



**TURKS AND CAICOS ISLANDS
FINANCIAL SERVICES COMMISSION**
Regulating with Honesty, Integrity and Transparency

**GUIDELINE NUMBER 1 OF 2019
FOR NON-PROFIT ORGANISATIONS**

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NON-PROFIT ORGANISATIONS GUIDELINE

NO. 1 OF 2019

1.0 INTRODUCTION

The Turks and Caicos Islands (TCI), consistent with the international standards and the approach of the international community, is committed to the fight to deprive criminals of access to financing. This is achieved through anti-money laundering regulations which seeks to deprive criminals of the use of their criminal proceeds or terrorist financing regulations which seeks to eliminate financing for terrorist activities.

2.0 OBJECTIVE

The objective of this document is to provide guidance to non-profit organisations concerning their obligations under the Non-Profit Organisations Regulations 2014 and the Proceeds of Crime Ordinance [Cap.03.15], and standards which the NPO Supervisor expects to be instituted in these organisations.

3.0 AUTHORITY

This Guideline is issued by the Turks and Caicos Islands Financial Services Commission (the “Commission”) pursuant to Regulations 4(e) and 4(2) of the NPO Regulations 2014 and in furtherance of its responsibility to supervise non-profit organisations. The Commission is designated as the NPO Supervisor¹.

4.0 SCOPE

This Guideline applies to all non-profit organisations registered in the Islands.

5.0 SUPERVISION OF NPOS

5.1 REGISTRATION

All non-profit organisation which are incorporated, formed or otherwise established in the TCI or administered in or from within the TCI, are required to be registered with the NPO Supervisor,

¹ Regulation 3 NPO Regulations 2014

unless exempted from registration². An NPO which is exempted from registration must still comply with the requirements of the NPO Regulations.

Registration is achieved by completing the NPO Supervisor's standard written application which is set out in two parts. The first being information relevant to the NPO itself to establish an early understanding of the vulnerability to the risks which it may face. The second section deals with identifying the "controllers"³ of the organisation. The legal form of an NPO may be as a non-profit company or as an unincorporated association.

If an NPO is proposing for its legal form to be as a non-profit company, the NPO will be subject to an additional process which would involve applying to the Companies Registry to form a non-profit company. The approval of the NPO Supervisor must be granted before the Registrar of Companies can incorporate the non-profit company⁴. In order to obtain the NPO Supervisor's approval, application must be made to the NPO Supervisor through the Supervisor's standard registration application.

The NPO Supervisor will not register an NPO which is proposing to be formed as a non-profit company until the company has been formed. NPOs which propose to be formed as a non-profit company will be required to provide information on all the natural persons who control and/or direct the company.

The completed NPO registration application must be accompanied by payment of a one-time registration fee of \$150.00, the submission of the NPO Controller Declaration, documents outlined on the application, and any additional documents which the NPO Supervisor considers appropriate.

5.2 MONITORING

Under regulation 4(b)(ii) of the NPO Regulations 2014, it is the function of the NPO Supervisor to monitor compliance by registered non-profit organisations with the NPO Regulations. Monitoring of NPOs is primarily achieved through NPOs' submission of their annual supervisory questionnaire, annual financial statements and subjecting NPOs to compliance visits by the NPO Supervisor.

Annual supervisory questionnaire

Submission of Annual Supervisory Questionnaires allows the NPO Supervisor to apply a risk-based approach to the supervision of the NPO sector. The questionnaire also enables the Supervisor

² Pursuant to regulation 6(2) of the NPO Regulations, if the annual income of an NPO does not exceed \$10,000 and the total value of an NPO's asset does not exceed \$20,000, an NPO would meet the criteria for exemption from the requirement to be registered under the Regulations.

³ See section 6.1.1 of this Guideline for a definition of controllers.

⁴ Section 8(4) Companies Ordinance 2017

to verify the profile of a registered NPO by ascertaining the currency and relevancy of information previously collected from an NPO. This is achieved through ascertaining the following in respect of registered NPOs, which is not exclusive –

- information on existing controllers;
- the existing purpose, objectives and activities;
- the current funding sources;
- the current legal form;
- the current governing provisions.

All NPOs are required to submit an annual supervisory questionnaire. Depending on the risk profile of an NPO, the NPO Supervisor will apply enhanced due diligence procedures.

Financial Statements

All registered NPOs are required to submit financial statements. Submission of financial statements allows the NPO Supervisor to track and assess financial information which may impact the risk exposure of NPOs. The required financial information includes details of annual income and the source of the income, annual expenses, the value of the assets of the organisation, significant donations and the types of programs and services of the NPO.

Compliance Visits

The NPO Supervisor will conduct compliance visits to assess the controls framework of registered NPOs and to determine compliance with the NPO Regulations, including determining whether NPOs –

- have supplied accurate information to the NPO Supervisor;
- maintain financial records for information reported on financial statements;
- maintain records of their purpose, objectives and activities; the identity of the persons who control or direct their activities, including, as appropriate, senior officers, directors and trustees; the identity, credentials and good standing of their beneficiaries and associate non-profit organisations;
- maintain records in accordance with the mandatory minimum retention period set out in the NPO Regulations.

While compliance visits will occur on a risk-sensitive basis, visits may also be triggered by other circumstances, such as, information provided to the NPO Supervisor, referral from another competent authority or governmental agency or credible complaints made by the public.

5.3 ENFORCEMENT/PENALTIES

One of the functions of the NPO Supervisor is to monitor compliance of NPOs with the NPO Regulations. The NPO Supervisor exercises this function through a number of different means, including the analysis of supervisory returns and financial statements, and by undertaking periodic reviews of the non-profit sector in the TCI to identify and assess higher risk NPOs. The NPO Supervisor also engages in outreach initiatives with the NPO sector to sensitise the sector to new and emerging money laundering and terrorist financing risks.

The NPO Supervisor assesses all NPOs to determine instances of non-compliance with the NPO Regulations. Where the NPO Supervisor identifies a breach of the NPO Regulations, the NPO Supervisor is empowered to apply a range of sanctions against an NPO.

The following are the range of sanctions the NPO Supervisor may apply for breaches of the NPO Regulations:

- i) De-registration of an NPO;
- ii) Imposition of administrative penalties in the following situations –

CONTRAVENTION	PENALTY
Breach of the requirement to keep records of the identity of the persons who control or direct the activities of the organisation, including as appropriate, senior officers, directors and trustees	A maximum of \$50,000
Breach of the requirement to keep records of identity, credentials and good standing of beneficiaries and associate non-profit organisations	A maximum of \$50,000
Breach of the requirement to keep a list of donors who have donated in excess of \$10,000 as a single donation or cumulatively, during the year	A maximum of \$50,000
Breach of the requirement to keep financial records in accordance with regulation 14(1)	A maximum of \$50,000

It should also be noted that where an NPO has breached more than one of the requirements set out in the table above, the NPO Supervisor can impose a fine for each breach which can amount to a maximum of \$50,000 in each case.

6.0 SUPERVISORY REQUIREMENTS

6.1 GOVERNANCE

NPOs must have a clearly identified leadership structure charged with the running of the organisation. The NPO Supervisor expects NPOs to be organized in a manner that enable the organisation to be properly administered, allowing for the clear identification of reporting lines

(e.g., persons charged with responsibility over the organisation's finances must be identified) and overall accountability for the operations of the organisation. The organisation's policies and procedures must be appropriate to its size and complexity.

All NPOs must operate with a governing document which set out the following –

- i) the name of the organisation;
- ii) the officers of the organisation;
- iii) a declaration that the organisation is a non-profit organisation;
- iv) a statement of the organisation's purpose, objectives and activities;
- v) a statement of the manner of electing the governing body of the organisation;
- vi) the organisational structure;
- vii) the duties and powers of the governing body, including procedures for the financial decisions of the organisation;
- viii) provisions limiting the objects of the organisation to—
 - a) pursue solely or primarily charitable or non-profit purposes and requiring the organisation to apply its income solely to promoting those purposes, and
 - b) prohibit the organisation from distributing any part of the profits generated to members, shareholders or office-bearers, except for the payment to any member or office-bearer as reimbursement of any expense or in consideration of any property made available or services provided by the member or office-bearer for the benefit of the company in furthering its purposes.
- ix) state the procedure for changing the governing instrument;
- x) require that, on the closing of the organisation, any surplus assets are not to be paid or transferred to its members or office-bearers but must be transferred to another non-profit organisation, whether in the Islands or elsewhere—
 - a) specified in the governing instrument; or
 - b) designated by resolution of the members at a meeting of the organisation called for the purpose of making such a designation or for purposes that include the making of such a designation.”.
- xi) require that provision is made for the organisation's financial transactions to be conducted through regulated financial channels.

6.1.1 Controllers

The NPO Regulations define a controller as “a person who owns, controls or directs a non-profit organisation and includes –

- i) A trustee of a trust, where the non-profit organisation is established as a trust;
- ii) A director of a company, where the non-profit organisation is established as a company;
- iii) A general partner of a partnership, where the non-profit organisation is established as a partnership;
- iv) A person responsible for the management and administration of an unincorporated association, where the non-profit organisation is established as an unincorporated association;
- v) A person not specified in paragraphs (i), (ii), (iii), or (iv) where the non-profit organisation is established by that person”.

Every NPO must have at least two persons as its controllers and these persons will have the fiduciary duty to administer the affairs of the NPO in a prudent manner. A fiduciary is expected to manage the assets of the organisation for the benefit of the organisation (and by extension, those persons who benefit from the purpose of the organisation) rather than for controller’s own profit i.e. controllers cannot benefit personally from their management of the NPO. Controllers therefore must exercise their duties with a high standard of care.

The controllers of an NPO should:

- be responsible for the proper administration of their organisation;
- safeguard and protect the assets of their organisation;
- act in the best interests of their organisation;
- avoid any conflict between their personal interests and those of the organisation;
- act reasonably and prudently in all matters relating to their organisation; and
- accept ultimate responsibility for everything their organisation does.

The following are indicators that the standards outlined above are being achieved: -

- The affairs of the organisation are conducted in an open, fair and transparent manner;
- Controllers actively participate in meetings of the organization, including committee meetings;
- Committees established by the organisation are subject to the control of the controllers;
- Decisions and the reasoning which underpin decisions of the board are documented;

- Controllers have general knowledge of the books and records of the NPO;
- Controllers assure accurate recordkeeping;
- Controllers protect the organisation's assets;
- Controllers conduct the business of the organisation in accordance with a governing document; and
- Where necessary, controllers obtain outside help to comply with the law.

Controllers must act in the best interest of the organisation which they control and exercise extreme care in dealing with the affairs of the organisation. Controllers should bear in mind that they can be held personally liable for breaches of their fiduciary responsibilities.

The NPO Regulations also make it clear that it is the responsibility of an NPO's controller to ensure that the organisation satisfy its obligations under the law and where a controller has failed to do this, they may be liable and could be fined by the NPO Supervisor.

6.2 PROVISION OF INFORMATION

A registered NPO have certain reporting obligations under the NPO Regulations which they must comply with.

Financial Information

All registered NPOs are required by law⁵ to annually prepare and submit financial statements on the NPO's revenue and expenditure to the NPO Supervisor. The financial statement must include information on –

- i) All money received and expended, and the matters in respect of which the receipt and expenditure relate;
- ii) All sales and purchases of property;
- iii) All money raised through fundraising;
- iv) Non-monetary transactions;
- v) Records of assets and liabilities; and
- vi) Any other matter that may be prescribed.

⁵ Regulation 15(2) NPO Regulations 2014

Information on Donors

The financial statements of a registered NPO must include information on donors who have donated in excess of \$10,000 to an NPO as a single donation or cumulatively during the year⁶. NPOs should provide information on donors in a form consistent with the Statement of Donations found in the NPO Financial Reporting Template.

6.3 NOTIFICATION OF CHANGES

The NPO Supervisor must maintain current and accurate information for each NPO on the register of NPOs. This information is relied on by the NPO Supervisor in its supervisory functions and may also be relied on by other competent authorities, including law enforcement. It is vital that the NPO Supervisor be informed of changes which concern an NPO.

Information which was provided to the NPO Supervisor during the registration of an NPO may at some point no longer be accurate and/or relevant, mostly due to expiry of documents or changes to the rules of the organisation. In accordance with the NPO Regulations, certain changes that occur within the organisation must be reported to the NPO Supervisor, these include –

- i) changes to the non-profit organisation's purposes, objectives and activities;
- ii) changes of office-bearers and their addresses and other contact details;
- iii) changes of the non-profit organisation's address and other contact details; and
- iv) changes to the governing instrument (before making any changes to a governing instrument, it is advisable to ensure that these changes will not affect the NPO's non-profit status).

If an NPO experiences any of the changes set out above, the Notice to the NPO Supervisor must be completed and lodged with the NPO Supervisor for review and recording. The notice form can be retrieved from the Commission's website or by contacting the Commission directly. Please be advised that a change of controller does not take effect until it is filed with the NPO Supervisor⁷.

6.4 FINANCIAL RECORDS

6.4.1 Accounts

All registered NPOs are required by law to keep financial records that show and explain their transactions, within and outside the TCI, and that are sufficiently detailed to show that its funds have been used in a manner consistent with its purposes, objectives and activities. Registered NPOs must also keep financial records that show the source of their gross annual income.

⁶ Regulation 14(3)(a) NPO Regulations 2014

⁷ Regulation 11(2) NPO Regulations 2014

6.4.2 Certified Accounts

Where an NPO's gross annual income exceeds \$500,000, the financial statements of the NPO must be certified by an accountant.

6.5 ADMINISTRATIVE RECORDS

NPOs are required to maintain administrative records with enough details to provide a clear understanding of the operations of the NPO. Administrative records are those records which are not financial records. These include the following records: -

- Due diligence records (i.e. identification and principal residential address records) for all controllers;
- Governing documents (originally signed version) setting out the purpose, objectives, activities and regulating powers of the NPO and all amendments to the governing document;
- Register of controllers, listing the name, address, occupation, date of appointment and departure, and position of all controllers;
- If the NPO is a non-profit company, then the Certificate of Incorporation, Articles of Incorporation, Annual Returns (if required), Registers of Directors, Secretaries, Officers, Members, and Charges;
- Records which relate to the distribution of the NPO's funds, including any reasoning applied to selecting beneficiaries, and information on beneficiaries such as name, principal residential address, sex and age.

6.6 RECORD KEEPING

The principal reason for imposing record keeping requirements on NPOs is to ensure that law enforcement agencies in the TCI are not hindered in their investigation money laundering or terrorist financing offences and claims for the confiscation of the proceeds of crime, and in assisting overseas law enforcement agencies in their investigations and prosecutions. The record keeping requirement is also to assist the NPO Supervisor in the exercise of its functions.

As previously noted in this Guideline, registered NPOs must keep financial and administrative records. Records of the NPO must be kept in a manner that enables them to be readily produced in the TCI in either physical or electronic form. NPOs are required to keep the records identified above for a period of at least five years.

NPOs should take steps necessary to safeguard their records by storing these documents in a safe and properly ventilated area. The records, in whatever form they are kept (i.e. computerized or in

some other electronic form), should be retrievable within at least 48 hours so that it can be produced to the NPO Supervisor or law enforcement authorities.

6.7 RISK MANAGEMENT FRAMEWORK

Recognizing the importance of the NPO sector to the TCI and recognizing the general vulnerability of this sector to money laundering and terrorist financing, it is imperative that NPOs have good governance systems as described below. These controls play an important role in preventing money laundering and terrorist financing.

Organisational integrity

NPOs are required to establish and operate in accordance with a governing document i.e. articles of incorporation, a constitution or bylaws that outline the purpose(s), structure, reporting practices, and guidelines for complying with local laws. Members of the governing board should understand and act in the interest of the organisation. The governing board should maintain oversight over the organisation by establishing strong financial and human resource policies, meeting on a regular basis, and actively monitoring the activities of the NPO.

Partner Relationships

To prevent the abuse of funds by principals, NPOs should carry out appropriate due diligence on individuals and organisations that the NPO receives funds from, gives money to or work closely with before entering into relationships or agreements. NPOs should conduct appropriate due diligence on principals and counterparties through searches of publicly available information, for example, including domestic and UN sanctions lists or, through other means including paid due diligence search providers. Written agreements can also be used to outline the expectations and responsibilities of both parties, which include detailed information as to the application of funds and requirements for regular reporting, etc.

NPOs must ensure that they know the beneficiaries of their funding. For example, beneficiaries may be children with disabilities or women who have been victims of domestic violence and for whom counselling is offered. It should be clearly documented who may qualify to receive funding or some other form of assistance from an NPO. NPOs must also ensure that they know the NPOs with which they have an association. This can be demonstrated by obtaining constitutional documents, such as, the governing document and certificate of registration, along with a list of all the controllers of the associated NPO.

Any person may, on completion of the NPO Search Request Form and payment of a fee of \$50, request that the NPO Supervisor provide details of the information entered on the Register of Non-Profit Organisations in respect of a registered NPO. The following information will be provided in respect of a registered NPO –

- (a) full name, address in the Islands, telephone number and e-mail address (if any);

- (b) a summary of its purpose, objectives and activities;
- (c) the names of the persons who own, control or direct the NPO;
- (d) the date of its registration and, if applicable, de-registration;
- (e) whether it is incorporated or unincorporated and, if incorporated, the number with which it is registered under the Companies Ordinance 2017;
- (f) if the NPO is not incorporated—
 - i) the address in the Islands that it has given as its address for the service of notices and other document; and
 - ii) the address where it keeps its records.

Financial accountability and transparency

NPOs can prevent financial abuse and misuse of resources by establishing strong financial controls and procedures. Examples of controls include, but is not limited to, establishing an annual budget with processes for monitoring the use of funds. NPOs should keep adequate and complete financial records of income, expenses, and financial transactions throughout their operations, including details on how its expenditures have achieved the desired objectives. NPOs should clearly state programme goals when collecting funds and ensure that funds are applied as intended. Information about the activities carried out should be made available to the public. NPOs should be informed as to the sources of their income and establish criteria to determine whether donations should be accepted or refused.

Programme planning and monitoring

NPOs should establish internal controls and monitoring systems to ensure that funds and services are being used as intended. For example, NPOs should clearly define the purpose and scope of their activities, identify beneficiary groups, and consider the risks of terrorist financing and risk mitigation measures before undertaking projects. They should maintain detailed budgets for each project and generate regular reports on related purchases and expenses. NPOs should establish procedures to trace funds, services, and equipment, and carry out transactions through the banking system to maintain transparency of funds and mitigate the risk of terrorist financing. Project performance should be monitored on a regular basis by verifying the existence of beneficiaries and ensuring the receipt of funds. NPOs should take appropriate measures, based on the risks, to account for funds and services delivered.

Many of the measures noted above are aimed at combatting fraud, tax evasion, embezzlement, money laundering, and other financial crimes in the NPO sector, and they help mitigate terrorist

abuse by enhancing the transparency and integrity of the NPO sector in its operations and flow of funds.

7.0 CONCLUSION

Money laundering, terrorist financing and proliferation of weapons of mass destruction continues to be an area of serious concern for countries and the financial systems. Like financial institutions, NPOs are vulnerable to these risks. The FATF has given detailed guidance addressing risks in the NPO sector through the issuing of Recommendation 8, the Interpretive Note and Methodology as well as best practices.

The NPO Regulations reflect the thrust of the FATF Recommendation 8. Therefore, it is essential that NPOs comply with the law and the NPO Supervisor admonishes NPOs to govern themselves in accordance with this guideline, which summarizes their legal obligations and best practices for the prevention of money laundering, terrorist financing and the proliferation of weapons of mass destruction.

NPOs are encouraged to contact the NPO Supervisor either by visiting the office in Providenciales (Caribbean Place, Leeward Highway) or Grand Turk (Waterloo Plaza) or alternatively, via email aml supervision@tcifsc.tc concerning any issue contained in this guideline or, any issue concerning NPOs which have not been included in this guideline.