise, the risks may need to be reassessed.

B2. Assessing risk in international work

The level of risk will be affected by a range of factors including the charity's familiarity with the country or region in which it is operating and how well it understands the laws, regulations and rules both nationally and locally.

There are no universally recognised criteria for assessing and determining risk in particular countries or geographic regions. However, regions that may pose a higher risk to charities in ensuring they discharge their legal duties and responsibilities may include:

a) countries that are subject to sanctions or embargoes, for example issued by the United Nations

b) countries identified by credible sources, such as the FATF or the World Bank, as well as relevant national government bodies and NPOs, as lacking appropriate anti-money laundering or counterterrorism laws and regulations. The information provided by these credible sources does not have the effect of law or regulation and should not necessarily be viewed as an automatic determination that something is of higher risk, but it does provide current information about high risk jurisdictions
c) regions known to be vulnerable to significant levels of corruption and criminal activity or with regular incidence of criminal activity
d) areas dealing with instability or conflict or other complex emergencies
e) areas of weaker government and levels of regulation
f) areas with little or poor infrastructure, possibly due to internal conflict or military action
g) countries or areas with no formal banking structure, or access to it and the basic safeguards a banking system should have
h) where terrorists and designated persons are known to operate

In these situations, even greater effort and stringency will be needed on the part of trustees to insure risks are assessed and thorough due diligence work undertaken to manage those risks properly.

Other issues to think about include:
a) the legal and political environment, including the efficacy of local authorities and government agencies
b) cultural issues and local practices
c) the nature of civil society, and ownership and structure of local delivery organisations and the local, national and international NPO sector operating there
d) the nature of activities carried out by local NPOs and partners
e) the geographical spread of the operations of NPOs or partners and type of work they carry out
f) whether the NPO or partner delivers the work itself or delegates it to local agents and with what control
g) the country's economic structure and environment
h) whether the country has an established banking and financial services sector and what safeguards exist in relation to it
i) the nature, sources, location and concentration of criminal activity, in particular the extent and nature of bribery and corruption
j) what are the main scams, methods and techniques criminals use in this country for laundering money and financing crime
k) what payment systems exist, how safe they are and how common cash-based transactions are.

The risks will also be affected by how well the charity is familiar with the country it is operating in, how well it knows and is familiar with the operation of local laws, regulations and rules, and government and regulatory oversight within the country. Charities working internationally must therefore ensure their risk assessments take into account any relevant circumstances arising in the particular country or region of operation.

B3. Dealing with high risk situations

Trustees need to ensure that the level of risk is assessed objectively and the safeguards are proportionate. Where the trustees consider that the risks are very high and cannot be adequately managed the appropriate decision may be to stop working in that region, either temporarily or, in extreme cases, permanently.

Where the risks are high, in order to fully discharge their trustee duties, trustees must carry out appropriate due diligence on prospective donors, beneficiaries and partners and carry out proper monitoring of the use of funds. Failure to do so in some circumstances because the risks are clearly higher, may mean a trustee does not discharge their legal duties and this failure may be regarded by the Registrar General and Charity Commissioners as evidence of misconduct or mismanagement.

As a minimum it is good practice for trustees of charities which work in a particular country to check the relevant country's lists of designated persons so that strategic and operational decisions are more informed. This is particularly important when working with a new partner organisation and/or in a particular region. In some circumstances, it will be difficult to see how trustees can properly discharge their duties and responsibilities unless they do so. How many international lists the charity consults and how regularly they are monitored needs to be appropriate to the level of risk to which the charity is exposed.

There are also other risks to be alert to if a charity receives large donations from overseas. If a project is operating in a cash-based environment overseas, and funds are not transferred through a formal or reliable banking system, this will present particularly higher risks. It will be even more important in these circumstances to ensure that manual and/or computer records are maintained for the use of funds locally connected to the project. A cash ledger, for example, is a basic tool that local and small projects might use to ensure funding use is properly documented.

C. Regulation 4: Due Diligence Requirements (The "Know Your" Principles)

Regulation 4 requires registered charities to take measures, where there is a reasonable risk of money laundering or terrorist financing, to confirm and appropriately record information on the identity, credentials and good standing of their beneficiaries, donors, associate charities and partners.

C1. Why due diligence is important

In order to ensure that they are fulfilling their duty to manage their charity's funds properly, trustees need to know where the funds come from, how they are to be applied in accordance with the charity's objects, and who will be involved in delivering the charitable services.

The voluntary nature of charities and their areas of work can make them vulnerable to people who want to misuse charities for their own gain. Charities are highly valued in society and the very nature of charities can make them attractive targets for criminal abuse such as fraud, theft and money laundering. People also abuse charities for private advantage, for example by ensuring a charity uses a particular organisation or individual to provide services which are not necessarily charged on the best terms available. Financial abuse and crime can result not only in a significant loss of charitable funds but also in damage to public trust and confidence in charities more generally.

Examples

A charity might engage a person or organisation to provide charitable services on its behalf to beneficiaries. Without proper due diligence the charity might be persuaded to drop standards and use a provider who in reality they know little about or whose services are below par and not value for money. This can create opportunities for others to abuse the charity and allow some of the charity's funds to be diverted for criminal and other purposes. Incidents of abuse of charities are small in number compared to the size of the sector. However, it does happen, and when it does the impact on the charity and its work can be great. It also affects public trust and confidence in charities.

Some charities may be at greater risk because of the activities they undertake or their structure, for example, numerous fundraising branches spread over wide geographical areas, where controls are hard to implement. However, no charity is immune so all charity trustees must ensure that they are aware of and assess the risks and take proper steps to manage them. Criminals may exploit charities by misappropriating charitable funds through fraud, theft, money laundering, financing terrorism or diverting charitable funds from legitimate charitable work. Examples of the types of fraud and financial crime that charities may be susceptible to include:

Donations: using a charity to launder proceeds of crime, or to make a credit card donation to test whether a stolen card still operates.

Partners: submitting false or inflated invoices or purchase orders for funds to be paid by the charity.

Beneficiaries: making fake grant applications or creating false or inflated numbers of beneficiaries, for claims and other forms of identity fraud.

Charities working internationally may be exposed to particular risks inherent in the environment in which they operate. Further information on the particular issues affecting charities operating overseas can be found in our guidance. It can be difficult to identify financial abuse as criminals may be adept at presenting their interests and activities as legitimate and lawful. Establishing the identity and legitimacy of any organisation the charity works with can help reduce some of these risks. For example, without appropriate due diligence in high risk situations, trustees are not going to be able to identify whether a partner or beneficiary is a designated person in Bermuda.

Working to these principles helps trustees ensure they comply with their legal duties and responsibilities to safeguard the charity's funds and property. Following the principles will also enhance their charity's transparency and accountability, which in turn will help build the trust and confidence of a charity's donors, supporters, partners and beneficiaries.

C2. Overview of the "Know Your" Principles

The essence of the "Know Your" principles is key to the legal duties and responsibilities of trustees in charity law. These requirements are not new. Similar duties and principles exist in other sectors. In the financial sector, for example, banks and other institutions have to take reasonable steps to ensure that they know who they are doing business with. For charities, the requirements can be summed up in the following three 'know your' principles:

- Know Your Donor

- Know Your Beneficiaries
- Know Your Partner

They are designed to help charity trustees know how they can be assured of the provenance of their funds and that they know the people and organisations they work with and on behalf of. They are the principles that trustees should follow to help ensure they meet their legal duties under charity law. Trustees must exercise reasonable care over their selection and use of donors, partners, and beneficiaries. The principles are about the reasonable steps a trustee should take to know who the charity's donors are, who its beneficiaries are, and who the partners are that the charity plans to work with. They help ensure that those individuals and organisations are appropriate for the charity to be involved with. For example, that the beneficiaries are within the class of beneficiaries a charity is allowed to help, that it is safe to accept money from a donor and that trustees can help ensure that a partner they are choosing will deliver what the charity wants them to, and that they are appropriate partners for a charity to work with.

To satisfy the core elements of due diligence, trustees must take reasonable steps to ensure they:

a) **Identify** –know who you are dealing with

b) **Verify** – where reasonable, and the risks are high, verify identities

c) **Know what the organisation's or individual's business is** and can be assured this is appropriate for the charity to be involved with

d) **Know what their specific business is with your charity** and have confidence they will deliver what you want them to and

e) **Watch out** for unusual or suspicious activities, conduct or requests.

C3. Know Your Donor

C3.1 What trustees need to do for "Know Your Donor"

Most charities should know, at least in broad terms, where the money they are being given comes from (eg grants, cash donations etc). Trustees should take reasonable and appropriate steps to know who the charity's donors are, particularly where significant sums are being donated or the circumstances of the donation give rise to notable risk. Good due diligence will help to:

a) assess any risks to the charity that may arise from accepting a donation or certain types of donations

b) ensure that it is appropriate for the charity to accept money from the particular donor, whether that is an individual or organization

c) give trustees reasonable assurance that the donation is not from any illegal or inappropriate source

d) ensure that any conditions that may be attached are appropriate and can be accepted.

Charity trustees need to put effective processes in place to provide adequate assurances about the identity of donors, particularly substantial donors, taking steps to verify this where reasonable, and it is necessary to do so (ie **identify** and **verify**). They should also have assurance on the provenance of funds and the conditions attached to them **ie know what the donor's specific business is with your charity** and ensure they know the rules of, and their responsibilities under, relevant legislation on substantial donors. This does not mean charities have to question every donation. Nor must they know lots of personal and other details about every donor.

C3.1.1 Small and regular donations

Some donors give relatively small amounts of money as a one off donation, by cheque, bank transfer or cash. Some charities may raise significant funds from fundraising events in public cash collections, such as fun runs, in public appeals for money in humanitarian disaster appeals (for example following tsunami or earthquake disasters), and through charity boxes. Charities are not expected to know the identity, or take steps to find out the identity, of each small cash donor in these sorts of circumstances. This would not be reasonable or necessary. Some individuals and organisations will donate regularly to the charity and set up regular payments through direct debits. Trustees will already have the name, address and details of those donors and their bank details to collect the money. Therefore it is unlikely that a charity will need to take any further steps in such cases.

C3.1.2 Recording donor information

When obtaining and recording personal records, charities should ensure that personal information is handled in a manner which protects privacy and confidentiality. Some charities use commercial participators and professional fundraisers to collect money for them. The use of such organisations does not relieve charity trustees of their responsibilities, so they should ensure that they monitor the activities of such third parties.

C3.1.3 Legacies and wills

For charities that receive legacies from wills, ensuring good receipt from the executor of the will is important. Larger charities will have established systems and legacy officers. For trustees of smaller charities, many legacies will be paid by a law firm or practitioners who specialise in this area. Trustees can ask to see a copy of the will if they have specific concerns or worries.

C3.1.4 Large grants and donor relationships

Other donors give significant grants to charity and the charity may have a close working relationship with them. It is for significant donors like these that trustees are likely to need to carry out further due diligence and take steps to verify the identity of the donor so they can assess any risks.

For example, if you know that the donor you are familiar with is from a country or operates a business, perhaps outside of Bermuda, about which public concerns have been raised, then the trustees should take more steps to verify the provenance of the funds. If there is a significant donor which is an organisation, the charity **should know what its business is** and be assured that the organisation is appropriate for the charity to be involved or linked with. If a donor is a charity, its registration and details can be checked on the Register of Charities maintained by the Registry General. If the donor is a company, it may be listed in the Directory of Donors on the Centre on Philanthropy's web site.

Sometimes risks can be identified by carrying out a check on the organisation's website, or using other internet search engines to look at other information written about it. However, care should be taken to assess how reliable the information is. For example, is the information repeating allegations others have made? Were they proven? How old is the information?

C3.1.5 Benefits of demonstrating due diligence

In accordance with their duties to act in the best interests of the charity and maintain its integrity, trustees should consider carefully donations from sources that might be seen to compromise the charity's reputation, independence and work. Key benefits of due diligence steps are:

a) ensuring trustees have a reasonable degree of confidence about the provenance of the donation and that there is no reason to believe it is suspicious

b) exposing legal reasons why the charity should not accept the donation (for example because the organisation is a designated person or there is a significant risk that the money comes from illegal sources) or operational reasons (for example the donor's activities or ethics may give rise to risks to the charity)

c) identifying if there are any requirements or conditions attached to the donation. Sometimes the conditions may mean a charity has to refuse the donation.

d) understanding the intentions of donors and any restrictions placed on the money received. A good relationship with donors which is open and transparent is essential for building trust and confidence and ensuring that the expectations and commitments of both parties are clear. Being clear about this will also ensure that the charity does not disappoint its donors where there are expectations, and could help with securing longer term funding

C3.2 Anonymous donations

The "Know Your Donor" principle does not mean charities cannot accept anonymous donations. Some donors want to remain anonymous. This is perfectly acceptable providing charities look out for suspicious circumstances and put adequate safeguards in place. Charities operating abroad will need to check whether the acceptance of anonymous donations complies with local law or local tax regulations.

C3.3 Accepting donations that have conditions attached

Charities are free to accept donations with conditions attached, provided that those conditions are not illegal and they are compatible with the purposes, priorities and activities of the charity. If the conditions are so stringent that they could undermine the charity's independence, the trustees may need to refuse the donation.

In deciding whether to accept or refuse a particular donation, charity trustees should consider the charity's best interests, taking an overall view. Where there is a cause for concern about a particular conditional donation the trustees can consider refusing it. In such circumstances the charity might wish to seek advice from the Registrar General and the Charity Commissioners in order to provide the trustees with comfort that their decision has been properly taken.

Decisions made to refuse donations and accept high risk donations should be recorded as this will demonstrate that the charity has identified and properly considered the risks and is transparent about the decision-making process. This is important for being able to show that the charity trustees have acted responsibly.

It is good practice to ensure relevant staff are sufficiently trained on the issues about accepting donations, and if the charity has a particular policy or procedure in place, that they are familiar with it. Charity trustees should ensure that appropriate procedures are in place for recording and processing donations and grants and that these are monitored and reviewed.

C3.4 Identifying suspicious donations

Most charities will be familiar with the source and nature of donations that they receive. The key to identifying suspicious donations is to look out for exceptional features, such as unusually large amounts, conditions or complex banking and transfer arrangements.

Charities should, as a matter of good practice, have policies and procedures in place both to ensure that staff and volunteers are aware of the risks, and to ensure that trustees and staff are alerted to any suspicious donations and know what to do if they find one.

Unsolicited donations might be suspicious, especially if the charity trustees are unable to satisfy themselves about the credentials of the people involved, or the propriety of the donation or loan. Donations may take forms other than money, for example shares or goods. Trustees should of course remember that the donor might be entirely legitimate, but they should not rule out the possibility that somebody is trying to exploit the charity. The following situations may indicate higher risks:

a) unusual or substantial one-off donations or a series of smaller donations or interest-free loans from sources that cannot be identified or checked by the charity

b) if conditions attached to a donation mean that the charity would merely be a vehicle for transferring funds from one individual or organisation to another, without the trustees being able to satisfy themselves about the appropriateness of their use, and that they have been used as intended

c) where a donation is made, the charity is told it can keep it for a certain period of time, perhaps with the attraction of being able to keep any interest earned whilst holding the money, but the principal sum is to be returned at the end of a specified, short, period

d) where donations are made in a foreign currency, and again unusual conditions are attached about their use, including a requirement that the original sum is to be returned to the donor in a different currency

e) where donations are conditional on particular individuals or organisations being used to do work for the charity where the trustees have concerns about those individuals or organisations

f) where a charity is asked to act as a conduit for the passing of a donation to a second body which may or may not be another charity

g) where a charity is asked to provide services or benefits on favourable terms to the donor or a person nominated by the donor

C3.4.1 Other factors which may alert suspicion

Whilst some of the examples above may be donations made in good faith, other factors combined with these examples may alert the trustees that the donation or circumstances could be suspicious. For instance, trustees should consider the timing of the donation, the country of origin, the amount donated and the frequency of the donations. Similarly, they should question payments received from a known donor but through an unknown party or an unusual payment mechanism.

Closer attention may need to be paid to donations which are received from unknown bodies or international sources where financial regulation or the legal framework is not as rigorous as in Bermuda. These may be useful indicators to the trustees that they may need to make further enquiries before accepting the donation. They may need to refuse a donation if they do not receive satisfactory replies to their enquiries.

C3.5 Dealing with a suspicious donation

If due diligence checks reveal evidence of crime, trustees must report the matter to the police and/or other appropriate authorities. Charities should have clear policies and procedures in place so that trustees, staff and volunteers know how to recognise suspicious circumstances and who to report them to within the charity. Suspicions in relation to money laundering or the financing of terrorism should be reported to the charity’s compliance officer, who must then decide whether to report the matter to the Financial Intelligence Agency (“FIA”).

Where there is a cause for concern about a particular donation because, for example, it is unusually substantial or forms part of an unusual series of smaller donations, or is an interest-free loan:

- check the donor against the consolidated lists of financial sanctions targets and designated persons

- consider whether to refuse the donation. In such circumstances the charity might wish to seek advice or authority from the Registrar General and the Charity Commissioners in order to provide the trustees with comfort that their decision has been properly taken

- if the trustees suspect that the purpose of the donation may be to facilitate criminal activity, they must report this to the appropriate authorities immediately.

C3.5.1 Reporting suspicious transactions

Trustees should consider making a report to the FIA if significant sums of money or other property are donated to the charity from an unknown or unverified source. This could mean an unusually large one-off donation or a series of smaller donations from a source you cannot identify or check. Trustees also need to be alert to the risk that individuals may be raising funds in the charity's name that never reach the charity, or where only some of the money is passed on. If trustees have concerns that this might be the case, again, they need to report this to the appropriate authorities. We have included examples of the type of questions that charity trustees may need to consider in a quick list in **Compliance Tool 6**.

C3.6 Case studies relating to "Know Your Donor"

The following two case studies illustrate situations in which the risks to the charities were high and the trustees should have done more due diligence to ensure they fulfilled their duty of care.

Case Study 1

An unregistered appeal was established mainly to provide medical assistance to the people of Iraq. The UK Charity Commission opened a statutory inquiry to ascertain whether funds resulting from contracts made under the United Nations Oil-for-Food programme were donated to the charity and, if so, to establish the legal status of those funds and to examine the extent to which the trustees of the charity properly discharged their duties and responsibilities in receiving those funds.

The UK Charity Commission found that the charity had received significant donations connected with improper transactions made under the UN Oil-for-Food Programme and in accepting these funds, the Commission found the trustees were not sufficiently vigilant and did not properly discharge their legal duties regarding these donations. The charity trustees knew about the sanctions placed on Iraq and the UN Oil-for-Food programme. Given the complex setting within which the charity had to work, the Commission's view was that the trustees should have been extremely vigilant in their acceptance of these donations. The trustees did not make sufficient enquiries as to the source of the donations, or assess whether it was proper and in the interests of the charity to accept them.

Case Study 2

In the course of a statutory inquiry the Commission established that over $150m was paid into a bank account which had been set up in a charity's name. The bank was suspicious of the origin of the money and so returned it to the remitting bank in the USA. When the funds were returned, the interest (£24,000) was not paid to the charity but to the owner of the group of companies from which the funds had originally been paid.

In light of the highly unusual nature of the arrangement with the owner, and the context of a small charity with no established income stream or track record, the charity trustees failed to take adequate steps to ensure that they were acting prudently when entering into the arrangement. In particular, they should have established the provenance of the funds. They also permitted the owner to have sole signatory rights of the dollar account and so failed in their fundamental duty to maintain control of charity property at all times. They were unable to produce any records of the arrangements or transactions and failed, therefore, to comply with their duty to keep proper books.

The trustees also failed to fulfill their legal duty to provide the Commission with substantive information to demonstrate that the arrangements were in the best interests of the charity. No monitoring processes or subsequent assessment of these arrangements were undertaken by the charity trustees in order to determine whether the activities were or had been appropriate and in the best interests of the charity. The fundraising methods adopted by the charity were high risk and have not benefited the charity. Had the charity derived any income from the fundraising schemes it may have been the subject of criticism and/or legal action, so damaging the reputation of the charity and the sector. The charity was removed from the UK Register of Charities.

C4. Know Your Beneficiaries

As charities carry out a vast range of activity and delivery of services in pursuit of their charitable purposes, whether in Bermuda or overseas, and in diverse circumstances, a common sense approach needs to be engaged in applying the "Know Your Beneficiaries" principle.

C4.1 Charities and their beneficiaries

Charities use a variety of ways to reach those they aim to assist through their own charitable activities, providing funding for others, and coordinating efforts to provide assistance. They may use their own staff and resources, or may work in collaboration and partnership with other organisations, including governments. Because of their contact with, knowledge of, and reach into local communities, charities are often uniquely placed to accurately identify those to whom aid, assistance or services should be most appropriately targeted.

The identification and selection of beneficiaries are important decisions for charities. Sometimes this is specified in the charity's governing document, making it a legal requirement. Other trustees will have more discretion about selection criteria. They may have decided on a policy to guide their decision making. Ensuring trustees make decisions which are legally valid and involve proper exercise of their discretion assists them in discharging their duty of care.

Some charities' activities are available to and open to everyone, and are fully accessible to members of the public. For example, a charity may provide a recreation ground. The charity does not choose its beneficiaries as such and clearly, there is no need to check and verify the identity of members of the public who walk across or use the ground. Some charities will not have individually identifiable beneficiaries, for example, a charity carrying out environmental work for the benefit of the public in a particular town or village. So again, the "Know Your Beneficiaries" principle will not have specific application. In the context of those charities whose purposes are the relief of need, the charities' procedures must ensure that charitable aid, funds and activities are targeted and delivered to those they intend to assist on the basis of charitable need. It may be possible to further limit those benefiting by some other criteria but this will depend on the charity's specific purposes and policies.

C4.1.1 "Know Your Beneficiaries" in practice

The "Know Your Beneficiaries" principle does not mean a charity providing soup kitchens or emergency aid to people in an area affected by drought, natural disaster or poverty who are clearly in need of assistance, have to ask for and check identification. The circumstances will be such that they know people coming to the charity for aid are clearly in dire need and qualify for assistance. Trustees would not need to take any specific action to comply with these principles, unless specific concerns arose.

Some charities offering services to the public, or large groups of people, should identify which beneficiaries they are providing services to and take their personal details. For example, a community centre charity may hire out the centre for various activities to some of its beneficiaries. Such charities need to take enough details to know who is hiring the rooms in the community centre, confirm the booking and contact them if there is a problem. Further details may be required in some situations, such as to comply with insurance conditions. It is unlikely that further steps need to be taken to verify the identity of these beneficiaries for the purposes of the "Know Your Beneficiaries" principle.

This "Know Your Beneficiaries" principle is more likely to directly affect other charities which restrict access to services or activities to a certain number of beneficiaries. The main reasons they need to know the identity of individual beneficiaries and gather further details about them is to:

a) ensure they qualify for any conditions or criteria which apply (for example, the beneficiaries may need to be elderly or have a registered disability to benefit from a charity whose services are designed to assist people within those categories)

b) be able to provide services to them (for example, to arrange for home help support, the address and details about the identity and personal circumstances of the beneficiary will be required to contact them to arrange for the services or activities, and perhaps to be able to help claim financial assistance to pay for the services)

c) help make a decision within the discretion of the trustees about which beneficiaries to select from a pool of eligible people where there are a limited number of services or activities to be provided by the charity.

C4.2 What trustees need to do for "Know Your Beneficiaries"

Where decisions are made regularly about selecting which particular individuals receive services or support from a charity, trustees need to take reasonable and appropriate steps to ensure that:

- they know who those individuals are

- where the risks are high, appropriate checks are carried out to ensure it is appropriate for the charity to provide assistance to them, both in terms of their meeting any eligibility criteria and there being no concerns that the charity's assistance will not be used as intended.

C4.2.1 Selection criteria

To ensure consistency, fairness and other elements of good decision making, it is good practice for trustees to have clear selection criteria, ideally set out in a document or policy. It is also good practice to ensure they keep sufficient details of, and a record of, the decisions made and process used. Key elements of this good practice are likely to include:

a) having clear selection criteria and a process which is informed by sound risk assessment and management; this may include making clear when an individual cannot qualify or be provided with support

b) recording the selection criteria in written form

c) making the selection criteria available publicly

d) ensuring where individual services are provided to large numbers of people, adequate records of those individuals, households or groups are kept so you can easily check up on any problems

e) ensuring there is a clear and documented process for dealing with any disagreements, disputes or conflicts regarding the identification and selection process

f) safeguards to ensure that there are no inappropriate links, relationships or conflicts of interest between applicants and those who are deciding whether to approve their applications

g) protecting the confidentiality of beneficiaries' information.

Participatory methods (selection processes involving people and groups in the community, together with a charity's local delivery partners) are sometimes used. This local knowledge may provide valuable information in ensuring beneficiaries are genuine and appropriately selected.

a) Does the charity have the means to identify and reach the potential **beneficiaries**?

b) Would the **beneficiaries** be put at risk by using the services offered?

c) Has the charity got the expertise and ability to reach the intended **beneficiaries**?

d) Are there already people or organizations reaching similar **beneficiaries** in the same area?

e) What are the needs, rights and requirements of the **beneficiaries**?

f) Are there any specific barriers which may impact access to **beneficiaries**?

g) Which **beneficiaries** are you intending to reach?

C4.3 Identifying suspicious situations

Trustees and their staff will normally be aware of the type, frequency and scale of applications or requests for charitable assistance. Using this knowledge they should identify the areas of risk and implement suitable safeguards. Trustees should be alert to the risk that some people abuse charities by making false applications for grant funding or for individual assistance, including creating beneficiaries that do not exist. People who may appear to be legitimate beneficiaries may make requests for support they do not qualify for or need. They may use the charity's money or other support for unlawful or inappropriate purposes, or pass it on to others who may not be truly in need of it, or may use it for those purposes. Charities who have concerns in relation to suspicious situations may refer the matter to the Registrar General for guidance.

C4.3.1 Increased risk of abuse

The risk of abuse may be greater where, for example:

a) a charity provides financial assistance, services or support on the basis of a certain sum of money per beneficiary and the numbers are relatively high

b) a charity provides services to large numbers of beneficiaries, where it may be easier to disguise additional beneficiaries

c) a partner is in receipt of funds from a number of different charities. There is a risk of doublefunding, particularly where contributions are being made to costs which are not tangible or easy to verify

Other suspicious indicators may include:

a) signs that people may have been placed on distribution and aid lists by providing kickbacks and bribes to officials

b) beneficiary lists that may be fake or have unusual characteristics. Trustees should be alert to the risk that lists of qualifying beneficiaries have been manipulated. Those who are not in need may exploit the situation. Lists may contain multiple manual corrections, multiple names may appear, some may claim more family members than they have to receive more financial or other assistance

c) evidence that third parties have demanded payment for recommending or nominating beneficiaries

d) larger than normal beneficiary lists

e) fake or suspicious identity documents

f) beneficiaries with identical characteristics and addresses or multiple identical or similar names and signatures

g) unexpectedly low beneficiary numbers - there should be systems for checking beneficiary numbers, as this may indicate fraud/theft of funds

h) rounding up of beneficiary numbers

i) discrepancies between budgeted needs and payments requested

C4.4 What trustees should do if they identify a suspicious situation

Charities should have policies and procedures in place both to ensure that their trustees, staff and volunteers are aware of this risk, and to ensure that trustees and/or senior staff are alerted to any suspicious situations. A charity's responsibility is not to investigate or determine criminality. Trustees should carry out good due diligence and take enough reasonable steps to satisfy themselves their beneficiaries are genuine.

If trustees suspect a crime has been committed or the charity's money or help is being used for illegal purposes, they must report their concerns and the suspicious activities to the police or other appropriate authorities. Suspicions of money laundering or the financing of terrorism should be reported to the FIA.

C5. Know Your Partner

C5.1 What trustees need to do for "Know Your Partner"

As with the other "Know Your" principles, the core elements of due diligence are taking reasonable steps to ensure the trustees:

a) **Identify** – know who you are dealing with

b) **Verify** – where reasonable and the risks are high, verify identities

c) **Know what the organisation's or individual's business is** and can be assured this is appropriate for the charity to be involved with

d) **Know what their specific business is with your charity** and have confidence they will deliver what you want them to

e) **Maintain boundaries** to avoid conflicts of interest and protect the charity's independence

f) **Watch out** for unusual or suspicious activities, conduct or requests

The "Know Your Partner" principle applies to all close partner work, including when using local individual representatives and agents to provide assistance, for close collaborative and coordinative work with other organisations and when using local Non-Profit Organisations ("NPOs") and partners to deliver projects and elements of the charity's work.

Due diligence of partners is important as trustees' duties are not just concerned with whether charitable money actually reaches the place, people and purpose intended. Trustees' duties also involve consideration of whether a partner is appropriate and suitable for their organisation to work with. For example, a charity must not provide funding or support to a partner organisation that exposes beneficiaries to activities which directly, or indirectly, promote money laundering or terrorism. This is so even if the charity's funding or support were used for legitimate humanitarian aid or other charitable activities. Aside from the risks of committing criminal offences under Bermuda legislation, this is also likely to amount to misconduct on the part of the trustees in managing and administering the work of the charity.

The higher the risks or the more significant or substantial the work or partnership, the more steps for due diligence trustees will need to take. Trustees need to be alert to signs that the charity's funds will not be properly or legitimately used by partners. Due diligence is also an opportunity for the charity to check that the partner has the operational capacity and capability to do what the charity wants it to do and that the partner fully understands the aims and parameters of the project. This aspect is not a legal requirement but is good practice. Due diligence will usually involve judging the quality and completeness of the initial information obtained and then deciding whether further checks or enquiries are necessary.

Due diligence steps are likely to include:

C5.1.1 Identify

This involves obtaining the key details about who the partner is, where it is based and who the charity will be involved with. These details are likely to be required in practice anyway to arrange for payment of any funds to the partner.

C5.1.2 Verify

Trustees will need to carry out further due diligence where the risks are high, and for significant partners, taking steps to verify the identity of the partner and to further assess the risks. This may involve checking the legal status of the partner – is it registered as a company and who owns it, for example, and is it appropriately registered with another regulator. If it is a charity or NPO, its registration and details can usually be checked with the relevant charity regulator, such as, in the case of Bermuda, on the Register of Charities. Good due diligence in higher risk situations may also involve obtaining references.

It will be up to the charity to decide when these checks need to be carried out. For example, if awarding grants to partners to deliver projects the trustees might consider that they need not carry out any additional verification checks until after the list of potential partners has been narrowed down, or until after they have identified the successful partner, but before any funding is paid.

C5.1.3 Know what their business is

This involves knowing what the partner's business is and being assured they are an appropriate partner for the charity to be involved with. Due diligence steps will involve assessing whether they have good credentials and a good reputation. The fact they are registered with another regulator may provide some level of assurance.

Sometimes risks can be identified from information in the public domain (sometimes referred to as open source checks). This would include, for example, information on the partner's internet site or information available through internet search engines. This may reveal information about the partner's purposes, its history and previous work.

Care should be taken about how reliable public information is, especially media reporting. This ought to be considered on a case by case basis, taking into account where the information has or is likely to come from, and whether the reporter is likely to have a certain point of view about the partner for a particular reason. Some further questions for trustees to ask themselves include:

a) is the information from an original source or is it repeating allegations others have made?
b) how credible is the reporter?
c) were any allegations investigated and/or proven?
d) how old is the information?

An examination of a partner's annual accounts and governing document may also provide useful information. Some organisations are legally required to put their accounts and annual reports into the public domain, or to provide them on request.

C5.1.4 Know what the partner's specific work is with your charity

It is important, particularly in assessing grants and projects to be funded by the charity, to ensure the trustees are clear on and have reasonable assurances about:

a) what will be delivered and how – what exactly is the project – how easy will it be to monitor its delivery?
b) whether the partner can deliver what is required – does it have the capability and capacity to deliver, and on time?
c) the partner's expertise and skills in this area – what history and track record does it have?
d) whether the partner has the management and technical capability and capacity to undertake this along with its existing commitments
e) the cost of the project, what the charity's money is going to be spent on and how it is going to be used

A partner may have one or more agreements in place with other funding organisations. Where the partner would be taking on significant additional project delivery commitments when entering into a new agreement, the charity should assure itself that the partner is financially stable and has a sufficiently robust infrastructure to deliver the project and is not over-stretching itself. In some circumstances where a partner may be funded by a number of different organisations, the charity may also want to explore with those other organisations ways in which the reporting requirements placed on the partner by all the funding parties could be streamlined or consolidated, in order to reduce the reporting burden and allow the partner to use its management resources as efficiently as possible.

C5.1.5 Maintain boundaries

Trustees should ensure that they are able to act independently from their partners to hold the partners accountable for how funds are spent and how projects are managed. If a partner is able to exert considerable influence over the charity, such as when organisations share key directors or officers, this may create conflicts of interest and prevent the charity from enforcing its anti-money laundering and anti-terrorist financing systems and controls.

Compliance Tools 8 and **9** provide additional "Know Your Partner" issues and questions trustees should consider.

C5.2 Assessing how many enquiries need to be carried out

It is for trustees to decide the level of due diligence to carry out and what type and sorts of checks they need to undertake. The nature and extent of due diligence checks should be proportionate to the risks involved from the project or entering into any new relationship. These include the risks present in the area where the partner is operating and the scale of the funding involved in the proposed arrangement. Where the risks are higher, more in-depth checks will be appropriate. If they know that the partner is from a jurisdiction about which public concerns have been raised, the trustees should take more steps to ensure that working with the partner is appropriate.

In high risk scenarios, trustees may want to seek professional advice. This is because if trustees do not take adequate steps to check their partners according to the level of risk, they will not be able to properly discharge their duty to protect the charity. Trustees should keep a written record of due diligence processes and the results which informed their decision making. This should include the checks carried out and the results and conclusions of the assessment on a partner. The trustees should document the risks identified from the assessment together with the actions they consider necessary to properly manage the risks arising from entering into a partnership arrangement.

Trustees may also want to consider publicising or making clear that due diligence checks will be carried out on partners. This may act as a deterrent against those who may wish to abuse charities. Some charities may want to consider going as far as making it clear that information may be shared with the police and other competent authorities for the purpose of detecting and preventing abuse and criminal activity.

C 5.3 Case Study on "Know Your Partner"

The importance of a charity carrying out due diligence and knowing about its partner was highlighted in a particular UK Charity Commission investigation. The Commission found that the charity had an agreement to hand over all its money to a foundation based in Europe. The European foundation was associated with the UK charity but was legally separate from it. The investigation was concerned that the trustees of the UK charity did not have sufficient records or controls over how its money was being spent by the European foundation.

The ability of the UK charity to operate independently and manage conflicts was made more difficult because two of its three trustees were also two of the three directors of the European foundation. The investigation decided the agreement was not in the best interests of the UK charity and seriously reduced its independence. The agreement was cancelled and two of the UK charity's trustees resigned and were replaced with new trustees who had no involvement with the European foundation. The UK charity's trustees were then able properly to account for and apply its funds.

C5.4 Identifying suspicious situations and serious concerns

Due diligence will help trustees to identify potential risks so that they can build in appropriate and proportionate safeguards. The effectiveness of the safeguards can then be monitored and any necessary adjustments made.

The risk of abuse may be greater where, for example:

a) the project proposal is vague or lacks adequate financial or technical details

b) the structure or nature of the proposed project makes it difficult to identify the partner and verify their identity and details

c) the proposals include delegating work to other unknown partners or newly formed organisations

d) it is difficult to contact the partner at their main address, or their telephone numbers are not working, or the partner always insists upon contacting the charity and not the other way round

e) the project involves unusual payment mechanisms, or requests for cash, or for money to be paid into an account not held in the name of the partner, or in a country in which the partner is not based and not where the project is being carried out

f) the partner may be, or may have involvement with, politically exposed persons (PEPs)

g) partners request unnecessary or unusual levels of privacy and secrecy

h) the partner cannot demonstrate much previous project delivery and it is difficult to get independent references to vouch for it

C5.5 What trustees should do if they identify a suspicious situation

If as a result of due diligence checks there is information to suggest there are significant risks to the charity or that a relationship with the partner would expose the charity's assets or reputation to significant risk, then the trustees need to consider not engaging with that partner or finding other ways to manage the risks. The nature and extent of the risks will determine whether the trustees should cease working with the partner, and on the project, or whether work can continue providing the risks are effectively managed.

A charity's responsibility is not to investigate or determine criminality. Trustees must carry out good due diligence and take enough steps to satisfy themselves the partner is genuine. If they suspect a crime has been committed or the charity's money or assistance is being used for illegal purposes by a partner, they must report their concerns and suspicious activities to the appropriate authorities. Suspicions of money laundering or the financing of terrorism should be reported to the FIA.

C5.6 Written partnership agreements

While partnership arrangements may be based on mutual trust, trustees are under legal duties to act in the best interests of the charity and protect charity property. Trustees must ensure that their charity's accounting records are sufficient to show and explain all the charity's transactions. Ensuring that the terms of the partner relationship are made clear in writing before a project commences will help with problems that may arise later, or possibly prevent them from occurring at all.

Once a decision has been made to work with a partner, before any funding is transferred, a charity should ensure that there is an agreement between the charity and its partner about how the partnership will work, how much funding will be provided by the charity, when any work will be delivered by the partner, how results will be demonstrated and how reporting and monitoring arrangements will operate.

If the amount of funding involved is very small and the risks are low, it may be disproportionate to have a written legal agreement. In other cases, the trustees either should, or even must, ensure they have one to demonstrate that they have discharged their legal duties.

A partnership agreement is usually a binding legal contract, although it will depend on how it is drafted. It usually sets out the extent and nature of the relationship between a charity and the partner and their respective roles and responsibilities. Whether a charity should take professional advice about proposed agreements will depend on the circumstances and risks. However, if an agreement is to be entered into and it will bind the charity, it must be signed by someone with an appropriate level of authority. The charity should also check that the person signing the agreement on behalf of the partner has the necessary authority. The decision to enter into the agreement should be recorded by the charity and appropriate monitoring against the agreements should be put in place.

The amount of any funds being provided by a charity to a partner should be clearly set out. It is good practice to ensure the agreement sets out the payment provisions and requirements for reporting on expenditure, what receipts and other records need to be provided or made available, and any particular accounting and audit requirements the charity has in order to meet its own financial or other reporting obligations. The agreement would also normally set out the expected outcomes and deliverables for the project with timelines and key milestones.

If the charity is itself under any specific obligations in respect of how it applies its funds, it is important to make sure the requirements it places on its partners include these. These requirements might, for example, relate to grant-related procurement issues, reporting on project progress, and any restrictions on the use of funds. Unless the charity legally requires its partners to meet certain standards, it may find it hard to enforce compliance and may find itself exposed to legal liability under its own agreement with its funders.

Depending on the circumstances, it may also benefit the charity to identify the partner's needs for guidance and support and plan to what extent it can help with these. Trustees may also want to consider including extracts of key charity policies or procedures within the partnership agreement where these will help to clarify expectations and obligations. As an example, **Compliance Tool 10** contains some requirements that may be useful to include in a partnership agreement.

C5.7 Case studies - "Know Your Partner"

Case Study 1

A UK charity was set up to provide education and other charitable benefit for children in Africa. It entered into a partner relationship with an African Non Governmental Organisation ("NGO") which provides schools and homes to local children, many of whom are orphaned and destitute. There was no written partnership agreement. The UK charity provided substantial funding to the African NGO but did not undertake any charitable activities in Africa itself.

The African NGO employed a number of volunteers, some of whom were UK-based and applied after seeing the NGO being featured on the charity's website. The charity did not play any direct part in the recruitment or appointment of volunteers but merely signposted them to the African NGO which carried out the selection process itself.

While working in Africa, one of the UK volunteers was assaulted by an employee of the NGO. This led to a complaint to the UK Charity Commission about the charity's alleged failure to provide adequate warning about the risks to volunteers and to put appropriate safeguards in place. The complainant also said that groups of children in the care of the NGO periodically visited the UK and were placed by the charity with families who had not been Criminal Records Bureau ("CRB") checked. The UK Charity Commission found that concerns had previously been raised about the safety of volunteers working with the NGO, but the trustees of the charity were unaware of these. The Commission also found that the charity had not ensured that families hosting the visiting children should obtain CRB clearance.

The Commission concluded that the charity trustees had not carried out sufficient due diligence with regard to the choice of partner NGO. Although the charity's trustees are not responsible for the recruitment of the NGO's staff, more detailed background checks would probably have revealed past incidents and enabled the charity at least to warn volunteers of the risk. They would also have strengthened the justification for a written partnership agreement into which suitable security precautions could be built. On the Commission's advice, the trustees have also introduced strict procedures to ensure that host families undergo CRB checks before children are placed with them.

Case Study 2
A UK charity was part of a world-wide federation of NGOs which had its administrative headquarters in Europe. The UK charity was legally independent and self-governing, but it had entered into a formal agreement under which it sent all of its net income to the federation headquarters. The federation's managers then distributed the funds to various humanitarian projects around the world. A substantial proportion of the UK charity's income was generated by posting appeal literature to members of the public, usually accompanied by a small free gift, seeking donations in return. The UK Charity Commission had received complaints about the emotive and distressing nature of the literature, and concerns about the expenditure of charity funds on free gifts.

The Commission concluded that the federation was in effect a partner of the charity, but in agreeing to hand over the charity's income the trustees had restricted their discretion and compromised the charity's independence. It appeared to the Commission that the UK trustees had not carried out adequate due diligence in the choice of partner or the terms of the operational relationship.

The Commission also concluded that although the trustees had taken conscious decisions to make the appeal literature hard-hitting and to send out free gifts they had not fully considered the negative public impact that this strategy might have and the reputational damage it was likely to cause. The Commission felt that the trustees had not adequately considered donor reaction at the outset, and had failed to monitor it during the course of the appeals.

C 5.8 How the "Know Your" Principles affect charities operating internationally

Fundamentally, the legal duties that apply to trustees of charities which operate in Bermuda apply equally to trustees whose charities are based in Bermuda but primarily work internationally. Appropriate due diligence will enable trustees to address the risks.

The legal AML and ATF duties apply to **all** trustees of **all** charities subject to the law of Bermuda, whatever their income, whether registered under the Charities Act 2014 or not and whether or not they are based, operate or work internationally. However, what action is reasonable or proportionate to take to ensure trustees comply with these duties will vary from charity to charity.

Charities working internationally may be exposed to particular risks inherent in the environment in which they operate, in regions and countries where the risks and challenges of operating are higher. It is in these contexts where there is often great humanitarian need. Charities working internationally or with bases overseas may face different risks and should tailor their due diligence and monitoring checks accordingly. Indeed it is all the more important that trustees are alert to the risk of abuse and take proper steps to reassure their donors and the public that the funds given to them are used for proper purposes and reach their intended beneficiaries.

C5.9 How local laws can affect the due diligence principles

It is important for trustees of charities that work internationally to be aware of and comply with the local laws that govern a particular area. A charity that operates internationally may operate in areas where the legal framework is very different from that in Bermuda. Charities are likely to be subject to different local laws and varying levels of local regulation in different parts of the world. Charity regulation differs in its scope, nature and effectiveness. It may or may not overlap with the role of the police and law enforcement agencies. As a matter of good practice, trustees should familiarize themselves with the local legal and regulatory framework before carrying out charitable programmes abroad.

In cases where there is a risk that a charity's activity in another country might breach local laws, the trustees should consider extremely carefully what course of action will be in the best interests of the charity using both their knowledge of local conditions and the needs of their beneficiaries. They would need to take appropriate legal and other advice. They would also need to balance the benefits of carrying out that activity against the dangers and disadvantages, including the potential human, financial and reputational cost, of doing so.

C5.10 Dealing with risks when selecting overseas beneficiaries

Generally speaking, trustees should apply the same due diligence principles when selecting beneficiaries overseas, but should adjust processes so that they work effectively in local environments and cultures.

In some cases charities may work in unstable or volatile situations, for example when delivering humanitarian assistance following natural disasters and during emergencies, in areas where there is armed conflict, or where government infrastructure is weak. Risks may be higher in certain areas or regions. Charities, their staff and partners are likely to have a good knowledge and understanding of the local situation, including any local power structures and dynamics, which may affect their work. There will be particularly high risks for charities when working in areas where designated persons are known to operate. It is particularly important for trustees to ensure that their charity is not used to commit any criminal offences under counter terrorism legislation.

In the context of those charities whose purposes are the relief of need, the charities' procedures must ensure that charitable aid, funds and activities are targeted and delivered to those they intend to assist on the basis of charitable need. In some situations, such as the delivery of food or other aid to a refugee camp, it may be legitimate for a charity to provide aid to all individuals within a group in need, even if it happens to include the children or families of terrorists or those responsible for terrorist activity. In doing so, its trustees must be satisfied that:

a) the aid, activities or services further the charity's purposes

b) the aid, activities or services are, in practice, capable of alleviating the need that has been identified

c) the criteria used – by the charity or its partners – when selecting beneficiaries are transparently and consistently applied

d) the charity is not breaking charity, terrorism or other applicable law in providing the aid

Trustees must also ensure that they fulfill any obligations under Bermuda or international law regarding the reporting of suspicions of terrorist or criminal activity. It is not acceptable for a charity to select and support individuals because they are the children or families of terrorists or those responsible for terrorist activity. Targeting funds on the basis of affiliations or connections to a terrorist group, irrespective of whether those in that group are in need, would raise the question of whether the purpose of that support was to indirectly support terrorist activity. It could create an unacceptable association to terrorism and would breach the trustees' duty to ensure charity funds were properly applied.

Humanitarian assistance or other charitable aid or funding cannot be denied to people because they support, actively or otherwise, or are sympathetic towards the work or aims of a political body. However, assistance cannot be given solely on the basis of a person's support for a political party or body.

D. Regulation 5: Systems and Controls

Regulation 5 requires that charities establish and maintain, on a risk-sensitive basis, policies, processes and procedures to comply with their obligations under the Regulations. An important objective is to enable trustees to ensure that charities' funds are used for their intended purposes, which also helps to promote donor confidence.

D1. Regulation 5(1)

The areas that must be addressed by these policies, processes and procedures are specified in Regulation 5(1):

a) Carrying out proper due diligence
There must be systems and controls in place to conduct due diligence (in accordance with regulation 4) on individuals and organisations that give money to, receive money from, or work closely with, the charity.

b) Identifying international transactions
Charities must have systems and controls in place that enable them to identify international transactions separately from domestic transactions. This will assist trustees to become aware of

any suspicious transactions involving payments overseas, which normally have greater risk of being associated with money laundering or financing terrorism. Trustees must also keep a record and analysis of international transactions separately from domestic transactions which can serve as evidence in the event of an investigation.

c) **Monitoring and verification of payments to beneficiaries and partners**
Charities must ensure that they are able to keep track of end-use payments to their beneficiaries and partners. They should know how their payments are being used through ongoing monitoring. The Monitoring section (page33) provides detailed guidance in this area.

d) **Reporting**
Charities should have policies and procedures for making reports of suspicious transactions internally to their compliance officers, as well as to external organizations such as the FIA. Further information on internal reporting is given in the section entitled "Regulation 7: Internal reporting procedures".

Charities should have clear policies and reporting lines for the reporting of suspicious transactions by staff and volunteers. Staff and volunteers should know that they must report suspicious transactions to the compliance officer, and the procedures to be used in doing so. Some charities may require a written report of any suspicions, depending on what best serves their circumstances. Pursuant to regulation 5(2), it would then be up to the compliance officer to assess the information to decide whether it gives reasonable suspicion that a person is participating in money laundering or financing terrorism.

e) **Training**
Charities must ensure that their compliance officers receive the AML and ATF training required by the Registrar under regulation 3(b). This applies to all compliance officers. Charities should also ensure that their staff and volunteers are aware of any likely ways in which their organization could be used for money laundering and terrorist financing so they can be alert for any suspicious transactions. These persons should also receive training on the specific procedures for reporting any suspicions they may have.

f) **Record-keeping**
Please refer to the section entitled "Regulation 6: Record Keeping" (page 45).

g) **Internal financial controls**
Charities must ensure that their financial controls are sufficiently robust and sophisticated to ensure that all funds are fully accounted for, and are spent in a legitimate manner that is consistent with the purpose and objectives of the charity's stated activities.

h) **Risk assessment and management**
Please refer to the section entitled "The Risk Based Approach" (page 4) and **Compliance Tools 1** through **5**, and **17** for guidance on risk assessment and management.

i) **Monitoring and management of compliance with AML and ATF policies, processes and procedures**

Charities should communicate their AML and ATF policies, processes and procedures to their staff and volunteers and conduct reviews to ensure effective compliance.

D2. Regulation 5(2): Disclosures

D2.1 Disclosures to the FIA

Persons who work with charities have obligations under sections 46(5) of the Proceeds of Crime Act 1997, section 9 or paragraph 1 of Part 1 of Schedule 1 to the Anti-Terrorism (Financial and Other Measures) Act 2004, to make disclosures to the FIA if they know or suspect that money laundering or terrorist financing is occurring within the charity that they work with.

D2.2 Disclosures to Compliance Officers

Regulation 5(2) requires that the policies, processes and procedures referred to in regulation 5(1) include requirements that anyone in a charity who receives information that causes them to know or suspect that money laundering or terrorist financing is occurring, or has occurred, must disclose the information to the charity's compliance officer. In doing so, they will have satisfied their obligations under sections 46(5) of the Proceeds of Crime Act 1997, section 9 or paragraph 1 of Part 1 of Schedule 1 to the Anti-Terrorism (Financial and Other Measures) Act 2004.

Once a disclosure is made to the compliance officer, he or she must decide whether it provides evidence of money laundering or the financing of terrorism. If so, he or she must report it to the FIA by filing a Suspicious Activity Report ("SAR"). To facilitate this, charities must have systems in place which enable relevant information to be available in response to reasonable enquiries from the Registrar, the FIA or a police officer. Charities' systems should be sufficiently sophisticated to determine whether they have, or had, a donor, beneficiary or partner relationship with a person during the previous seven years. It is recognized, however, that charities will not always be able to identify every donor or beneficiary specifically.

Charities can decide for themselves how the information is captured and retained, but they may find that the best way to keep track of it would be to develop and maintain an electronic database for that purpose. Such a database could also be used for recruitment, business development and fundraising purposes.

D3. Monitoring

It is important that donors and the public have confidence that money they have donated to charity has been used appropriately. Trustees are under a legal duty to ensure funds are used only in furtherance of the charity's purposes and are legally responsible and accountable for their proper use. They must be able to demonstrate that funds have been used for the purposes for which they were intended.

Monitoring is an important way of ensuring this is the case. Drawing up robust monitoring processes, and recording and implementing them will help charity trustees ensure that funds are adequately protected from abuse, misuse or other loss, and are being put to their most effective use. Monitoring may help the trustees identify occasions where the project work has gone wrong or not been delivered in the way the charity expected. It may also help identify situations where people other than the intended beneficiaries have taken advantage of charitable services or activity. Where it is well known a charity carries out robust monitoring, this may act as a deterrent, helping to prevent abuse of its funds.

D3.1 Overview of monitoring

Monitoring will almost always include some steps to verify that funds have been passed to the beneficiary, partner (if there is one) or other party, and verify their proper end use. But monitoring is more than that. It is about ensuring effective delivery and that promises made to the charity by the beneficiary, partner or other party, are met. This, in turn, protects the trust and confidence a charity's donors have in it. Even in lower risk situations, monitoring helps to verify that the project matches the initial low risk assessment, and if not, triggers a process for appropriately revising the risk assessment for the beneficiary, partner, or other party.

Monitoring will take a variety of forms depending on the charity's work, the particular project, the amount of charitable funds involved and the outcome of a risk assessment. However, it will usually involve steps aimed at ensuring:

a) the charity's funds can be accounted for, that there is an audit trail showing the expenditure of funds by the charity, checking the funds were received by any partner and, if the partner forwarded those funds on, that there is an audit trail to show this

b) the partner or other party has actually delivered the project and charitable work expected

c) the charity's funds have been used for the purposes for which they were intended, and for the beneficiaries identified

d) that any concerns that need to be dealt with are identified

e) the beneficiary or partner continues to be appropriate in all respects for the charity to work with

Monitoring may also be broadened to fulfill other purposes, for example:

a) assessing the impact and value of the project and charitable work

b) as a tool to gauge customer and stakeholder satisfaction with the charity

c) helping to benchmark standards across a number of the charity's projects

d) helping to assess and review risks to the charity

Monitoring is not always easy and may present practical challenges, particularly in certain parts of the world where access to the areas in which the charitable work is being carried out may be restricted.

D3.2 Monitoring steps trustees should take

The extent and nature of the oversight and monitoring required will therefore depend on a number of factors, including the risks involved in the charitable work and project. Other relevant factors include:

a) the experience the charity has in carrying out this work

b) whether its own staff or trustees are experienced in, and/or able to, carry out the monitoring required

c) how robust and strong the charity's normal internal and financial controls are

d) whether the charity has an established internal audit function that can carry out project monitoring

e) whether the charity has accountants which independently audit or examine the charity's funds and projects

f) whether the charity's own grant funders will carry out their own monitoring or auditing of the project

g) the capability, capacity and track record of partners in both delivering results and properly accounting for and reporting on the use of funds

h) the size, nature and complexity of the project

i) the amount of the charity's funding involved compared to the charity's size

j) the amount of the charity's funding compared to the total cost of the project and if it is overseas, the relative value of this in the country concerned

k) if it is known that an overseas partner does not or cannot use a formal banking system and may use for example, local unregistered Money Service Businesses or cash couriers

l) over what period the project and funding is being provided

m) the extent and nature of the charity's existing relationship with any partners

n) the nature and strength of a partner's own governance, risk management and internal controls

o) whether ensuring there are proper audit trails may be sufficient evidence that the funds have been used for proper purposes

p) whether monitoring is required at different stages of the project or just at the end

q) whether the monitoring information required will be generated manually or will form part of routine period-end computer reports

r) how much it will cost in terms of money and staff resource

A risk-based approach allows for flexibility in deciding how often and what methods a charity uses to ensure it meets minimum standards, and the trustees discharge their legal duties. The risks that some partners and projects give rise to may only become fully evident once substantial activity has begun, which reinforces the importance of monitoring. The most effective monitoring systems will usually use a variety of different methods. These systems should be in accordance with the monitoring provisions in any partnership agreement and should be regularly reviewed (see outline partnership agreement at **Compliance Tool 10**). Choosing how a charity monitors a project will very much depend on each individual circumstance and the practical issues involved. Where there are higher risks associated with an activity, (for example, when operating overseas in areas where financial and other crime is known to be a problem), this will probably need to be reflected by increasing the frequency and intensity of monitoring.

There may be some instances where it is dangerous or extremely challenging to effectively monitor work being carried out, for example providing humanitarian aid in a disaster or conflict zone. In such instances, trustees will need to reflect the risks involved in developing a practical monitoring process.

The risk based approach recognises that not all partners, projects and financial transactions need to be monitored in exactly the same way. However, if as a result of monitoring, suspicions arise that non compliance may have taken place, trustees will have much less flexibility.

D3.3 Verifying the end use of funds

Verifying the end use of funds is the process of ensuring money has both physically reached the partner, beneficiary, or other party, and that it has been spent by them properly and as the charity intended.

The key elements of verifying the end use of funds usually include:

- ensuring there is an audit trail for the movement of funds from the charity to partners, beneficiaries or other parties
- ensuring there is an audit trail and proper records (eg receipts and invoices) that show the recipient has spent the funds on legitimate goods and services
- some form of proactive monitoring by the charity to be satisfied that the funds were actually used for the purposes intended, with appropriate reporting by the partner or other party to support this

It is important to stress that verifying the proper end use of funds is not just about ensuring a paper trail for the flow of funds is in place. For example, a charity may fund a project to build a local school and hospital for a poor community. Although audit trails, receipts and records may show that the charity’s funds have been spent on buying bricks and building materials they would not necessarily show that the materials have been used to build the hospital and school. They might, for example, have been diverted to build property for the families of local criminals.

This is why some form of proactive monitoring by the charity and reporting by the partner and other parties is important. As with the “Know Your” principles, the frequency and intensity of these processes will depend on the risks and a number of other factors. A charity should be able to show that it receives accurate reports that enable effective control and oversight of the use of its resources. Reports may be linked to key aspects of the project cycle such as periods of funding tranches, project milestones and deliverables, and project completion. The detail and frequency of monitoring and reporting should be proportionate to the level of risk faced.

D3.4 Other issues that affect monitoring

Effective monitoring should be carried out by competent staff with the right skills and expertise. Trustees should consider, for example, whether a technical expert or someone with financial expertise should carry out the monitoring on a particular project.

The most effective monitoring usually involves some degree of independence and impartiality. It may be important to ensure that the charity's staff who monitor the project are different from those who act as the point of contact with the delivery partner. For example, trustees should consider whether the charity's local office or branch or the national/head office should lead the monitoring. It is also important that any conflicts of interest are managed and dealt with properly. Potential conflicts of interest may arise between the personnel in the charity and the partners, or with the bodies or people external to the charity carrying out monitoring. It is important that monitoring is, and is seen to be, objective and unbiased. It is important that the people carrying out the monitoring appreciate the context in which the project is being carried out. Monitoring needs to be appropriate for the charity's needs, the project, the country and the risks involved.

Trustees need to think about what the results of the monitoring look like. Will it be in the form of a written report? If not, the charity will need to keep a record of monitoring work that has been carried out with a sign off/authorisation sheet. Will the partner have a chance to comment on the results and how will the charity deal with any disagreements? Trustees also need to remember that any issues which arise as a result of monitoring will need to be taken up with the appropriate party and dealt with. It is important that the findings are acted upon swiftly.

D3.5 Parameters for monitoring

There are a number of ways in which trustees can monitor the delivery of charitable services and the expenditure of charitable funds. The choice of methods will depend on a range of factors, including the nature of the charity's work and the involvement of any operational partners. Trustees should implement monitoring systems that meet their charity's specific needs and are proportionate to the risks. Charities operating internationally may need to build in additional checks.

The **Compliance Tools** include a checklist of some things to think about when monitoring a project, whichever form of monitoring is required.

D3.6 Suggested monitoring tools and options

It is for trustees to decide which methods and techniques best fit the charity, its work and the purpose of the monitoring it needs to carry out. Some of the monitoring tools that charities use include:

a) **Formal reporting by any partners** delivering the project. This could take a number of forms and the charity may place specific reporting requirements on the partner:
   - this might be regular **verbal reporting** if the risks are low, the project is simple or short term or the situation on the ground fast evolving

- a form of simple written **self certification** might be useful to ensure there is some assurance on basic checks about the use of funds. Self certification can help reduce the financial and administrative burden on a charity. It also helps the charity focus enhanced monitoring on where its resources and time will be best spent relative to the risks
- in larger projects, for larger grants or where the risks are higher, a more **formal report** in writing is likely to be a necessary basic step

b) A report by the charity's own **internal audit** function.

c) The usual reports of the charity's external, **independent auditors and examiners of the charity's accounts.** Audits and independent examinations normally concentrate on paperwork and records being in order. An assessment needs to be taken as to whether the audit or examination needs to go beyond a paper trail, if so how, and whether this will be enough for the charity's monitoring of the particular project in question.

d) **Off site office based supervision and monitoring by the charity**, checking paperwork and audit trails and using phone and other communication methods to verify activity on the ground.

e) **On site inspections/visits** carried out **by the charity**. Depending on the size and structure of the charity this might be part of the internal audit function or a specific step taken for a particular project. The charity's local office or branch or the national/head office might be used to carry this out. One way of ensuring standards are objective, and the assessment independent, might be for offices or personnel other than the one(s) responsible for the project to carry out monitoring.

Inspections and visits can take a variety of forms. They may include unannounced spot checks or planned detailled inspections.

a) **On site inspections/visits carried out by others**, including:

b) the charity's auditors or independent examiners of its annual accounts

c) the partner's accountants or other professional advisers

d) other independent experts or consultants

e) another funder in the area, perhaps through a mutual monitoring exchange programme partnering up with other charities and NPOs

f) other local NPOs or branches of international charities if it is an overseas project

g) the charity's local representative/agent in the area

h) relying on the monitoring **reports of other regulators** and government agencies

i) commissioning **external consultants or agencies** specialising in monitoring and evaluation. A charity might want to employ its accountants or other specialists to carry out bespoke monitoring of a particular project. When using third parties to carry out monitoring on behalf of the charity, it is important that it is made clear what monitoring is required and by when.

j) p**eer or stakeholder reviews**

k) using **benchmarking and industry standards.** Trustees will know what specific benchmarks and best practice standards are relevant to their charity's work, akin to "industry standards". Stakeholder and community feedback and standards can be useful in this respect: the charity itself, if large or with a number of operations, may want to establish its own benchmarking standards for all of its projects and work which it expects all its partners to comply with.

l) **feedback direct from beneficiaries** and problems identified through complaints and concerns made by beneficiaries and the public, can be useful monitoring tools. Sometimes they may identify, for example, blockages to aid getting through and they may be the only people who could detect abuse on the ground (for example local agents taking a cut of the aid themselves or seeing local bribes taking place). Where a charity is open and transparent about what its money should be used for, its beneficiaries and people working with them will be more likely to notify the charity or the partner if this is not the case. It is important to ensure the charity is clear about how such complaints are dealt with and its staff and volunteers know what to do if a concern or complaint is raised.

m) **Local reporting information** can also be useful for the monitoring of projects. This may be specific, for example, that it is well known in the community the charity's goods are being sold locally in a market. Or it may be general, for example, that there are reports of intimidation and corruption in the locality which pose a risk to any humanitarian projects currently being carried out.

There are advantages and disadvantages associated with each of these techniques and methods. These will impact upon how much a charity can or should rely on a particular method or the results of them. The most likely combination for larger and high risk projects will probably include some kind of regular off site supervision for the period of the project, including analysing reporting information coupled with an on-site inspection.

D3.7 Other alternatives

Trustees need to balance the costs and practicalities of on-site inspections, especially for projects in areas which are inaccessible. Sometimes the safety risks may mean a visit is not possible. However, in order to comply with their legal duty they must take reasonable steps to ensure that the charity's funds are being properly applied. There are a number of other options to demonstrate effective delivery.

When on-site inspections/visits are not possible or not appropriate, as a minimum written reports should be obtained in higher risk cases. These should be supported by documentary evidence (where available) to obtain assurances that charity funds are being used appropriately. Examples of other suitable evidence might include:

a) photographs and/or video footage
b) self-certification by the partner and/or local agents
c) feedback, testimony or references from beneficiaries and other stakeholders
d) inspection of financial records, including banking statements, invoices, receipts and cash books
e) minutes of key meetings and decisions

f) copies of assessments undertaken by agencies and other contracted third parties

Local regulation of charities may complement the monitoring work undertaken by trustees, but it should not replace it completely. Trustees are still under obligation to be able to demonstrate reasonable efforts have been made to obtain the verification necessary from partners to account for expenditure.

D3.8 Identifying suspicious situations

Even with good monitoring systems it is not always easy to recognise genuinely suspicious situations. Nor should trustees assume that a failure or negative outcome of an individual monitoring check amounts to evidence of serious problems. Most monitoring failures will simply indicate that there is a possible weakness in a particular area of the charity's operations or administration, and that some corrective action needs to be taken to put things right before the weakness becomes serious. However, if the monitoring process reveals serious weaknesses, or weaknesses across a wide area of the charity's activities and operations, a more rigorous response may be called for including, where appropriate, reporting matters to the relevant authorities.

D3.8.1 Paperwork

Signs that audit trails, financial and other records and paperwork may not be in order including, for example, signs that:

a) invoices and paperwork have been tampered with, perhaps they have been altered in crucial aspects with handwritten amendments
b) invoices and papers recording a lower than expected number of goods on them
c) there is a lack of evidence to show fair and transparent tendering or procurement procedures
d) invoices and papers recording a higher cost for goods or services than expected or agreed
e) missing key documents or only copies can be produced, which raise suspicions perhaps because they are poor copies or because key details are illegible or have been altered
f) signatures confirming receipt or payment are missing or the invoice is unsigned or undated
g) receipts have been signed and dated a long time after the goods or services should have been delivered
h) particularly late or early invoicing
i) repeated excuses of systems crashing, losing records or paperwork not being available for inspection
j) records of receipts not being on the usual headed notepaper or official receipt book of the partner, or records which are out of chronological and numbered order
k) beneficiary lists that may be fake or have unusual characteristics, for example, identical characteristics and addresses or multiple identical or similar names and signatures
l) larger than normal beneficiary lists, especially in an international environment during local election periods

D3.8.2 Project issues

Suspicious activities on the ground in the project may include indications that:

a) relief, goods or items provided by the charity in connection with the project have been tampered with, for example packaging torn, items feel lighter in weight than expected when carried, or there is an unusual number of damaged goods which are irreparable and have to be counted as void or returned to the supplier as faulty

b) equipment and materials are old, sub-standard or non-functioning, suggesting that they have not been purchased using funds recently provided for the purpose
c) documents accompanying goods and items are missing
d) deliveries of goods take an excessively long time to arrive
e) the local community is receiving aid or assistance by other unexplained or unexpected means
f) indications that local staff may be living beyond their means or staff appearing at unusual times or carrying out tasks or jobs they should not be, or other unusual staff behaviour or conduct

D3.8.3 Financial

Indications that financial aspects and transactions may be suspicious including, for example, signs of:

a) unexpected currency changes or transactions, where commission has been deducted or charged or where no receipts are available
b) figures in documents or records that look familiar or may be repeated
c) invoices with key pieces of information missing
d) sudden or increased staffing costs
e) unexplained additional increases in costs for goods, especially if they appear more than the local or market rate
f) discrepancies between budgeted needs and payments requested
g) requests for payment to be made into a different bank account, not in the name of the partner or NPO helping on the project, or where the name of account is slightly different from the name of the partner, or at a different address from that previously given and upon which due diligence checks were carried out
h) requests for payment in cash to be made to an unknown third party or other organisation
i) requests for continued payment to people who left the organisation or partner some time ago
j) payment of administration costs not appearing to relate to the project or which appear unusually high taking into account the nature of the project
k) bank transfers taking longer than they would normally
l) cash advances and payments that are unusually frequent and/or have not been recorded or approved
m) funds are not being banked or accounted for
n) infrequent and/or poor reconciliation of local banking and accounting records
o) being asked to pay a local member’s wages direct to someone else in the team
p) payments to suppliers via cash payments to members of staff

D3.8.4 Other

Other signs which may or may not indicate something to take a closer look at include:

a) numerous urgent requests for assistance to be dealt with outside of normal procedures or accompanied by requests to deal with them in a lighter touch procedure
b) requests by partners to use a particular auditor or accountant
c) late reporting by the partner or reluctance on their part to submit monitoring reports, or regular resistance to receiving monitoring or audit visits
d) offers for monitoring to be carried out by friends or known associates of the local partner without the need for the charity to carry out an inspection or checks on the partner themselves
e) requests to use particular officials or agents in the locality for monitoring purposes
f) any evidence that people may have been placed on distribution and aid lists by providing kickbacks or bribes to officials
g) evidence that third parties have demanded payment for recommending or nominating

beneficiaries or delivery agents

h) emails from new or unusual email addresses not in the partner's domain name or from someone who is not a previously agreed contact point
i) inconsistencies between narrative reports and financial claims and reports and
j) monitoring reports always being about the same sites or projects

D3.8.5 Partner reports

When examining and relying on partner reports, trustees should be alert to the following which may be signs that something is not right:

a) reports that are completely consistent with the targets and always indicate that benchmarks have been met, with little supporting information
b) reports that are inconsistent with other sources of monitoring information
c) inconsistency between individual reports or between listed achievements and the financial figures
d) a high incidence of simple errors that may be masking more serious underlying problems
e) unquantifiable opinions or excessive praise from unlisted or uncredited beneficiaries
f) where there are multiple sites, services or projects being worked on, the same examples are appearing as 'success stories'

Whilst these examples might be innocent mistakes, errors or events, they might also be signs of suspicious activity.

D3.9 Case studies - Monitoring

Case Study 1

A charitable appeal was launched in the UK by a non-charitable company to raise funds for the victims of widespread flooding in Asia. The charitable funds were kept properly segregated in their own UK bank account and there were records showing clearly how much had been received. The company had an agreement with a local NGO in the affected area to carry out relief projects, and the charitable funds were to be released to the NGO in tranches as the projects progressed.

The managers of the company were unable to visit the area regularly themselves, and relied mainly on progress reports from the NGO itself. There was no formal written agreement in place setting out the structure of the reports and the evidence of progress that was to be provided. Nor was there any arrangement to have independent corroboration of progress. The managers of the company became concerned that the progress reports were inadequate, and that costs appeared to be too high for the work done. As a result, the release of charitable funds to the NGO was delayed and this adversely affected the relief projects.

The UK Charity Commission found that both the company and the NGO had acted honestly and in good faith, but the absence of a proper agreement between the company and the NGO, including arrangements for independent verification of costs and progress reports, caused delays in releasing charitable funds which could have affected the beneficiaries.

Case Study 2

A charity was established to relieve hardship and distress amongst refugees in a Middle Eastern country. In response to complaints that donors were being misled into believing that they were sponsoring individual children, the UK Charity Commission investigated the way in which the charity identified and provided charitable services to its beneficiaries.

The Commission found that funds were sent to an intermediary in another Middle Eastern country and paid into his personal bank account. The intermediary was effectively left to distribute the funds unsupervised. The trustees claimed that this arm's length arrangement was necessary to prevent the identities of recipients becoming known to armed political groups who would have victimised them. However, the trustees were unable to exercise any effective control or supervision over the way in which the funds were being spent, or even confirm that they did in fact reach their intended country of destination. The intermediary did not provide any feedback to the trustees, and they did not ask for any. There were no financial controls in place once the funds had left the charity's UK bank account, and the trustees acknowledged that they could not account for or verify the end use of a significant proportion of the funds. The trustees were unable to demonstrate that the funds were in fact reaching the charity's beneficiaries.

The Commission concluded that the trustees had not carried out sufficient due diligence in the selection of the intermediary. Nor had they given any instructions to him about the detail and frequency for providing feedback and evidence that the funds were being applied in accordance with the charity's objects. The trustees neither carried out any direct monitoring of the end use of the funds themselves, nor did they make arrangements for monitoring to be carried out by another person or NGO.

D3.10 Specific considerations for performing monitoring overseas

Although the same general principles of monitoring apply whether the charity operates in Bermuda or overseas, the way in which they are applied and the extent and nature of the oversight required may be different. Charities operating within Bermuda, sending money to projects, charities, NPOs and direct to beneficiaries in other countries carry out invaluable work, often helping the neediest in society. In some countries and regions charities face great challenges in delivering their work. Sometimes trustees of these charities will need to take additional steps to ensure they meet their duties to ensure the charities' money is properly used and reaches the intended beneficiaries.

In some cases the risks will be significantly higher. Sometimes these risks arise because the charity itself is unable to check the funds have been spent properly or it is impractical to do so. This means these charities must consider carefully what due diligence and monitoring steps they need to put in place. These steps may well be greater and more intensive than for other charities.

D3.10.1 Working with partners internationally

Prospective partners may take a variety of forms, depending on the country they operate in and its particular legal system. Some Bermuda charities work with and decide to select NPOs as partners. NPOs may distribute funds, aid and charitable services to beneficiaries. They can take different forms, including foundations, fundraising committees, law and practice associations, public interest bodies, limited companies and public benevolent institutions. Many NPOs undergo audits or some other form of independent check, and depending on the jurisdiction, this may be a legal requirement. Some adhere to standards upheld by self-regulating or accrediting umbrella bodies.

D3.10.2 Monitoring an overseas project

The most effective monitoring arrangements will use a variety of different methods. Ideally they should be set out in any partnership agreement and regularly reviewed. Deciding exactly how to monitor an overseas project will depend very much on individual circumstances and the practical issues involved. Where the risks are higher, for example, when operating overseas in areas where financial and other crime is known to be a problem, this will need to be reflected, perhaps by increasing the frequency and depth of monitoring checks. There may be situations in which monitoring activity will potentially expose charity representatives to hazards, or even danger. An example would be where representatives of a charity providing humanitarian aid in a disaster or conflict zone need to make a site visit. In such instances, trustees will need to assess the risks very carefully and ensure that they are reflected in developing a plan of action for monitoring.

A risk-based approach allows flexibility in deciding what monitoring and reporting information is required, how often, and what trustees can do to ensure that they discharge their legal duties. In some cases risks will only become fully apparent when the operational project relationship has commenced. This reinforces the importance of monitoring and the need to have a risk management system that is adaptable. Difficulties in monitoring and verifying the end use of funds applied overseas may be more acute, but again the same basic principles apply.

In higher risk areas, appropriate steps may involve trustees taking appropriate action to manage the charity’s exposure to these risks, implementing new procedures for controlling expenditure and the distribution of funds, or sharing risk with others through working together. In some cases, albeit on rare occasions, and where risks are extremely high, the appropriate decision may be to stop working in that region or country, either temporarily or permanently. Those charities working in disaster relief, particularly the larger charities who specialise in this area, usually ensure they have proper and adequate measures in place in advance for due diligence. In disaster relief situations, the priority is clearly getting aid to those who need it and quickly. Due diligence and monitoring in emergency situations will take a different form and needs to adapt to the circumstances. However, the need to deliver relief urgently does not justify having no due diligence and monitoring checks. In most cases, the larger charities will already have well established relationships with local NPOs and partners and due diligence may have already been carried out. They may also have basic procedures and monitoring systems in place to ensure, as a minimum, basic records and audit trails are kept, especially for large operations.

D4. Regulation 5(3): Systems enabling response to official enquiries

The systems and controls that charities must maintain under regulation 5(1) and the record-keeping systems implemented pursuant to regulation 6, must be capable of providing specified information to the Registrar, the FIA or the police when any of these make reasonable enquiries. The specified information relates to whether any particular person is or has been a donor to, beneficiary of, or partner with, the charity during the previous seven years, and the nature of that person’s relationship with the charity.

Regulation 5(3) does not mandate the form that the relevant systems should take, whether electronic or otherwise, but they must be flexible enough to enable the information to be accessed in response to reasonable requests.

E. Regulation 6: Record-keeping

There are certain key records that a charity must keep for a period of at least seven years. These include the following:-

a) **International transactions.** Charities must be able to distinguish between their international and domestic transactions, and to keep separate records of each, in sufficient detail that they are able to provide an analysis of the international transactions. Money laundering and terrorist financing are more likely to involve international transactions than domestic. Being able to easily distinguish between them provides transparency and should make it easier to conduct investigations of suspicious transactions. In addition, charities must ensure that all of their transactions are recorded in sufficient detail to verify that their funds have been spent in a manner consistent with their purposes and objectives. Charities are also required to provide a list and analysis of their international transactions with their Annual Report, pursuant to regulation 9.

b) **Due diligence.** When charities perform due diligence on donors, beneficiaries, and partners, they must ensure that they retain a record of the information obtained.

The records described in the above sections must be made available to the Registrar, the FIA and the Police in response to a reasonable request by any of them (see regulation 5(3).

Although, as stated above, the general rule is that the records must be retained for at least seven years, if a police officer notifies a charity in writing that an investigation is being carried out, the registered charity shall keep the records beyond the seven-year period pending the outcome of the investigation.

F. Regulation 7: Internal reporting procedures

Registered charities must establish internal reporting procedures which require their officers to report any information that causes them to believe or suspect that someone is engaged in money laundering or the financing of terrorism, to their compliance officer. All of a charity's officers must know who the compliance officer is and what the procedures are for reporting suspicious activity. Each charity must decide for itself what those procedures will be, with their level of structure and formality determined using a risk based approach. The procedures can be fairly simple for small charities, or others whose circumstances are such that there is little risk that they will be abused for money laundering or the financing of terrorism.

The compliance officer is responsible for assessing any information disclosed to determine whether it might indicate that money laundering or the financing of terrorism is being engaged in, or provides a suspicion of such activities. The internal reporting procedures must authorize the compliance officer to request any information that he requires to assist him in assessing the information disclosed. If the compliance officer determines that the information disclosed to him does indicate that money laundering or the financing of terrorism is taking place, or causes him to suspect so, the procedures must specify that he should file a report to the FIA and keep a written record of such reports.

G. Regulation 8: Training etc.

Registered charities must ensure that their relevant officers are aware of the law relating to money laundering and terrorist financing, and that they regularly receive training on how to recognise and deal with transactions which may be related to money laundering or terrorist financing. Relevant officers should be screened prior to hiring to ensure high standards. A security check by the Bermuda Police Service would satisfy this requirement.

For the purposes of the Regulations, an officer of a charity is a relevant officer if, at any time in the course of his duties he has, or may have, access to any information which may be relevant in determining whether any person is engaged in money laundering or terrorist financing, or he plays a role in implementing and monitoring compliance with anti-money laundering or anti-terrorist financing requirements. This also extends to volunteers.

H. Regulation 9: Annual report

Registered charities are required to complete an annual report under section 38(1) of the Charities Act 2014, which should be submitted to the Registrar within six months of the end of the financial year to which it relates, unless the six-month period has been extended by the Registrar under section 37(2), as read with section 38(4), of the Act. Pursuant to section 47A of the Act, the Registrar may impose a civil penalty in the amount of $200 where a charity fails to submit its annual reports within the specified timeline.

Regulation 9 adds requirements relating to AML/ATF information that must be included in the annual report. This requirement can be satisfied by completing the standard Annual Report Form provided by the Registrar, particularly the section relating to AML/ATF matters. A copy of this Form can be found by searching for “charities” on the Bermuda Government web portal.

The annual report should also include a list and analysis of the charity’s international transactions. It would be acceptable to include this list in the financial statements, which must be submitted at the same time as the annual report. **Compliance Tool 17** provides a model list and analysis form.

I. Regulation 10: Offences

Charities should be aware that failure to comply with the Regulations may be a criminal offence, pursuant to regulation 10, which provides:

1) A person who fails to comply with any requirement in regulation 3, 4, 5(1) and (3), 6, 7 or 8(1) is guilty of an offence and liable—
    a) on summary conviction, to a fine not exceeding $50,000; or
    b) on conviction on indictment, to a fine not exceeding $750,000 or to imprisonment for a term not exceeding two years, or to both

2) A person who fails to comply with any requirement in regulation 9 is guilty of an offence and liable—
    a) on summary conviction, to a fine not exceeding $5,000; or
    b) on conviction on indictment, to a fine not exceeding $10,000 or to imprisonment for a term not exceeding two years, or to both

3) In deciding whether a person has committed an offence under paragraph (1) or (2), the court shall consider whether he followed any relevant guidance which was at the time issued by the Registrar.

4) A person is not guilty of an offence under this regulation if he took all reasonable steps and exercised all due diligence to avoid committing the offence.

5) Where a person is convicted of an offence under this regulation, he shall not also be liable to a civil fine imposed by or under any statutory provision in relation to the same matter.

Definitions

Beneficial owner
The person who enjoys the benefits of owning a security or property, regardless of whose name the title is in.

Beneficiary
A natural person, or group of natural persons, receiving charitable, humanitarian or other types of assistance through the services of a charity.

Consolidated List of Financial Sanctions Targets
The Asset Freezing Unit of HM Treasury is responsible for the implementation and administration of international financial sanctions in effect in the UK, for domestic designations (principally under the Terrorism Order) and licensing exemptions to financial sanctions. The UK is responsible, through legislative process, for extending to its overseas territories the means by which such international financial sanctions can be effected within the respective territories. Accordingly, the consolidated list of asset freeze targets designated by the United Nations, European Union and United Kingdom under legislation relating to current financial sanctions regimes, which is available on the HM Treasury website, is also to be utilized by Bermuda charities. The web address is:
www.gov.uk/government/organisations/hm-treasury

NB: Links to the various consolidated lists are available on the International Sanctions page of the website of the National Anti-Money Laundering Committee. The web address is www.namlc.bm.

Designated Person
A person (whether legal or natural) who is the target of international financial sanctions by virtue of being designated by the United Nations Security Council, or by the EU, UK, or the Governor of Bermuda in accordance with sanctions legislation extended to Bermuda. As such, the financial assets of a designated person are regarded as terrorist property and must be subject to freezing and seizure in accordance with the specific sanctions legislation related to their designation. The consolidated lists of designated persons are to be found on the website of the UK's HM Treasury:
www.gov.uk/government/organisations/hm-treasury.

Due diligence
Due diligence is the process and steps that need to be taken by trustees to be reasonably assured of the provenance of the funds given to the charity, confident that they know the people and organisations the charity works with and are able to identify and manage associated risks. What trustees need to apply to undertake due diligence can be described as the 'Know Your' Principles: Know Your Donor, Know Your Beneficiaries, and Know Your Partner.

Financial Action Task Force (FATF)
The FATF is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. FATF is therefore a 'policymaking body' that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. You can find more information about the FATF at its web address: www.fatf-gafi.org.

Financial Intelligence Agency (FIA)
The FIA is an agency established under section 3 of the Financial Intelligence Agency Act 2007, possessing the mandate and powers to receive, gather, store, analyse and disseminate information relating to suspected proceeds of criminal conduct, potential money laundering offences and potential terrorist financing offences.

Governing document
A legal document setting out a charity's purposes and, usually, its rules of management. Types of governing document include a trust deed, constitution, memorandum and articles of association, will, conveyance, Private Act, Royal Charter, and scheme of the court.

Money Service Business/Bureau (MSB)
A business that exchanges currencies, transmits money or cashes cheques for its customers.

Non Governmental Organisation (NGO)
A non-profit organisation which is based on a set of social values, is independent of government and works for the benefit of other people or a class of people. NGOs may or may not also be charities.

Non-Profit Organisation (NPO)
A legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works".

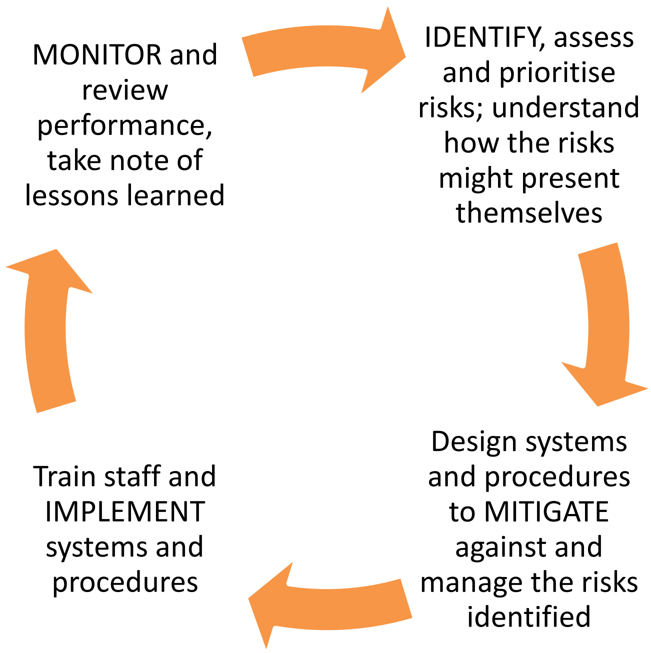
Politically Exposed Person (PEP)
PEP is a term that describes a person who has been entrusted with a prominent public function, or is closely related to such a person. By virtue of this position and the influence it holds, PEPs present a higher risk for potential involvement in bribery and corruption.

Property
All assets, including cash, investments, land and buildings.

Suspicious Activity Report (SAR)
A disclosure to the Financial Intelligence Agency (FIA) under either the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.

Trustee
Charity trustees are the people who are responsible for the general control and management of a charity. In some charities they may be known as directors, board members, governors or committee members.

Compliance Tool 1: The Risk Assessment Cycle



Guidance on how a risk assessment cycle usually works

Stage one: Carry out a risk assessment

No matter what size they are, charities which consider risk and its management in a structured way and make a clear risk management statement in their Annual Report are likely to benefit in many ways. This includes enhancing charities' effectiveness and accountability, and strengthening their reputations among beneficiaries, partners, donors, supporters and the public.

There are various frameworks available for identifying the risks and carrying out a risk assessment that may be suitable for a charity to consider when planning programme operations. Once the various risks have been identified their likelihood and impact need to be evaluated. In practice it may be reasonable to exclude risks where both impact and likelihood are assessed as low and to focus attention and valuable resources on areas of risk with the highest impact.

Stage two: Use processes and procedures and take action to mitigate and manage risks

Once the risks are identified and evaluated, trustees can draw up a plan for the steps that they consider need to be taken to address or mitigate significant or major risks.

There are four basic strategies that can be applied to manage a recognised risk. These strategies can be identified as the **Four Ts**:

• **TRANSFER** the financial consequences to third parties or share it. In this context, for example, through the terms or conditions of a partnership agreement or grant that enable the charity to claw back the grant or payment in certain situations

• **TERMINATE** the activity giving rise to the risk completely. In this context, for example by refusing the grant or not accepting the project or stopping a particular activity or service

• **TREAT** the risk through effective management. In the context of giving grants or supporting projects, the best way to manage risk is to carry out proper due diligence and act on its results, ensuring there is suitable and regular reporting. Other ways of managing specific risk include making grants in smaller amounts conditional on certain events happening, or satisfactory reporting and auditing, or making an initial grant first and making it easy to terminate this.

• **TOLERATE** the risk as one that cannot be avoided if the activity is to continue. An example of this might be where trustees take out an insurance policy that carries a higher level of voluntary excess or where the trustees recognise that in an emergency situation the main concern is to get aid to those who need it. Not all risks can be avoided entirely. The general approach is that the greater the risk the more that trustees need to do to be able to demonstrate that they have discharged their duty to manage it.

The cost of managing a risk should usually be proportionate to the potential impact. A balance will need to be struck between the cost of further action to manage the risk and the potential impact of the residual risk. However, a short term or one-off cost must be assessed against the long term benefits, assurances required and donor and public expectations. Some common risks that will need to be considered in the context of due diligence and monitoring are noted in other Tools.

Stage three: Training staff and implementing systems

Procedures and processes only work if they are properly implemented. Charity staff, volunteers and other personnel need to know what those procedures are and how they work. They will need adequate training to ensure they are familiar with the systems and procedures. It is very important that they know what action to take if they suspect misconduct and criminal financial abuse. By understanding their own and others' roles and responsibilities, individuals are more likely to be able to identify and report wrongdoing.

Compliance Tool 2: Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis

This example shows how a SWOT analysis can be used by trustees to help identify and assess the risks associated with entering into a new partnership with another organization to carry out the charity's purposes.

STRENGTHS: attributes of the partner, project or activity that will help to achieve the objective or improve the outcome.	**WEAKNESSES:** attributes of the partner, project or activity that might cause problems, be harmful to the quality of the outcome, or potentially prevent the objectives from being achieved.
OPPORTUNITIES: conditions or resources which could be used to help achieve the objectives, or which could help to improve the outcome.	**THREATS:** events or conditions which could restrict the achievability of the objectives, or which could damage the quality of the outcome.

Compliance Tool 3: PESTLE Analysis

A PESTLE analysis may help when assessing the risk arising from the impact of external factors on a charity, particularly when working internationally.

POLITICAL	Factors may be altered by the government's influence on a country's infrastructure. This may include tax policy, employment laws, environmental regulations, trade restrictions, tariffs, reform and political stability. Charities may need to consider where a government does not want services or goods to be provided.
ECONOMIC	Factors include economic growth, interest rates, exchange rates, inflation, wage rates, working hours and cost of living, these factors may have major impacts on how charities operate and make decisions.
SOCIAL	Factors include cultural aspects, health and safety consciousness, population growth rate and various demographics.
TECHNOLOGICAL	Factors include ecological and environmental aspects and available products and services. Charities may need to innovate, having considered the compatibility with their own technologies and whether they are internationally.
LEGAL	Factors include any law which may impact on the charities' operations, including NPO regulation and criminal and terrorist legislation which differ from country to country.
ENVIRONMENTAL	Factors include an awareness of climate change or seasonal or terrain variations which may affect charities' service delivery methods.

Compliance Tool 4: Risk Matrix

A Risk Matrix is another common method for assessing risk, which can be used in conjunction with the SWOT and PESTLE analyses. Trustees may find this method useful when assessing areas of risk, for example when planning a new project to be carried out with a new partner organization. The identification of appropriate risks may be best undertaken by involving those with a detailed understanding of the charity's operations and work and/or detailed knowledge of the particular operating environment of the nature of particular projects.

The level of risk should be measured by both the likelihood of something occurring and the severity of impact if it were to happen. The risk matrix can subsequently be used as a risk register for ongoing monitoring and review of risk throughout the life of a project. An example of a section of a matrix can be found below:

Areas	Risks	Likelihood	Impact	Controls
Reputation	A real or perceived link or association between the charity and terrorist activity damages the charity's reputation	LOW	HIGH	• Draw up detailed partnership agreements • Review partner's governance structures • Review project audit and monitoring, including field visits • Include an impact and risk assessment for all projects • Take references and contact other affiliates of the partner for recommendations • Request standard documentation and invoices • Check the consolidated list of designated persons
Financial /Criminal	Financial loss, fraud, money laundering, terrorist financing. Failure to comply with Bermuda, international or local regulations. Exchange rate losses or gains. Funds or assets provided are not used for the intended project or misappropriated.	MEDIUM HIGH MEDIUM LOW	HIGH MEDIUM MEDIUM MEDIUM	• Clear responsibilities and segregation of duties • Scheme of delegation • Developing and implementing a fraud policy • Purchases and tender controls, reconciliations of cash book to petty cash and bank, expenses procedures and authorization limits • Monitor exchange rate losses or gains and review impact on expenditure and income • Use appropriate bank accounts and procedures

				• Quarterly project financial reviews and project reports • Documented financial procedures • Regular budget monitoring and forecasting and grant management
Security	Risk to staff and/or beneficiaries. Obstacles to the effective delivery of services. Areas of conflict, political instability, hostile government	HIGH	HIGH	• Country specific security risk management • Crisis management policy and procedures • Health & Safety and security training

Compliance Tool 5: Risk Assessment Checklist – things to think about

The activity/project

- Is the activity clearly within the charity's objects?
- Are proper policies and procedures in place to prevent beneficiaries being put at risk?
- Are partners/staff/volunteers sufficiently trained to be able to carry out the work?
- What lessons has the charity learned from its own previous experience, or that of other organizations working in the same area and/or type of activity?

Comments

Legal

- Are there any specific laws and requirements to be aware of in carrying out the activity?
- Are there any Bermuda Government and/or local sanctions in force?

Comments

Finance

- What is the charity's financial position and is there enough money available to support the proposed activity?
- Will there be an impact on tax?
- How will the money get to the project site? Will it go through bank accounts direct to the recipient?
- Will Money Service Businesses be used?
- Will cash couriers be required?

Comments

Partners

- Are partners being used? What risk does this pose?
- Have these partners been used before?
- Will a written agreement be in place?
- What are the risks of the partner not delivering?
- Can money be recovered if necessary? What problems might there be?

Comments

External Factors

- What factors are outside the trustees' direct control?
- Charities working internationally should ensure their risk assessment takes account of any relevant circumstances arising in their particular country or region of operation. Specific risks could arise from working in an area where there may be:
    - Internal conflict or other violent or military action
    - Known terrorist or criminal activity
    - Poor infrastructure in remote or sparsely populated areas
    - Changes in government/political environment
    - Lack of banking facilities
    - High levels of bribery and corruption

Comments

Compliance Tool 6: Know Your Donor – Key Questions

These questions are not intended to be asked in respect of each donor. However, trustees may need to consider them depending on the **risk**, including the size and nature of the donation, and whether it appears to have any **suspicious** characteristics.

General information

- Who are the donors?
- What is known about them?
- Does the charity have a well-established relationship with them?
- Do any additional identity checks need to be made? Full use should be made of internet websites, particularly to check whether a donor organization is registered with another regulator. Registration may provide access to the organisation's accounts and governing document.
- In what form is the money being received? Cash, cheque, bank transfer?
- Have any public concerns been raised about the donors or their activities? If so, what was the nature of the concerns and how long ago were they raised? Did the police or a regulator investigate the concerns? What was the outcome?
- Would any adverse publicity about the donor have a damaging effect on the charity?

Comments

The nature of the donation and any conditions

- How big is the donation?
- Is it a single donation, or one of a number of regular donations, or the first of multiple future donations?
- Is the donation one of a series of interest-free loans from sources that cannot be identified or checked by the charity?
- Are there unusual or substantial one-off donations?
- Does the donation come with any conditions attached? What are they? Are they reasonable?

- Is there a condition that funds are only to be retained by the charity for a period and then returned to the donor, with the charity retaining the interest?
- Is the donation conditional on particular organizations or individuals being used to apply the funds?
- Is the donation conditional on being applied to benefit particular individuals either directly or indirectly?
- Is there a suggestion that the charity is being used as a conduit for funds to a third party?
- Is the donation in Bermuda dollars or another currency, perhaps with a requirement that the donation be returned in a different currency?
- Are any of the donors based, or does the money originate, outside of Bermuda? If so, from which country? Does this country/area pose any specific risks?
- Are donations received from unknown bodies or international sources where financial regulation or the legal framework is not rigorous?
- Is the donation received from a known donor but through an unknown party or an unusual payment mechanism where this would not be a typical method of payment?
- Is anything else unusual or strange about the donation?

Comments

What trustees should do if they are suspicious

- If due diligence checks reveal evidence of crime, trustees must report the matter to the police and/or other appropriate authorities
- If the trustees have reasonable cause to suspect that a donation is related to terrorist financing, they are under specific legal duties under the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014 to report the matter to the FIA
- This could include, for instance, if significant sums of money or other property are donated to the charity from an unknown or unverified source, or if an unusually large one-off donation or a series of smaller donations are received from a source you cannot identify or check.
- Check the donor against the consolidated lists of financial sanctions targets and designated persons

- Consider whether to refuse the donation

Comments

Compliance Tool 7: Know Your Donor

SUSPICIOUS DONATIONS LOG			
Name of donor			
Amount of donation		Date received	
Form of donation (eg cheque, credit card)			
Name of bank			
Sorting code		Account number	
Account name			
Name of cheque signatory			
Currency used			
Nature of suspicion / reason for query			
Any previous donations from this source?			
Any conditions attached to the donation?			
Action to be taken	Report to police	☐	
	Report to FIA	☐	
	Report to Registrar General	☐	
	Refuse donation	☐	
	Other action (record overleaf or attach)	☐	

Compliance Tool 8: Know Your Partner

Know Your Partner – key issues to think about

Key Partner details	Are you satisfied with the partner's status and governance? Consider checking: • Its governing document • The designated persons list • The consolidated list of financial sanctions targets Carry out internet searches and review local media to identify if, for example, the organisation has any links with political activity.
Representatives and structures	Who are the key senior personnel? Have you checked that they do not appear on the Designated Persons list? Are the organisation's size, management and operational structure fit for purpose? Can you be reasonably sure the organisation is able to deliver the services required? How easy is it to contact the organisation's senior representatives and other key staff?
Practical working relationship	What do you know about the partner? Have you worked with them before? Does your experience of working with the partner in the past raise any concerns? Are its aims and values compatible with those of your charity? Are there likely to be any language, communication or cultural problems? How can these be overcome? Is the partner already working with other organisations? Will this present any problems? Are there arrangements in place to enable you to monitor the charitable services provided? Are you confident about any third parties involved in monitoring and feedback?
Accounting and internal financial controls	Are its financial policies and procedures documented?

	What recording and audit systems are in place, and are these suitable for the type of work being undertaken and the scale of funding involved? Will the charity be able to inspect the partner's financial records? Are there any concerns about banking local arrangements and the movement of funds? If so, have these been addressed satisfactorily? Does the partner have adequately trained and qualified staff to manage funds, maintain accounts and report back to the charity? How closely do the partner's senior staff monitor its more junior staff?
External risk factors	What special risk factors apply to the area in which the partner organisation will operate? Will the organisation be able to deal with these? For example: • What is the political, economic and social environment? • Is there any potential or actual instability, unrest or conflict? • Are there health and safety concerns for charity representatives? • Would external factors affect your ability to monitor the charity effectively?

Compliance Tool 9: Know Your Partner

VERIFICATION OF PROPOSED PARTNER FORM	
Basic information	
Name of partner	
Principal address	
Website	
Main contact	
Name	
Telephone & email	
Trustees	
Name	
Address	
Name	
Address	
Name	
Address	
Name	
Address	
Senior management staff	
Name	
Position	
Name	
Position	
Name	
Position	
Name	
Position	

Legal Status and formation of partner organisation			
Legal status (eg company, association)			
Type of governing document (attach copy)			
Date established			
Country			
Charity registration (if applicable)			
Relevant policy documents (attach)			
Working language(s)			
Partner's objects and activities			
Bank details			
Name of bank			
Sort code		Account number	
Partnerships with other organizations (if any)			
Proposed partnership work			
Outline of project			
Technical and other skills necessary			
Estimated overall cost			

Estimated time scale	
External and other risks identified	
Assurance	
Summary of other due diligence checks carried out	
Confirmed partner is complying with other regulatory requirements, where applicable (eg reports submitted in time, registration with relevant regulatory bodies)	
Partner's accounts examined	
Year ending	
Comments	
Year ending	
Comments	
Year ending	
Comments	
Designated persons checks made	
Date	
Outcome (attach)	
Partnership agreement signed (attached)	
Date signed	

Position of partner signatory	
References taken up (attached)	
Other 'open source' checks (details attached)	
Overall conclusion as to suitability, including assessment of capacity to deliver project	
Board approval given	
Signature and date	

Compliance Tool 10: Outline Partnership Agreement

IMPORTANT

This is not intended to be a precedent or definitive model agreement, but a guide and check-list. Every project and partnership will be different, and the content of the agreement will vary according to the particular situation. Legal advice in preparing the agreement, or reviewing it, is highly recommended, particularly where there is a significant level of funding, or where reputational risk is at stake.

Where the charity is entering into the partnership to enable the delivery of services which the charity is contracted to deliver by another body or donor, or where the funds have been supplied by a donor with particular conditions or restrictions attached, the terms of the partnership agreement should set the same or higher standards and obligations on the partner, to ensure that the charity does not inadvertently default on its head contract or funding agreement.

Key items that the Partnership Agreement is likely to need are set out below.

1. **Date of Agreement**

2. **Title of Agreement/Project**

3. **Parties' names and addresses**

4. **Brief overview of nature and duration of Agreement**

   For example, "The Charity and the Partner agree to work together for the implementation of the Project during the period 1 January 2010 to 31 December 2012 in accordance with the terms set out in this partnership agreement dated 15 December 2009 'the Agreement' ."

   Brief summary of the purpose and aims of the Project and the key deliverables. (Further detail is provided in the Project Implementation document annexed to the Agreement).

5. **The Charity's responsibilities and obligations**

   For example:

   • To provide ongoing assistance to the Partner in implementing the Project within the limitations of resources and funding at its disposal for these purposes.

   • To advance funds in accordance with the agreed Budget (annexed to the Agreement) to the Partner in a timely manner to a bank account nominated by the Partner.

   • To carry out monitoring visits on dates as set out in the Visit and Reporting Schedule (annexed to the Agreement) or where the Charity otherwise considers such a visit is reasonably required, and has given the Partner reasonable notice in advance of the visit.

   • To make available to the Partner assistance from appropriate and qualified personnel to provide expert technical advice on the Project, whose fees will be funded by the Partner in accordance with the Budget.

   • To give reasonable consideration and a prompt response to requests from the Partner for adjustments to the Budget, or the Project activities, or phasing of income and expenditure, or project deliverables or timescales under the Agreement, or for the use of unspent funds.

• To inform the Partner in a timely manner of any changes to the financial, procedural or reporting requirements for the Project.

6. The Partner's obligations

For example:

• To implement the Project in accordance with the Agreement, using its best endeavours to complete the activities and deliverables listed in the Project Implementation Document (annexed to the Agreement), within the Budget and to target timescales.

• To co-ordinate and co-operate with the Charity, and to make available to the Charity information relating to the Project, including the submission of financial and narrative reports required by the Visit and Reporting Schedule (annexed to the Agreement) or such other material as the Charity may reasonably request.

• To comply with the Financial Reporting Requirements (annexed to the Agreement), and to request the funds required to implement the Project in accordance with the Budget (annexed to the Agreement).

• To monitor regularly the Project's progress, and to adapt activities where necessary and with the Charity's prior agreement so as to ensure that the Project is fully implemented within the total amount of the Budget

• To manage the Project in accordance with the Charity's policies (annexed to the Agreement).

• To facilitate visits to the Project, in accordance with the Visit and Reporting Schedule (annexed to the Agreement).

• To use its best endeavours to ensure that no funds provided under the Agreement are used for any purpose other than the Project, or for any improper purposes, or purposes unlawful in Bermuda or the Partner's country of operation, including money laundering, supporting terrorist activity, inappropriate private benefit, or for political purposes; nor to assist or be in contact with any person suspected of such activities; and to report any such suspicions to the Charity as a matter of urgency.

• In the event of the Partner sub-contracting any aspect of the Project to local partners, the Partner must:

- before selecting a local partner, conduct appropriate due diligence to ensure that the partner has compatible values, and the capacity and expertise to perform the sub-contract;
- put in place a binding written agreement with the local partner containing terms and conditions that reflect those in the Agreement; and
- regularly monitor and review the local partner's implementation of the Project.

7. Standard clauses

For example:

- How disputes will be dealt with and by whom – internal and/or external to the Charity and the Partner (alternative dispute resolution, jurisdiction?)

- How the Agreement can be terminated.

- The conditions under which the Charity can withhold funds.

- Force majeure clause (what will happen in the event of any exceptional and insurmountable situation beyond the control of the parties, which affects the parties' ability to fulfil their obligations under the Agreement?)

- Who are the appropriate contact persons for each party to the Agreement?

- Confidentiality clauses?

- Intellectual property considerations?

8. Signature by authorised officers on behalf of each party to the Agreement

9. Annexes

For example:

- **Project Implementation Document**

  Clearly setting out the details of the project:

  - specific activities to be undertaken or other milestones
  - where it should be delivered
  - the nature of the beneficiaries
  - the timeframe
  - SMART objectives and deliverables (qualitative and quantitative)

- **Budget**

  Setting out different heads of expenditure and amounts allocated to each. For example:

  - staff costs (recruitment, salary, pension, other benefits, training)
  - travel costs (travel tickets, subsistence, insurance)
  - external costs (procurement of project items, legal fees, auditors, consultancy, bank charges, meeting / event costs, grants to other organisations / individuals)
  - office costs (rent, telephone, internet, postage, stationery, printing, artwork / design, office equipment, photocopying)

- **Financial Reporting Requirements**

  Setting out minimum financial standards the Partner should follow. For example:

  - maintenance of proper records for a specified period
  - auditing requirements

- accounting requirements (keeping funds ring-fenced, accounting in such a way as to enable monthly monitoring of expenditure)
- how financial transactions should be conducted/ authorized
- budget monitoring and forecasting requirements
- treatment and permitted levels of under spend or overspend
- treatment of exchange rate gains or losses
- how funds are drawn down (tied in with reporting)
- currency and exchange rate to be used for financial reporting

- **Visit and Reporting Schedule**
  - dates for submission of reports (monthly/ quarterly/ annually / on project milestone dates/ project end)
  - periods which reports should cover
  - format of reports (financial and narrative)
  - dates for site visits
  - format for site visits
  - responsibilities of the Partner for site visits
  - responsibilities of the Charity for site visits

- **Relevant policies**

Where a partner agency does not have its own policies in place, or its policies do not meet the standards to which the Charity wishes it to adhere, the Charity should explore whether the partner is willing and to adopt the Charity's own policies, for the purposes of the partnership work.

Such policies may include:

- child protection
- staff security
- procurement
- staff handbook
- health and safety
- serious incident reporting
- insurance
- finance

Compliance Tool 11: Grant Monitoring Report

GRANT MONITORING REPORT – DECLARATION BY PARTNER ORGANISATIONS			
Basic information			
Name of partner			
Principal address			
Website			
Main contact			
Name			
Telephone & email			
Project for which grant being made			
Project duration			
Start date		Estimated end date	
Reporting period			
From		To	
Date report due		Date submitted	
Report type	Monthly	☐	
	Quarterly	☐	
	Six-monthly	☐	
	Final	☐	
Amount of grant			
	Single grant	☐	
	Stage payment	☐	
	Frequency of stage payments		

GRANT MONITORING REPORT – DECLARATION BY PARTNER ORGANISATIONS		
Period for which grant is being made		
From		To
Total grants to date		
Date next grant request expected		
Project objectives and milestones		
Summarise planned key stages and milestones)		
Is progress to date within plan?		
State reasons for any significant variation from plan, & action required		
Narrative report submitted? Yes – attach ☐		No – attach other evidence ☐
Summary of achievements and key developments		
Any delays in project implementation? If so, explain reasons		
Summary of main risks, challenges or significant problems		
Significant changes to project plans and / or activities		

Financial reporting				
Bank utilisation report	Yes	☐	No	☐
Confirm / information documentation received (indicate all that apply)	Invoices, bills, etc.			☐
	Bank statements			☐
	Management accounts			☐
	Audit reports			☐
	Other (state)			☐
Budget monitoring report	Yes	☐	No	☐
Date and amount of last funds received				
Amount requested for next funding period				
Summary of overall budget and expenditure year to date, including variance				
Overall budget				
Spend YTD				
Variance amount				
Variance %				
Summary of action required to correct variances				

GRANT MONITORING REPORT – DECLARATION BY PARTNER ORGANISATIONS	
Specify any new funding received	
Source	
Amount	
Purpose	
Duration	
Specify any key changes in personnel	
Summary of arrangements for periodic financial reports to be made	
Beneficiaries / Impact	
Details of charitable services provided by project, including number and distribution of beneficiaries (if applicable)	
Any proposed changes to agreed selection criteria	
Any proposed changes to agreed identified beneficiaries	

<table>
<tr><th colspan="3">GRANT MONITORING REPORT – DECLARATION BY PARTNER ORGANISATIONS</th></tr>
<tr><td colspan="3"></td></tr>
<tr><td>Do beneficiaries know their entitlements?</td><td colspan="2"></td></tr>
<tr><td colspan="3"></td></tr>
<tr><td>Have reports been given to beneficiaries and other stakeholders?</td><td colspan="2"></td></tr>
<tr><td colspan="3"></td></tr>
<tr><td>Feedback received (attach or summarise as appropriate)</td><td>Govt agencies
NPOs
Beneficiaries
Other</td><td>☐
☐
☐
☐</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td colspan="3">Declaration</td></tr>
<tr><td colspan="3">The information provided on this form, and the attached supporting documents, are a true and accurate report of project activities and use of funds by the charity.</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td>Signed</td><td colspan="2"></td></tr>
<tr><td colspan="3"></td></tr>
<tr><td>Date</td><td colspan="2"></td></tr>
<tr><td colspan="3"></td></tr>
<tr><td>Position</td><td colspan="2"></td></tr>
</table>

Compliance Tool 12: Monitoring visit checklist

Here is a checklist of some questions and factors that may be useful when considering how best to carry out a monitoring visit:

- How much control do you have over the inspection and questions that will be asked?
- Will you be able to influence the scope of the visit?
- Are there any health or safety concerns about visiting the project or area in which it is being carried out?
- Are there any restrictions as to who can visit the project or location? For example, do people need to have background checks?
- What knowledge and expertise does the person carrying out the monitoring visit have? For example, will they be able to assess whether items have been purchased at a reasonable price or if the standards being met are suitable for the region?
- Do you need to verify independently the feedback you receive?
- Are there language and/or communication issues?
- How will these be addressed?
- What form does the inspection/visit report need to take?
- Is it a one-off visit?
- If not, how often will they take place?
- Are there any timing issues?
- Are there any local laws which affect record keeping?
- Are the records likely to be readily available?
- Are there any local customs that might impact the information required or evidence? For example, is it unusual in the location to receive a receipt as proof of purchase?
- Are there any conflicts of interest issues?
- If problems are identified, how will this be reported back to the trustees and how quickly will this be done?

Comments

Compliance Tool 13: Options for on-site inspections

Some form of monitoring is essential to ensure that the charity's funds are being used for proper purposes. In some cases on-site inspections are the only reliable method, but it is not always practicable for trustees to carry out the inspections. This flowchart may help in assessing the different options and their merits.

Visit the project in person

- Q. Is it possible?
- Q. Is it safe? (For all parties)
- Q. Is it affordable?
- Q. Are there any specific restrictions? (eg CRB check, obtaining a visa, health and safety?)

Yes

- Q. Who should undertake the visit? (Will they be able to assess whether items have been purchased at a reasonable price, for example)
- Q. Do you give prior notice to the people at the project or visit unannounced?
- Q. Are there specific things you want to see, for example accounts, which you may need to request in advance?
- Q. Are you clear about the objectives of the visit?

No

Someone to visit on your behalf

This can be:

- Auditors
- Donors
- Another charity
- Local representative or agent
- Specialist consultants
- External regulator
- Other stakeholders

Yes

- Q. How will they report back to you?
- Q. Is there a cost and is it affordable?
- Q. Is the person briefed on the project?

No

Receive written or verbal reports

- Q. Can you use technology to make this easier? (eg video conferencing, skype etc?)
- Q. Can reports be given in a timely manner?
- Q. Have you agreed what reports should contain?

No – consider
whether the project should go ahead.

Compliance Tool: 14: Monitoring visit log

MONITORING VISIT LOG			
Basic information			
Name of partner			
Project address and principal contact on site			
Address			
Contact name & position			
Project duration			
Start date		Estimated end date	
Date of visit			
List of staff / representatives met			
Name			
Representing		Position	
Name			
Representing		Position	
Name			
Representing		Position	
Project objectives and milestones			
Outline of key project milestones/stages (if appropriate)			
Milestone/stage			
Progress to date, including significant delays, changes and costs			
Milestone/stage			
Progress to date, including significant delays, changes and costs			
Milestone/stage			
Progress to date, including significant delays, changes and costs			

Description and assessment of partner's own records of progress and monitoring; whether consistent with inspection	
Financial records	
Results and audit trails covering - **Income/receipts -**	
Whether record keeping system is adequate & in accordance with agreement	
Evidence of income/expenditure retained	
Income/expenditure approved at correct level	
Expenditure -	
Whether record keeping system is adequate & in accordance with agreement	
Evidence of income/expenditure retained	
Income/expenditure approved at correct level	
Budgeting -	
Whether record keeping system is adequate & in accordance with agreement	

Evidence of income/expenditure retained	
Income/expenditure approved at correct level	
Areas of concern	
Nature of concern	
Recommended action	
Nature of concern	
Recommended action	
Nature of concern	
Recommended action	
Progress to date	
Assessment and evidence of project delivery to date	
Direct observation of project work/activity	
Feedback from beneficiaries	
Name (where appropriate)	
Comment	
Name (where appropriate)	
Comment	
Feedback from independent stakeholders and/or observers	
Name & position	

Comment	
Name & position	
Comment	
Photographic/video/media evidence (attached)	
Future progress	
Current project risks	
Risk	
Rating of risk	
Action to mitigate risk	
Risk	
Rating of risk	
Action to mitigate risk	
Other comments	
Conclusion	
Overall assessment	
Log completed by	
Name	
Position	Date
Signature	

Compliance Tool 15: Project monitoring checklist

Robust monitoring processes will help to satisfy trustees that funds are adequately protected from abuse and have been put to proper use. These should also be capable of identifying system weaknesses and breakdowns at an early stage so that action can be taken to put things right. And at the end of the project, good quality monitoring feedback will help trustees to see whether there is anything that can be improved upon in the planning of future projects.

Below is a checklist of some of the main general questions to ask as part of the monitoring process. There will invariably be sub-questions below each of them.

When monitoring a project, the following questions will help trustees to determine whether due diligence checks were adequate and charity funds are being used effectively and appropriately.

- How does performance and delivery link to agreed milestones and targets?
- Is the quality of activities/services delivered acceptable?
- Can all the money sent be accounted for?
- Is there sufficient proof of expenditure?
- Are there sufficient financial controls in place?
- Have there been any significant changes in personnel?
- Has the project actually been carried out?
- Have the project activities, services or funds reached the intended identified beneficiaries?
- Are all funds, assets and premises accounted for?
- Were any significant problems encountered? If so, were these reported promptly to the charity and dealt with effectively?
- Are there any lessons that can be learned to improve future performance and quality?

Comments

Compliance Tool 16: Due diligence - core principles

Identify	Know who are dealing with
Verify	Where reasonable, and the risks are high, verify identities
Know what the organisation's or individual's business is	And can be assured this is appropriate for the charity to be involved with
Know what their specific business is with your charity	And have confidence they will deliver what you want them to
Watch out	For unusual or suspicious activities, conduct or requests

Compliance Tool 17: Centre on Philanthropy Risk Based Model

Topic / Requirement	Subset / Characteristic	Indicators of lower risk	Indicators of elevated risk
Identity and good standing of beneficiaries, donors, affiliated charities and partners	Members	On Bermuda government list of registered charities.	Absence of lower risk indicator
	Associate members	Publically listed company on recognized stock exchange Regulated in Bermuda (financial services, telecoms) Vouched for positively by 2 staff or directors	Absence of lower risk indicator plus a non-full set of Bermuda contact details (phone, address)
	Individual members	Vouched for positively by 2 staff or directors	Absence of a lower risk indicator plus a non-full set of Bermuda contact details (phone, address)
	Donors	Publically listed company on recognized stock exchange Regulated in Bermuda (financial services, telecoms) Vouched for positively by 2 staff or directors	Absence of a lower risk indicator plus a non-full set of Bermuda contact details (phone, address)
	Suppliers	Publically listed company on recognized stock exchange Regulated in Bermuda (financial services, telecoms) Vouched for positively by 2 staff or directors	Absence of a lower risk indicator or contact details or bank account held outside of the expected country of operation.
	Others	Publically listed company on recognized stock exchange	Absence of a lower risk indicator or contact details or bank account held outside of the

		Regulated in Bermuda (financial services, telecoms) Vouched for positively by 2 staff or directors	expected country of operation.

Topic / Requirement	Subset / Characteristic	Indicators of lower risk	Indicators of elevated risk
Transactions	Inbound		Non BMD/USD originating currency Individually more than \$5,000 or in aggregated more than \$15,000 from counterparty Transaction is from a non-Bermuda based bank.
	Outbound	Budgeted payment to pre-approved counterparty (e.g. rent, employee salary, government taxes) in Bermuda.	Absence of low risk indicator plus any of: Payment in currency other than BMD. Payment to a bank outside of Bermuda. Individually more than \$5,000 or in aggregated more than \$15,000 from counterparty

Compliance Tool 18: List and Analysis of International Transactions

CHARITY LIST AND ANALYSIS OF INTERNATIONAL TRANSACTIONS			
RECEIPTS			
Name of source			
Address			
Telephone & email			
Amount		**Date received**	
Purpose			
Name of source			
Address			
Telephone & email			
Amount		**Date received**	
Purpose			
Name of source			
Address			
Telephone & email			
Amount		**Date received**	
Purpose			
Name of source			
Address			
Telephone & email			
Amount		**Date received**	
Purpose			
Name of source			
Address			
Telephone & email			
Amount		**Date received**	
Purpose			
Name of source			
Address			
Telephone & email			
Amount		**Date received**	
Purpose			

CHARITY LIST AND ANALYSIS OF INTERNATIONAL TRANSACTIONS			
DISBURSEMENTS			
Name of recipient			
Address			
Telephone & email			
Amount		**Date paid**	
Purpose			
Name of recipient			
Address			
Telephone & email			
Amount		**Date paid**	
Purpose			
Name of recipient			
Address			
Telephone & email			
Amount		**Date paid**	
Purpose			
Name of recipient			
Address			
Telephone & email			
Amount		**Date paid**	
Purpose			
Name of recipient			
Address			
Telephone & email			
Amount		**Date paid**	
Purpose			
Name of recipient			
Address			
Telephone & email			
Amount		**Date paid**	
Purpose			