

Charities Compliance Officer Training

Registry General
September 2015

Charities Compliance Officer Training

Topics

- What is FATF?
- How FATF relates to charities
- Guidance Notes on the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014

What is FATF?

- The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions.
- FATF's objectives are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering (ML), terrorist financing (TF) and other related threats.
- FATF has developed Recommendations that are the international standard for combating ML and TF

How does FATF relate to charities?

- FATF has issued Forty Recommendations
- FATF has also issued a Methodology for assessing:
 - technical compliance of jurisdictions' legal and institutional framework
 - the effectiveness of jurisdictions' AML/ATF systems
- Recommendation 8 relates specifically to Non-Profit Organizations, including charities

Recommendation 8

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organizations are particularly vulnerable, and countries should ensure that they cannot be misused:

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

Guidance Notes on the Charities (AML, ATF & Reporting) Regulations 2014

- Regulation 3: General Duties
 - The Risk Based Approach
- Regulation 4: Due Diligence
- Regulation 5: Systems and Controls
- Regulation 6: Record Keeping
- Regulation 7: Internal Reporting
- Regulation 8: Training, etc.
- Regulation 9: Annual Report
- Regulation 10: Offences
- Definitions
- Compliance Tools

Regulation 3: General Duties

- Every registered charity shall:
 - a) Designate a person to be its compliance officer
 - b) Ensure the compliance officer & other relevant officers receive AML/ATF training
 - c) Require its officers to disclose any previous convictions for AML or ATF offences
 - d) Report suspicious transactions relating to ML or TF to the FIA
 - e) Keep a record of all such suspicious transactions
 - f) Conduct ongoing monitoring of its relationships with beneficiaries, donors and partners
 - g) Take reasonable measures to establish the identity of donors, beneficiaries and partners, where reasonable risk of ML and TF
 - h) Ensure payments to beneficiaries and partners are appropriately monitored
 - i) Establish and maintain its AML and ATF systems and controls

The Risk Based Approach

- The duties imposed on charities must be complied with on a risk-sensitive basis (risk based approach)
- Under the risk based approach, the greater the risks, the more charity trustees have to do to ensure they discharge their legal duties
- The risk based approach is proportionate, and means that trustees' actions to comply must:
 - be designed to prevent abuse of the charity, its funds and property
 - Use greater effort and stronger measures for higher risks
 - Take account of the amount of money at risk, although this will not be the only factor

The Risk Based Approach

- Measures taken by trustees should:
 - Be flexible enough to adapt to and complement the charity's work
 - Avoid negative impact on legitimate donors and beneficiaries
 - Not be unduly costly or administratively burdensome to the charity

Identifying and Assessing Risks

- Risks may take several forms, including:
 - a) Operational
 - b) Financial
 - c) Reputational
 - d) External
 - e) Compliance with the law and regulations

Identifying and Assessing Risks

- Charities may determine for themselves how to identify and assess their risks
- Compliance Tools 1 – 5 and 17 may be of assistance
- Smaller charities with simple activities may need only to ensure they are aware of the risks and take them into account in decision making
- Larger more complex charities may find it helpful to carry out a formal written risk assessment
- If a charity has a risk management strategy, this needs to be reasonable considering the size and nature of the charity

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

| | |
|---------------|---|
| 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. |

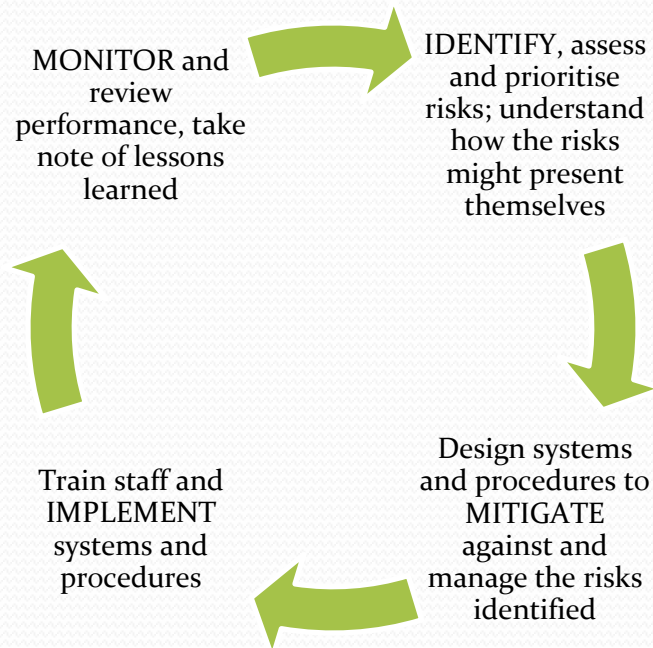
Compliance Tool 17: Centre on Philanthropy Risk Based Model

| 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 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. |

Compliance Tool 17: Centre on Philanthropy Risk Based Model

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

Compliance Tool 1: The Risk Assessment Cycle



Risk assessment is an ongoing process and should be conducted on a regular basis

Regulation 4: Due Diligence Requirements

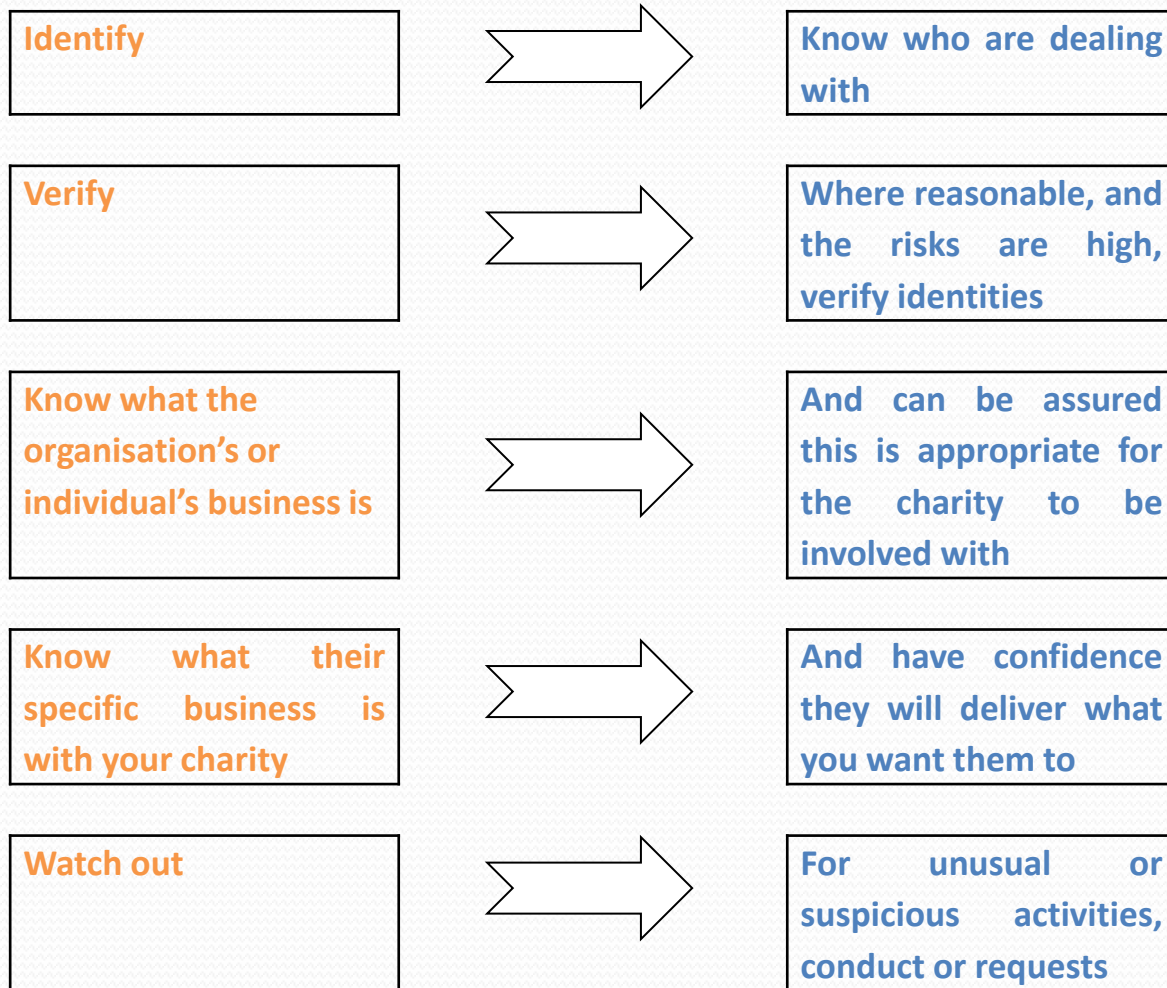
(The “Know Your” Principles)

- Regulation 4 requires registered charities to take measures, where there is a reasonable risk of ML or TF, to confirm and appropriately record information on the identity, credentials and good standing of their beneficiaries, donors, associate charities and partners.
- In order to ensure that they are fulfilling their duty to manage their charity's funds properly, trustees need to know:
 - where their funds come from,
 - how the funds are to be applied in accordance with the charity's objects, and
 - who will be involved in delivering the charitable services.

Overview of the “Know Your” Principles

- The Due Diligence requirements are often referred to as the “Know Your” principles
- Similar duties and principles exist in other sectors
- For charities, the requirements can be summed up in the following three principles:
 - Know Your Donor
 - Know Your Beneficiaries
 - Know Your Partner
- These give 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 it plans to work with.

Compliance Tool 16: Due diligence - core principles



Know Your Donor

- Good due diligence will help to:
 - Assess any risks to the charity from accepting a donation or certain types of donations
 - Ensure that it is appropriate to accept money from the particular donor
 - Give trustees reasonable assurance that the donation is not from any illegal or inappropriate source
 - Ensure that any conditions that may be attached are appropriate and can be accepted

Know Your Donor

- What trustees need to do for “Know Your Donor”:
 - Small and regular donations
 - Recording donor information
 - Legacies and wills
 - Large grants and donor relationships
 - Anonymous donations
 - Accepting donations that have conditions attached

Identifying suspicious donations

The following situations may indicate higher risks:

- 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
- if conditions attached to a donation make the charity a mere vehicle for transferring funds from one party to another, without the charity being able to verify the funds' use
- where a charity is told it can keep a donation for a certain period of time, and any interest earned whilst holding the money, but the principal sum is to be returned
- where donations are made in a foreign currency, and unusual conditions are attached about their use, such as a requirement to return the original sum in a different currency
- where donations are conditional on particular persons being used to do work for the charity, where the trustees have concerns about those persons
- 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
- where a charity is asked to provide services or benefits on favorable terms to the donor or a person nominated by the donor

Dealing with a suspicious donation

- 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 from the Registrar General and the Charity Commissioners
 - 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

Reporting suspicious transactions

- Charities should have clear policies and procedures in place so that trustees, staff and volunteers know how to recognize suspicious circumstances and who to report them to within the charity.
- Suspicions in relation to ML or TF should be reported to the charity's compliance officer, who must then decide whether to report the matter to the Financial Intelligence Agency ("FIA").
- Reports to the FIA should be in the form of Suspicious Activity Reports ("SARs"), which can only be filed online.

Know Your Beneficiaries

- The identification and selection of beneficiaries are important decisions for charities
- Common sense must be used in applying the “Know Your Beneficiary” principle
- Sometimes the beneficiaries are specified in the charity’s governing document, making it a legal requirement; in other cases there is more discretion
- Some charities’ activities are available and open to the public
- Some charities do not have individually identifiable beneficiaries
- When individual beneficiaries cannot be identified, trustees need to ensure that funds and activities benefit the intended class of persons

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 assist them, in terms of their meeting any eligibility criteria and that there are no concerns that the charity's assistance will be misused.

Beneficiary 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. Key elements are likely to include:
 - having clear selection criteria and a process which is informed by sound risk assessment and management
 - recording the selection criteria in written form
 - making the selection criteria available publicly
 - ensuring where individual services are provided to large numbers of people, adequate records are kept so any problems can be investigated
 - ensuring there is a clear and documented process for dealing with any disputes or conflicts regarding the identification and selection process
 - safeguards to ensure that there are no inappropriate links, relationships or conflicts of interest between applicants and decision makers
 - protecting the confidentiality of beneficiaries' information

Identifying suspicious situations

- Awareness of the type, frequency and scale of regular applications or requests for charitable assistance can help identify the areas of risk
- Some people abuse charities by making false applications for grant funding, including creating beneficiaries that do not exist
- People may make requests for support they do not qualify for or need
- A charity's money or other support may be used for unlawful or inappropriate purposes

Higher risk situations

- 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
- A charity provides services to large numbers of beneficiaries, where it may be easier to disguise additional beneficiaries
- 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

Know Your Partner

- 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.

Know Your Partner

- **Identify** – know who you are dealing with
- **Verify** – where reasonable and the risks are high, verify identities
- **Know what the organization'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
- **Maintain boundaries** to avoid conflicts of interest and protect the charity's independence
- **Watch out** for unusual or suspicious activities, conduct or requests
- **Compliance Tools 8 and 9** provide additional “Know Your Partner” issues and questions trustees should consider.

Identifying suspicious situations and concerns

- The risk of abuse may be greater where, for example:
 - the project proposal is vague or lacks adequate financial or technical details
 - the structure or nature of the proposed project makes it difficult to identify the partner and verify their details
 - the proposals include delegating work to other unknown partners or newly formed organizations
 - it is difficult to contact the partner at their main address or telephone number, or they always insist upon contacting the charity and not the other way round

Identifying suspicious situations and concerns

- The risk of abuse may be greater where, for example:
 - 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
 - the partner may be, or may have involvement with, politically exposed persons (PEPs)
 - partners request unnecessary or unusual levels of privacy and secrecy
 - the partner cannot demonstrate much previous project delivery and it is difficult to get independent references

Know Your Partner – Other Issues

- Trustees should consider having written partnership agreements
- Written agreements help ensure that the terms of the partner relationship are made clear before a project commences, possibly preventing problems from occurring later
- **Compliance Tool 10** contains some requirements that may be useful to include in a partnership agreement

How the “Know Your” Principles affect charities operating internationally

- The AML and ATF duties that apply to charities which operate in Bermuda apply equally to charities that are based in Bermuda but primarily work internationally
- Charities working internationally or with bases overseas may face different risks inherent in the area in which they operate, and should tailor their due diligence and monitoring checks accordingly
- Trustees should be aware of the local legal and regulatory framework before conducting charitable programmes abroad
- Trustees must ensure that their charity is not used to commit any criminal offences under counter terrorism legislation

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
- Regulation 5(1) provides the areas that must be addressed by these policies, processes and procedures
- Regulation 5(2) relates to requirements for making disclosures

Regulation 5(1) Policies, Processes and Procedures

- a) Carrying out proper due diligence
- b) Identifying international transactions
- c) Monitoring and verification of payments to beneficiaries and partners
- d) Reporting
- e) Training

Regulation 5(1) Policies, Processes and Procedures

- f) Record-keeping
- g) Internal financial controls
- h) Risk assessment and management
- i) Monitoring and management of compliance with AML and ATF policies, processes and procedures

Regulation 5(2) Disclosures to the FIA

- Persons who work with charities have obligations to make disclosures to the FIA if they know or suspect that money laundering or terrorist financing is occurring (pursuant to 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)

Regulation 5(2) Disclosures to Compliance Officers

- The policies, processes and procedures referred to in regulation 5(1) must include requirements that anyone in a charity who receives information relating to ML or TF, must disclose the information to the charity's compliance officer
- The compliance officer must decide whether it provides evidence of ML or TF. If so, he or she must report it to the FIA by filing a SAR online
- 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 7 years

Regulation 5

- Regulation 5 does not mandate the form that systems and controls must take, trustees must decide this for themselves
- The systems and controls might also be useful for other purposes
- A database storing information on a charity's donors, beneficiaries and partners might also be used for recruitment, business development and fundraising purposes

Monitoring

- Monitoring includes steps to verify that funds have been passed to the beneficiary, partner (if there is one) or other party, and to verify their proper end use
- Monitoring helps to ensure effective delivery, and that promises made to the charity by the beneficiary, partner or other party, are met
- Monitoring helps to verify that a project matches the initial risk assessment, and if not, triggers a process for appropriately revising the risk assessment for the beneficiary, partner, or other party

Monitoring

- Monitoring will usually involve steps aimed at ensuring:
 - the charity's funds can be accounted for, that there is an audit trail showing the expenditure of funds by the charity, checking that funds were received as intended
 - the partner or other party has actually delivered the project and charitable work expected
 - the charity's funds have been used for the intended purposes, and for the identified beneficiaries
 - that any concerns are identified
 - the beneficiary or partner continues to be appropriate in all respects for the charity to work with

Monitoring tools and options

- Formal reporting by any partners delivering the project
- A report by the charity's own internal audit function
- The usual reports of the charity's external, independent auditors and examiners of the charity's accounts
- Off-site office based supervision and monitoring, checking paperwork and audit trails and using phone and other communication methods to verify activity on the ground

Monitoring Compliance Tools

- Compliance Tool 11: Grant Monitoring Report
- Compliance Tool 12: Monitoring Visit Checklist
- Compliance Tool 13: Options for On-site Inspections
- Compliance Tool 14: Monitoring Visit Log
- Compliance Tool 15: Project Monitoring Checklist

Regulation 6: Record-keeping

- Certain key records must be kept by a charity for at least 7 years:
 - a) **International transactions.** ML and TF are more likely to involve international transactions than domestic. Charities must be able to provide an analysis of their international transactions pursuant to regulation 9.
 - b) **Due diligence.** Copies of information obtained when performing due diligence must be retained.
- Records described above must be made available to the Registrar, the FIA and the Police upon reasonable request.

Regulation 7: Internal reporting procedures

- Registered charities must establish internal reporting procedures requiring their officers to report any suspicions of ML or TF to their compliance officer
- Each charity must devise its own procedures according to its structure, formality and risk profile
- The procedures should require the compliance officer, if he determines that ML or TF are taking place, to file a report to the FIA and retain a written record of any such reports

Regulation 8: Training, etc.

- Charities must ensure their relevant officers are aware of ML and TF laws, and that they receive training on how to recognize and deal with suspicious transactions
- Relevant officers must be screened prior to hiring
- A relevant officer is one who, 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 ML or TF, or he plays a role in implementing and monitoring compliance with AML or ATF requirements.

Regulation 9: Annual report

- Regulation 9 adds requirements relating to AML/ATF information that must be included in the annual report.
- These requirements can be satisfied by completing the standard Annual Report Form provided by the Registrar, particularly the section relating to AML/ATF matters
- The annual report should include a list and analysis of the charity's international transactions. **Compliance Tool 17** provides a model list and analysis form.

| 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 | |
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| Purpose | | |
| | | |
| Name of recipient | | |
| Address | | |
| Telephone & email | | |
| Amount | Date paid | |
| Purpose | | |

Regulation 10: Offences

- 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

Regulation 10: Offences

- 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.

Questions