MISSIONARY SERVICE AGENCY

P.O. Box B ▪ Marietta, GA 30061 ▪ Phone & Fax (770) 424-1545 ▪ www.WorldOutreach.org

## The "Why" Behind Our e-Newsletter & Annual Report Requirements

▪ **"Going Into All the World!"**

▪ **Global Impact:**

*Evangelism*
*Discipleship*
*Church Planting*
*Bible Schools*
*Leadership Training*
*Life Skills Training*
*Trafficking Rescue*
*Translation Work*
*Medical, Dental*
*Aviation*
*Agriculture*
*Water Systems*
*Drama Teams*
*Feeding Centers*
*Orphanages*
*Helps Ministry*

Dear WOM Missionary,

Occasionally, mission workers want to know why we have requirements for regular **e-Newsletters** and our **Annual Report Form**. Let me offer a clear explanation for these requirements. Additionally, I am attaching several scanned documents that address areas of accountability, money laundering, the Patriot Act, Homeland Security, and KYC principles (know your customer). **Once mission workers understand the "Why" behind this, nearly 100% are willing to make adjustments if needed.**

**From a legal standpoint, the IRS requires all nonprofit organizations to maintain records that validate the funds they collect and distribute, are in fact, being used for the stated purpose of the organization when it was granted their 501 (c)3 nonprofit status**. In fact, each year we are required to file a **Form 990 Annual Report** with the IRS, and each year the WOM mission statement must appear on page one (the past few years of our 990's are publicly posted on our home page – find the link in the yellow section near the bottom). Additionally, the IRS requires us to comply with a number of ongoing reports for accountability – **941 quarterly reports, weekly tax deposits, and 1099's for all affiliated mission workers. However, they do not specify "how" or with what "tools" a mission organization should use to provide accountability for each individual worker's activities – but they do expect it.**

For example, in our 40+ years of operation as a 501 (c)3 nonprofit, we have been audited by the IRS two times (WOM received its nonprofit approval in 1979). **In both audits, part of the process included the IRS agent giving us a list of missionaries that we had distributed funds to. We had to provide our file on each one to verify activities -- Application forms, newsletters, updates, etc.** *What was the IRS looking for? Why did they want to see documentation for some mission workers? Well, the answer is simple. They were looking for due diligence on our part to verify that funds we distributed, were in fact, going towards our stated purpose as an approved 501 (c)3 nonprofit organization engaged in Christian outreach. Were the missionaries actually doing some form of Christian mission work (either foreign or home missions)? Were we as an organization doing due diligence to verify it?* They wanted to see some means of verification that funds were not going to suspicious persons or groups that may be involved in money laundering, terrorist activities, human trafficking, etc. So does the IRS specify "newsletters?" NO. **But does the IRS expect some means of documentation regarding activities? Absolutely, YES. In both audits, we came out just fine, but each one was intense and lasted months**. Audits are costly (you need your accountant involved), time consuming, and disruptive to our normal work flow.

**Thus, our Board of Directors determined that for our purposes, e-Newsletters (we prefer "Monthly" but Quarterly is the minimum) and our Annual Report Form**

(www.WorldOutreach.org/report) **are the best means by which we can show due diligence, accountability, and documentation**. This is why we have requirements for regular **e-Newsletters** and our **Annual Report**. **WOM mission workers are not our employees in that they are not working "for us" or performing duties or assignments on our behalf. WOM mission workers come to us with their own outreach and ministry goals already in place, so in that sense they are "independent mission workers" who receive the 1099 Tax Form. Our focus is to provide the administrative support that they need in order to be successful. Newsletters and the Annual Report give us what we need in order to keep each missionary account in good standing.**

If you are going to be involved in mission work (foreign missions, home missions, or both) – you **need to be communicating in some formal manner with your home office and supporters. We realize that some mission workers rely heavily on Facebook groups and other social media platforms (which are great) -- but nothing can replace a well-designed Newsletter. Your e-Newsletters have the advantage that they can be forwarded to new contacts, printed, copied, and distributed at appointments or meetings. They also provide the documentation that we need to verify your ministry activities.**

★ **In the end, though, if someone simply refuses to meet our basic requirements to keep their WOM status in "good standing" – then we have no choice but to close their WOM account. There are no exceptions.** Our sincere hope is that you will see the "value" of all that our Missionary Agency provides for you and make adjustments if needed. **We provide powerful tools that are second to none!** *Your outreach has its own Donation Page, your own personal link to your Donation Page, a powerful Online donation system that can process cards from any nation (and converts gifts to $USD), a 24/7 login portal, reliable service & deposits, and an extensive Resource Library with videos and audios.*

**If you need to make adjustments about e-Newsletters, then we have very helpful information in our Resource Library about designing effective e-Newsletters, samples, and various platforms for scheduling your e-Newsletters**. And, if you use Facebook as most of us do, we have a short Telephone Interview (audio) on how to use Direct Messages (DM's) to collect email addresses from your Facebook contacts. All this and more can be found in our **Resource Library (please bookmark this link) -- www.WorldOutreach.org/resources**.

**It will take some effort to produce your first e-Newsletter -- but once you do the first one, the rest will come easier.** In fact, you will probably discover that you enjoy doing them once you see their effectiveness for communication and increasing your financial support-base. **You will definitely see an increase in income for your outreach.**

Be sure to look over the attached documents about accountability (scroll down). This subject gets into areas that most people rarely give thought to – but which the IRS and Homeland Security focus on. **Things like accountability, documentation, guarding against money laundering, terrorism, human trafficking, etc.**

Thank you for a humble heart & open mind . . .

Blessings Always,
Jason Peebles
President WOM

stewardship®

transforming generosity

# guide to churches making payments overseas

November 2012

(updated Feb 2015)

**Even though this article is from a UK source, the same principles apply here in the USA.**

## Stewardship Briefing Paper

Stewardship, 1 Lamb's Passage, London EC1Y 8AB
t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

## table of contents




 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

# 1 Introduction

Ever since Jesus uttered the words of the Great Commission, Christians have been working across the globe seeking to share the Gospel and to bring social justice to the very ends of the earth. Working in partnership with overseas churches and other organisations is a rich tradition within the Christian faith and its continuation and expansion is something that Stewardship highly values.

This guide has been written with that backdrop and is for the primary use of churches, recognising that they are likely to make only occasional payments to overseas entities to support mission and social projects outside of the UK. Such payments may be made to individuals or organisations; they may be significant in size; repeating in nature, but they are unlikely to constitute the main activity of the church. Working with churches and others who are based overseas is about partnership. It is about developing and cultivating relationships and trust and it is the strength of these relationships that are vital as UK churches fulfil their UK governance responsibilities when deciding which overseas projects should be supported. But, it is worth remembering that what is eminently sensible in one culture may be really strange in another.

In the UK, we have developed a greater sense of external scrutiny and public accountability than in many other parts of the world where relationship and trust are absolute. This framework of public accountability continues to evolve and at Stewardship we see HMRC more frequently challenging the eligibility of gifts and grants made overseas as 'charitable expenditure' than ever before.

In this paper, we are seeking to encourage churches to continue giving generously, but not to be naïve. We aim to provide church trustees with sufficient guidance to enable overseas payments to be made responsibly, taking account of best practice, and the legal responsibilities placed upon UK charity trustees.

Adopting some sensible controls, knowing and understanding your donors and beneficiaries and very importantly clearly documenting the audit trail from UK donation to overseas use will enable most churches to continue supporting overseas projects, confident that payments are being made and used for the intended purposes.

This guide is not intended for charitable organisations which may be far more heavily or exclusively involved in projects overseas and for whom controls and checks may need to be more rigorous.


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

## 2 The nature of overseas payments

Broadly speaking, churches make payments abroad for the following reasons:

- to support overseas mission – either directly, or via a missionary organisation;
- in direct response to financial appeals – disaster relief;
- on recommendation by a third party – possibly a church member or a missionary contact, or to support a specific project or work.

In deciding whether or not to make such payments, trustees need to be aware of the various laws that cover money laundering, terrorist financing and bribery (see appendices 1 and 2), but they will be primarily concerned with two questions:

- Are the payments intended to be used for charitable purposes?
- Are they actually used for those intended purposes?

As trustees seek to build relationships with their overseas partners, there are two principles that will prove helpful in building a picture that answers those questions:

1. Know who you are dealing with.
2. Adopt a risk based approach to making overseas payments.

## 3 Principle 1: Know who you are dealing with

Having a clear understanding of the people and the organisations that your church interacts with is important as you seek to work together in what may be an unfamiliar location. This principle conveniently splits into two parts. First, knowing your donor, and second, knowing the beneficiary organisation, or delivery partner.

### Know your donor

In almost all cases, donations made through a church for use overseas will come from people who have a strong association to the church and may well have been attending for several years. Where significant donations come from people who are either very new to your church, or have little connection with it, finding out a little about them would be sensible. Informal networking with others that you trust often provides a useful background. The point to be addressed here is that the donor is indeed who they say they are, and that they are not using the church as a means to channel funds to some form of illegitimate purpose. More formal identification of the donor (e.g. by asking for, and photocopying, a driving licence or passport) may be required, but only in rare cases.

Pastoral concern may be aroused in cases where donations appear to be outside what is normal and expected for that person. For example, it might be appropriate to ask some sensitive pastoral questions


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

where someone living on modest means wishes to donate a significant and unusual amount. This will help to protect both the giver and the church.

Greater care may be required where someone not known to the church offers a donation without explanation, particularly in cases where this donation is restricted for certain uses overseas. In such cases, the trustees need to have a clear understanding of the source of the funds to make sure they do properly belong to the donor. If there remains doubt, it may be appropriate not to accept the donation at all.

**Example:**

We were contacted by a UK church leader who was speaking at a conference in Central America. He had been approached by someone whom he did not know who had wanted to make a US$100,000 donation to the UK church, but on condition that US$85,000 of it was to be given on to an 'NGO' in a developing world country. The remaining US$15,000 was 'for the work of the UK church'.

There are a number of things that could be going on here. It could be that everything is as it has ben portrayed and the church and the NGO are the beneficiaries of a generous donor. However, on the other hand things may not appear quite as they seem. Has the money come from a legal or illegal source? Does the NGO really exist? Why was it established? Is it well run? Why was this particular speaker approached?

There are enough unusual circumstances to suggest that this donation might be suspicious. It might be a case of money laundering; placing illegal funds into the financial system to extract 'clean' funds later. It might be a case of fraud (tax or otherwise). The funds might even be applied for terrorist financing. We advised him against receiving the 'donation' before carrying out thorough research on the background of the donor, the donation and the NGO concerned.

Churches should be wary of donors who offer a gift that is subject to a *condition* that the church uses it in a certain way, rather than where they *express a wish, desire or expectation* that the trustees will use it in that way.

## Know your beneficiary or partner

At the other end of the chain from your donors are the intended beneficiaries. Whether you are partnering with a local organisation, an NGO, a charity, or an individual, it is important to understand and document who they are, what they are intending to do, and how that meets your charitable purpose.

All relationships start with an initial meeting, but normally before a UK church invests in an overseas initiative, it will seek to cultivate that relationship so that a degree of mutual trust is established. That process will be shortened in cases where you already know those involved with the initiative or perhaps you can get a personal recommendation from someone you trust who has personal knowledge of those involved. Even so, we are seeing a requirement from HMRC for more formalised documentation even in cases where long-standing relationships with a high degree of trust have been developed.

Where the amounts involved become significant, and the relationship develops, it is quite likely that a representative of the UK church should be prepared to fly out to the project, documenting what they find


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

and reporting back. The examples and case studies in this paper illustrate when a visit may be appropriate.

Getting the flavour for what is going on 'on the ground' will not only help the church better understand the project and its continuing funding requirements, but also significantly help in building a genuine partnership. Many of the most effective projects are more than 'giver/receiver' arrangements and become genuine partnerships of faith. However, be mindful of personal safety when arranging such trips and research the country, area and risks using appropriate resources, such as those of the UK's Foreign and Commonwealth Office.

As with donors, for those partners that are less well-known, especially those who operate in countries that are susceptible to corruption, more formal identification will be required, including original formation and governance documents. Particular care should be taken when dealing with unsolicited appeals especially when requests are made for a meeting either in the UK or overseas. Such meetings may be potentially dangerous perhaps accompanied by a threat of violence.

Whilst you can only be expected to use your best and reasonable endeavour, you are also expected to exercise common sense. 'No' is a valid response to an appeal for need. In cases of doubt or uneasiness, especially if the amounts are significant, and *even if payments have already been made in the past*, your best defence may be to simply decline to support (or further support) an appeal for funds from overseas.

**Example:**

A small Christian charity provided funding for a Central African project. After the payment of 18 months' worth of the funds, the project director ceased responding to e-mails and calls and 'disappeared'. The givers only knew of the project via the director and could not find out what was happening or whether the funding had been well spent.

Whilst there may have been nothing untoward in the above circumstances, the church has no way of knowing, unless further objective information becomes available. The most responsible approach by the UK church trustees is likely to be to cease payments until their concerns are resolved, and may, in appropriate circumstances, be to take steps to recover payments already made.


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

# 4 Principle 2: Adopt a risk based approach

The second principle is largely about common sense. Certain situations are inherently more uncertain than others. Both the way in which a proposed overseas payment is handled, and the level of effort involved in handling it, should be determined by the level of risk involved.

Factors increasing risk include the fact that:

- the donor and/or beneficiary has little, no, or a distant relationship with the church;
- the jurisdiction in which the beneficiary project or initiative is operating is prone to corruption or misapplication of funds;
- the size of the donation is significant, or increasing over time.
- A regular gift, approved by the trustees some time ago, has not been recently reviewed to ensure that the recipient, purpose, use and level of the gift remain appropriate in all of the circumstances.
- the gifts are made for general rather than specific purposes. The issue here is demonstrating to the satisfaction of the UK authorities that the funds you have given, now mingled with other 'general funds' have themselves been used for charitable purposes (as per UK charity law).

Where risk levels increase, the trustees should take even more care before moving ahead. Where significant funds are involved, be prepared to seek original copies of official documents, such as passports and proof of home address, founding documents of non-profit organisations, bearing official stamps, and so on.

However, bear in mind that corruption is rife in some countries and forgery, or even creation of official looking documents is very easy these days. It may well be best to travel there or send others who are trusted. Long-term, trusted relationship is often more reliable than paperwork!


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

## 5 Does the payment constitute charitable expenditure?

The two principles above provide a reassuring environment from which the trustees can make more specific enquiries if required. Remember that increasingly evidence will be required to demonstrate that an intention that a payment is for charitable purposes has in fact been fulfilled. This is important from both a charity law and a tax perspective.

In cases where a church's income and gains are not applied solely to charitable purposes[1], exemption from tax may be restricted. HMRC guidance states that a payment made, or to be made, to an entity outside the UK will only be considered as charitable expenditure if:

- the payment is made to a foreign supplier of goods or services in the ordinary course of the UK charity's (the church) activities; or
- the charity takes steps that the Commissioners for HMRC consider are reasonable in the circumstances to ensure that the payment is applied for charitable purposes1, including where the payment is made to an overseas branch or office of the charity.

It is not sufficient for the UK church to simply establish that the overseas entity is a charity under the domestic law of the host country.

It remains the responsibility of the trustees to demonstrate (and if requested, to provide evidence) that they took reasonable steps (see below) to ensure that the required criteria are met. There is no set format or guidance as to what might be considered reasonable and, what might be reasonable in one scenario may not be considered reasonable in another. Much will depend on the principles of knowing who you are dealing with and using common sense in situations of greater risk.

Documenting what you know is becoming increasingly important even within long-standing and well-developed relationships. As the church's exposure grows, so the level of documentation that should be retained increases with it. In all cases, it is necessary to be able to explain the charitable purpose that is achieved by making the payment. In all but the very smallest scenarios, it would be wise to document and retain sufficient evidence in order to explain this and to:

- verify the identity of the person or entity to whom the payment was given;
- confirm what guarantees or assurances have been given by the overseas body that the payment will be applied for the purpose for which it was given;
- demonstrate what steps the trustees took to ensure that the payment will in fact be applied for charitable purposes;

[1] 'Applied for charitable purposes' means applied for purposes, which are regarded as charitable within Sections 2 and 3 of the Charities Act 2011 (s2 of the Charities Act 2006). Whilst most of this Act applies in England and Wales only, this definition of charitable purpose applies, for tax purposes, to all charities claiming UK tax reliefs and exemptions, wherever the charity is located, including in Scotland, Northern Ireland, or other member states of the EU, Iceland or Norway.


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

- show any follow-up action the trustees took to confirm that payments were applied properly. In an ideal world, this would include obtaining invoices and receipts. However in many countries this is not always possible, and in such cases providing an analysis of where money has been spent will be the only real option available.

In the event that HMRC cannot be convinced of the charitable status of the expenditure, this may give rise to a liability to tax[2] on the UK church.

Although this section of guidance is primarily tax driven, it is worth noting that the obligation to take reasonable care is also a charity law requirement of all trustees. Trustees are obliged, by law, to always act in the best interests of their charity. Trustees who allow funds to be used other than for charitable purposes may commit a breach of trust and, in doing so, could face a personal liability to make good the charity's loss.

In addition to having to repay the tax liability the charity suffers, if the funds are *actually* misapplied as a result of the trustees' failure to properly monitor the grant, whilst unusual in the worst case, they may also face a separate liability to make good the charity's loss of the grant itself.

Having said all that, churches across the UK generously and safely make thousands of payments to support work overseas every year and, when responsibly undertaken, fear of 'what may be' should not stop churches fulfilling what they want to achieve and advancing Christian work across the world. The law is there to support good charitable work, not prevent it.

## What is considered reasonable?

What is reasonable is not an easy concept to define, but is one that appears extensively in official guidelines and regulations. It places the onus on those responsible for the payment (in this case the trustees) to assess for themselves what is reasonable without relying on a formalised checklist. It does not require 'perfection'. Even the best organisations can have something go wrong, and Trustees have to work in the real world and make the best decisions they can at the time. No one is expected to have hindsight, but they are expected to have exercised reasonable judgement.

The Finance Act 2010 changed the tax rules. Arguably, meeting the test of reasonableness is now somewhat trickier; the steps that a charity has to take no longer have to be reasonable in the eyes of the trustees (who have first-hand knowledge of their charity and its operations), but they must be reasonable in the eyes of HMRC (who do not). Some of the uncertainty created by this change in the law has been clarified by HMRC through an update to their Guidance which is contained in Annex II[3] of the Detailed Guidance Notes for charities. The Guidance can be found here. We would also comment that we find it is rare that HMRC do not accept as 'reasonable' what the vast majority would also consider 'reasonable'.

---

[2] In essence, tax reliefs previously given, for example through Gift Aid and the Gift Aid Small Donations Scheme, would be withdrawn retrospectively and would, therefore, need to be repaid to HMRC.

[3] The Detailed Guidance Notes are intended for readers that are familiar with, or have an interest in charities and charity tax, rather than being basic guidance. Nevertheless the Payments to Overseas Bodies guidance is useful to any church wishing to know more. Annex II, as a whole, deals with situations where a charity's expenditure could be regarded as non-charitable. Making payments overseas is one such situation.


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

In this context, advice from others who are experienced can be immensely helpful. Trustees can gain invaluable help by discussing their case with other churches, charities or professional advisers.

The following examples should help to demonstrate steps which should be considered reasonable.

**Example 1**

This type of scenario is far and away the most common among churches. Donations are received from people well known to the church, the overseas beneficiary is also well known, and the payment or series of payments is relatively small.

A pastor from a church outside the UK visits a partner church in the UK. On his return home, he discovers that the church building in his home town has burned down. When writing to the UK church to thank them for his visit, he mentions this and the UK church decide to appeal for donations and eventually donate £500 to help rebuild the church. The overseas church sends a thank you note and a picture of the new building when it is complete.

Here, an exchange of correspondence between the parties (preferably on headed notepaper) may be considered reasonable and sufficient. The correspondence should give details of the payment, the purpose for which it is sought, and provide confirmation that it was, in fact, used for the purposes for which it was intended. This confirmation should, wherever possible, be supported by details of the expenditure incurred).

The reasoning behind why this low level of documentation is acceptable recognises:

- it is a situation where, through an on-going relationship, the overseas based pastor is known personally to the UK charity and its trustees (there is a reason to trust the recipient);
- the amount is a small one-off payment (the risk is low); and
- there is a good connection between the charity and the overseas church (the risk of misappropriation can be informally assessed and, one hopes, judged as low).

In addition, the church knows the donors and the beneficiary well,, and has some written evidence of the reason for the donation, for their confidence that it will be used as intended, and separate confirmatory evidence (appropriate to the size of the donation) that the money has indeed been used for the intended purpose.


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

**Example 2**

This scenario recognises that there are times when churches seek to get more heavily financially involved with beneficiaries that they perhaps know less well. Such cases would be far less common than the scenario set out in example 1.

As each of the comfort factors in example 1 fall away, e.g. the overseas entity is not so well known and the payments gets larger, so the amount of evidence that is required increases. The church knows its beneficiary less well and, therefore, the assessment of risk increases.

A UK church becomes involved in a project to build a school in an area that is in need and agrees to send across £10,000 in four tranches of £2,500 each, to an overseas entity responsible for the building work.

Although the responsibilities of the trustees remain the same as in the first example, because the level of risk increases, so does the requirement to collect and maintain more formal documentation.

More formal due diligence of the overseas entity is necessary to ensure that it actually exists, is properly constituted, is registered with the necessary local authorities and does not have an adverse operating history. This would be further supported by the receipt of regular updates both from the construction company and the church, and wherever possible, *independent* verification of progress (either formally or informally,) for example, through local press reports or through reliable, independent, Christian contacts in the locality, rather than sole reliance on personal testimony.

Be cautious of relying on internet coverage. It is very easy these days to set up web pages with the intention of giving an air of authenticity to something whilst being rather less than truthful!

HMRC state that, in these circumstances, invoices from the building company are, of themselves, insufficient. We would suggest that additional evidence like that listed above is needed. In our view that would mean sufficient evidence such that a reasonable, experienced and independent person would be satisfied that the payments can be safely made. Further tranches of payments should not be made unless, cumulatively, the UK church is satisfied with the evidence provided.


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

**Example 3**

Most churches are unlikely to experience this scenario, but for some churches drawn to a larger overseas vision, it may become a reality. Under this scenario, the amounts involved are significantly larger and the project is likely to take much longer to complete.

A UK church enters into a partnership agreement with an overseas church or organisation to set up and establish a new church in a new region, to fund the training of its pastor and to partially fund a social regeneration project. The commitment of the church is likely to be perhaps £200,000 over a 5 year period.

The amounts involved are now very significant and, even though the relationship with the overseas church is likely to be quite strong, and indeed the UK church may even supply some people to help the project progress, because it will take place in an unfamiliar area, because the payments are large and because the project is a lengthy one, quite extensive formal documentation should be maintained. In addition to that in the other examples, this may include:

- records of meetings or teleconferences with the overseas entity;
- exchanges of correspondence between the UK church and the overseas entity;
- project plans and viability assessments;
- financial budgets and projections showing the need for, and timing of, the UK church's assistance;
- copies of (legal) agreements between the overseas entity and any third parties carrying out major elements of the work;
- any official project literature;
- independent verification that the expected work is being carried out in a way that is effective and relevant, and is building a good, rather than bad reputation. As above, using press reports, reports from known and trusted links (for example, via long established and trusted missions or individuals working in the area) will help in this;
- independent verification that the accounts are being properly maintained and that adequate control is being exercised over the payment of suppliers and local workers;
- being given copies of the overseas entity's annual accounts (preferably audited).

Further tranches of payments should not be made unless, cumulatively, the UK church is satisfied with the evidence provided. It is likely that, with a project of this size, that stage payments will be made on the basis of specific, agreed, targets.

The trustees should consider entering into a legally binding and enforceable agreement to ensure that any payment will be applied only for charitable purposes, putting in place a suitable mechanism to ensure that this happens, and requiring repayment of the monies if they are not applied properly.


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

Given the size of the funding in this case, it would not be unreasonable (and it may indeed be expected) for the UK church to send one or more of its members to the area for a personal visit to report on progress. In doing so, it is worth considering who is best to send in terms of their personal experience and qualifications. Remember also to be mindful of personal safety when arranging such trips and research the country, area and risks using appropriate resources, such as those of the UK's Foreign and Commonwealth Office.

Simply because the trustees are satisfied with the initial payment does not mean that they should not take similar actions before continuing funding. Many a project may start well, but either deliberately or inadvertently may go 'off the rails' with funds being diverted into other projects or used for completely different purposes.

### Relevant laws

The main law governing overseas payments by charities for charitable purposes is contained in Section 547(b) of Income Tax Act 2007 (Section 500(b) of Corporation Tax Act 2010), as amended by Finance Act 2010. Some further legal provisions to be mindful of are briefly covered in Appendices 1 and 2.

In addition, a church's general charitable activity is also legally subject to:

- its Governing Document (Constitution, Trust Deed, Memorandum and Articles of Association, or similar)
- Charities Act 2011 (England and Wales), Charities and Trustee Investment (Scotland) Act 2005, or Charities Act (Northern Ireland) 2008.

## 6 Don't you trust me?

Either explicitly or implicitly the issue of 'don't you trust me' may often crop up in cases where the UK church seeks the necessary assurance and documentation before making a payment to an overseas entity, particularly where the beneficiary is a Christian or another church.

Such concerns should be handled sensitively, but firmly. If payments are challenged at a later date in court or in correspondence with the UK authorities, a defence that starts with "they were Christians so I trusted them..." is unlikely to be well received. A good maxim to work to in this context is "In God we trust, everyone else we audit!"

Remember the cultural differences. As said earlier, what is eminently sensible in one culture can be really strange in another. In the UK, we have developed a greater sense of external scrutiny and public accountability than in many other parts of the world where relationship and trust are absolute. Time, patience and humility are often needed to work through this type of issue.

It is helpful to explain, and to do so right at the very beginning of any conversations or exchanges on funding, that this is not an issue of 'personal trust', but an issue of a UK church or charity needing to comply with its own UK laws. You can explain that if you, as a UK charity, don't have these explanations or documents you are asking for, the UK charity can be taxed or prosecuted. Even if they don't


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

understand all the reasons, in our experience most people do realise it is unreasonable for them to withhold information that will give major difficulties to their friends that are generously helping them!

Overseas churches and other entities that are not cooperative with you in this and do not recognise the need for sensible controls and due diligence should be avoided and alternative partners sought. The financial, legal, and reputational risk of being linked with an overseas entity that it later transpires is involved (however inadvertently) in money laundering, bribery or terrorist funding, or simply misapplication of funds, is not worth contemplating.

## 7 Conclusion

Payments to overseas organisations are a generous and desirable response by UK churches to need and suffering in other parts of the world and, as such, should be encouraged. By taking reasonable steps and particularly by ensuring that you know your donors and your beneficiaries, payments can be made safely without any cause for concern.

It is the responsibility of the trustees to take action and to help the church be effective in fulfilling its purposes. Trustees should not be dictated to by the need for documentation, but by the same token should not act irresponsibly. Wisdom is found in the council of many, but sometimes trustees may just need to take a reasoned, well thought out risk.


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

# Appendix 1 Money laundering and terrorist financing

## Money laundering

Money laundering is the process by which criminally obtained money or other assets (criminal property) is exchanged for 'clean' money or other assets which then have no obvious links to their criminal origin.

The principle regulations relating to money laundering are contained in the Money Laundering Regulations 2007 (as amended)[4] which states that money laundering activity includes:

- acquiring, using or processing criminal property;
- handling the proceeds of crime including theft, fraud and tax evasion;
- being knowingly involved in any way with criminal property

## Trustee responsibility

The principal safeguard for trustees is to 'know your donor'. Understanding your donors and applying a risk based approach to individual donations will go a long way towards ensuring that your church is not inadvertently a link in a money laundering chain.

Trustees should put in place suitable controls to ensure that:

- Donors, particularly new donors or those not well known to the church are verified (see earlier section on know your donor). We recognise that this is a sensitive area and it may be useful for a church to have in place a written policy that it applies to all donors, so that no individual donor feels that they have been singled out.
- Using the risk-based approach, churches may want to introduce a policy that, in certain cases, considers both the size and the ultimate destination for the donation. A church's policy may be limited to payments that are restricted for use overseas and that exceed a certain amount (say £2,500). Payments to the general fund, where the donor loses all control of the funds are much less likely to pose a risk from the perspective of money laundering and may not, therefore, need to be covered in such a policy.
- Receipt of unusual or large donations is investigated. This will involve asking some sensible and sensitive questions when the amount of the donation is not in keeping with what you know of a person's lifestyle or, more particularly, when the donation comes from a person not well known to the church.

[4] The 2007 Regulations were amended from 1 October 2012 by The Money Laundering (Amendment) Regulations 2012 (SI 2012/2298).


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

- Donations given for a purpose that is restricted at the request of the donor which, in effect, mean that they are only made available to fund certain overseas projects should be checked more carefully. In such cases, the church trustees are bound, by general trust law, to use the funds for the purpose requested by the donor. So, particularly in cases where the church has little or no contact with the beneficiary, the church should take steps to ensure that the intended beneficiary is who they say they are, and is involved in appropriate charitable activities (see the 'know your beneficiary' section above). Compliance with such a donor request will be high risk, unless suitable and successful due diligence is carried out on the proposed overseas beneficiary.
- Records of all receipts are properly recorded.
- Where appropriate, relevant policies are maintained and kept up-to-date.

The law states that where a private individual (this could be a church officer) becomes involved in something that they know or suspect is connected to money laundering they have a legal obligation to report this to the UK Financial Intelligence Unit[5].

'Suspects' is a legal term and guidance on how it might be applied in a church situation is hard to come by, as most available guidance is directed at regulated financial commercial organisations. It certainly means more than a vague impression that things are not right and does not extend to the individual going on a 'fishing trip' to confirm or assuage those vague impressions with anything more substantive.

It is highly unlikely that a normal church will be required to report suspicions in this way, but where the circumstances are such that an individual is unsure of how to proceed, seeking immediate legal advice may be appropriate.

## Terrorist financing

The Charity Commission tackles the issue of terrorist financing within its compliance toolkit: 'Protecting charities from harm—terrorist financing'. It recognises that terrorist activity often requires little funding and minimal involvement in the financial system. So, even the payment of relatively small amounts overseas may be sufficient to fund terrorist operations.

Simply defined, terrorist financing is the raising, moving, storing and using of financial resources for the purposes of terrorism. The Charities Commission recognises that charities and voluntary organisations play an important role in ensuring that the funds they collect are not diverted to terrorist organisations.

Although there are often links between money laundering and terrorist financing, a major distinction is that whereas the origins of money for money laundering are always illicit, funds for terrorist financing can originate from both legal and illegal sources.

[5] The UKFIU is part of the Serious Organised Crime Unit (SOCA).


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

## The law

The law relating to terrorist financing is found in the Terrorism Act 2000 which finds a person guilty of a criminal offence if he 'knows', 'intends', or has 'reasonable cause to suspect' that the property (this includes both money and other goods) may be used for the purposes of terrorism. This law extends beyond the charity's trustees and will also include fundraisers and perhaps even some volunteers.

The law also extends beyond the boundaries of the UK, so any act carried out abroad that would contravene the Act had it been carried out within the UK will be treated as if it had, in fact, been carried out within the UK.

## Trustee responsibility

It is the trustees' responsibility to assess and manage risk to ensure that the charity is protected and should take all reasonable steps to minimise the risk that the activities of the charity could be misinterpreted as promoting or supporting terrorism.

Applying the procedures and obtaining the evidence set out throughout this Guide will provide the trustees with sufficient comfort to make the payment without fear of recourse.

The trustees should have heightened awareness where the beneficiary operates in geographical regions which are subject to embargoes, or where it is known that terrorist organisations operate, or where significant levels of corruption and crime are known to exist.

Where payments are being directed towards these countries, trustees should take additional steps to ensure that the funds are reaching the correct beneficiaries, that those beneficiaries are using the funds for the agreed charitable purposes, and that they are not being diverted.

The main legal provisions are found in Part 7, Proceeds of Crime Act 2002 / Money Laundering Regulations 2007 and the Terrorism Act 2000 and Regulations made thereunder.


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

## Appendix 2 Charities and the Bribery Act 2010

The Bribery Act 2010 came into force on 1 July 2011, replacing previous laws on bribery and corruption. It creates four new offences:

- giving a bribe: it is an offence for a person to offer, promise or give a financial or other advantage to another person, where that advantage is intended to induce that other person to perform his functions or activities improperly, or reward that person for improper performance.
- receiving a bribe: it is an offence for a person to request or accept a financial or other advantage if it is intended that, as a result of receiving that advantage, he will perform his functions or activities improperly.
- bribing a foreign public official: it is an offence to offer or provide a financial or other advantage to a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business.
- the 'Corporate Offence': an offence will be committed by a 'commercial organisation' if any of the bribery offences described above are committed by a person 'associated' with (i.e. anyone performing services on behalf of) the organisation, with the intention of obtaining or retaining business or an advantage in the conduct of business for the organisation. However, it is a defence for the organisation to show that it had in place 'adequate procedures' designed to prevent persons associated with it from committing acts of bribery.

The first three offences can be committed by either an individual person or a body corporate but, are unlikely to impose any additional obligations on church trustees. However, the 'corporate offence' has the potential to be much wider reaching as it captures associated persons.

The Ministry of Justice guidance makes it clear that charities can be 'commercial organisations' for the purposes of this offence, if they are incorporated or in partnership, and carrying on a business, even if the business objectives are charitable in nature. It does not matter if any profit is applied for charitable purposes. So churches can, in certain circumstances, be considered 'commercial organisations' under this definition and in such cases all four offences may apply.

The full Ministry of Justice guidance can be found here.

The main legal provisions are found in the Bribery Act 2010 and Regulations made thereunder.

# Appendix 3 Case studies

Two overseas initiatives were presented to an Essex church, one in Bangladesh and one in India. The leadership of the church were inspired by both initiatives and wanted to support them. Because the circumstances for each initiative were very different, the approach that the church adopted in each case was also very different, although in both cases the church sought to deepen its relationships with those heading up the projects in the two countries and to act as on-going partners in each case.

## Case study A: Bangladesh

***Scenario***

This initiative was to develop a business based in Bangladesh using renewable bamboo as the base product and seeking to employ local staff in the country to bring them and their families out of poverty as well as provide a vehicle for the Gospel. The initiative was to be headed up by a former member of the church who had already been working overseas with a major UK mission agency, and this agency was to be involved in establishing the new business.

Monies were provided by the church from general funds or specific appeals. Direct funding from individuals via the church was not permitted.

***Church action***

The church leadership could quickly see the potential of this initiative and wanted to provide significant on-going support of around £10,000 per annum. The circumstances were such that the church was able to get involved very quickly.

- The project was headed by a former member of the church, personally known to many on the leadership team.
- The experience that he had already gained working overseas meant that he understood different cultures and would not be completely naive.
    - This gave added assurance that monies would not in any way be used inappropriately in paying bribes to local officials.
- The involvement of a major UK mission agency provided additional comfort.
- The church was involved right from the out-set and had access to formation documents allowing them a chance to help shape the structure of the company. These included;
    - Memorandum and articles of association
    - Statements of faith
    - Internal purpose and vision statements (this was important as it enabled the leadership to be sure that any expenditure on this initiative was directed to charitable expenditure).
- The monies came directly from the church's general funds. As individuals were not permitted to fund the project directly, the assessed risk of money laundering was low.

This background and low level documentation allowed the church leadership to assess the project using a risk based approach and to formerly minute at a trustees' meeting the church's support right from the outset.

Developing the relationship over time with regular project updates, by e-mail, or Skype, visits to the project by members of the church, visits and preaching opportunities afforded to the person heading the project when in the UK all enable the church leadership to remain confident that the project continues to develop in accordance with what was envisaged and that monies forwarded have been used in accordance with the initial proposal.

As additional external funding is required to expand the project, the church continues to be involved with potential third party funders, making sure that the project does not alter in nature and as a result fall outside of what would be recognised as charitable expenditure.

## Case study B: India

***Scenario***

One of the leadership team met an Indian pastor and was felt drawn to the idea that the church should support the work that he was doing on the ground in India. There had been no previous contact with this pastor, and the region in which he was working was not well known to anyone in the church. The pastor was not part of any missionary organisation and because an element of the funding was deemed to be for his personal support any monies used with this initiative were routed directly through him.

In hindsight and even though the work was on a small scale, the establishment of a charity to carry out the work may have been a more appropriate response, allowing the church to clearly separate the funding which was for support, and that which was for the project itself.

Monies were provided by the church from general funds or specific appeals. Direct funding from individuals via the church was not permitted.

***Church action***

This situation was very different to Case Study A and the church proceeded much more slowly and in a more cautious manner. The aim of the church was much the same; to develop a lasting, effective and meaningful partnership with this pastor, but because both he and the region were not well known to the church and, added to that, the project was not to be established as a charity in its own right, more time was required and more emphasis was placed on the character of the person and understanding their situation and requirements. The church leadership:

- Initiated correspondence with the pastor, to start to build a relationship and to understand the work that he felt called to in that region.
- Went to visit the pastor right at the outset 'on-the-ground' in India to see for itself what the initiative involved, to assess the local culture, and to learn more of the man's character.
    - The deacon for overseas missions undertook this visit.

    - No formal documentation was available (not being a charity), but notes of what was seen, and character assessments of others involved were made.

- Started cautiously, sending only small sums for individual projects and obtaining regular feedback from the pastor as to progress and success.

    - Initially this was via e-mail and Skype. As the relationship and the funding grew, further visits were arranged to further assess development and to see at first-hand the assets that had been acquired (sewing machines, etc.)

The monies came directly from the church's general funds. As individuals were not permitted to fund the project directly, the assessment of money laundering was low.

As the relationship developed:

- Small teams of young people went to the project to take part in what was happening. This was a huge encouragement to all involved as the teams came back strengthened by what they had seen and been involved with.

- The pastor visited the UK and met with many of the church leadership team and was afforded the opportunity to speak in the church.

The second scenario is perhaps more difficult for the church leadership to grasp. There was little or no documentation that can be verified, assessed and checked, no accounts that can be scrutinised and audited and obtaining independent evidence of progress in certain areas (e.g. helping abused wives) was not easy. The challenge for the church (even without much documentary evidence) was to assess if the proposed work was, in fact, going ahead and achieving results.

As the partnership developed and because of the frequent visits and updates, the church felt able to provide more significant regular financial support of around £5,000 p.a. It recognised that, initially, there was no formal process to ensure that the funds were being used as desired, thereby making this scenario riskier than the first. The leadership had to make an initial and continuing judgement call based on the character of the person and the picture that they were able to construct.

This was far from a perfect or complete picture, so the team had to take a reasoned risk based decision on what they did know. The alternative was that the work may not have developed.

The aim of the church was the same in both cases. To understand the project, to get to know and to make an assessment as to the character of those involved, to see the impact that the project would make in the local community and to determine that the money was being wisely and legitimately spent.

In the first case, the relationship was important, but so was the documentation. Formation documents, accounts, budgets all played an important part. In the second scenario, there was little or no documentation. Relationship, supported by updates and visits, was all that was available.

These are very different cases, requiring different approaches. However, the church is now able to support both projects, confident that the monies forwarded are used appropriately and both relationships are well and fruitfully established.

## Appendix 4 Useful sources of further information

The following resources may be useful for churches and charities for whom overseas activity and expenditure forms a more significant part of their work.

1. HMRC guidance to overseas payments

   www.hmrc.gov.uk/charities/guidance-notes/annex2/annex_ii.htm

2. Ministry of Justice Guidance on Bribery Act

   www.justice.gov.uk/legislation/bribery

3. Transparency international; corruptions perceptions index

   www.transparency.org/research/cpi/overview

4. Charities commission; protecting churches from harm

   www.charity-commission.gov.uk/Our_regulatory_activity/Counter_terrorism_work

   (see section headed protecting charities from harm)


 t: 020 8502 5600 e: enquiries@stewardship.org.uk w: stewardship.org.uk

# What is KYC and why does it matter?

## A closer look at how Know Your Customer rules work—and how they impact the financial system

BY IZA WOJCIECHOWSKA • MARCH 01, 2019 • 4 MIN READ

Recently, the government has been holding financial institutions to ever higher standards when it comes to "Know Your Customer" (KYC) laws—but established finance firms don't bear that burden alone.

KYC regulations have far-reaching implications for consumers, and are increasingly

becoming critical issues for just about any institution that touches money (so, just about every business). So while banks are required to comply with KYC to limit fraud, they also pass down that requirement to those with whom they do business.

And with pretty good reason. The idea is that knowing your customers—verifying identities, making sure they're real, confirming they're not on any prohibited lists, and assessing their risk factors—can keep money laundering, terrorism financing, and more run-of-the-mill fraud schemes at bay. The key is finding a balance so that these efforts are effective without penalizing innocent consumers—or being so onerous that upstarts can't comply with them (and hence can't compete).

## The ABCs of KYC

KYC laws were introduced in 2001 as part of the Patriot Act,

which was passed after 9/11 to provide a variety of means to deter terrorist behavior.

The section of the Act that pertained specifically to financial transactions added requirements and enforcement policies to the Bank Secrecy Act of 1970 that had thus far regulated banks and other institutions. These changes had been in the works for years before 9/11, but the terrorist attacks finally provided the political momentum needed to enact them.

Thus, Title III of the Patriot Act requires that financial institutions deliver on two requirements to comply with the stricter KYC: the Customer Identification Program (CIP) and Customer Due Diligence (CDD).

## CIP

CIP is the more straightforward of the two components, and likely more familiar.

To comply with CIP, a bank asks the customer for identifying information. Each bank conducts its own CIP process, so a customer may be asked for different information depending on the institution. An individual is generally asked for a driver's license or a passport. Information requested for a company might include:

- **Certified articles of incorporation**
- **Government-issued business license**
- **Partnership agreement**
- **Trust instrument**

For either a business or an individual, further verifying information might include:

- **Financial references**
- **Information from a consumer reporting agency or public database**
- **A financial statement**

Nonetheless, every bank is required to verify their customers' identity and make sure a person or business is real.

## CDD

The second component, CDD, is more nuanced.

In conducting due diligence, banks aim to predict the types of transactions a customer will make in order to then be able to detect anomalous (or suspicious) behavior; assign the customer a risk rating that will determine how much and how often the account is monitored; and identify customers whose risk is too great to do business with.

Banks may ask the customer for a lot more information, which may include the source of funds, purpose of the account, occupation, financial statements, banking references, description of business operations, and others. There's no standard procedure for conducting due diligence, which

means banks are often left up to their own devices.

In fact, the Patriot Act doesn't even directly specify a CDD requirement, but rather specifies that a bank is required to file a suspicious activity report if it suspects or has reason to suspect such activity. But without knowing much about its customers, a bank won't be able to meet this requirement—hence the CDD.

The Financial Crimes Enforcement Network (FinCEN) regulates—and strictly imposes—this aspect of KYC. FinCEN also manages other regulators for banks, including the Fed's Board of Governors, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency of the U.S. Treasury. Other financial institutions can be regulated by the SEC, the U.S. Treasury, the IRS, or the National Credit Union Administration, among others.

As a result of due diligence, a bank might flag certain risk factors like frequent wire transfers, international transactions, and interactions with off-shore financial centers. A "high-risk" account is then monitored more frequently, and the customer might be asked more often to explain his transactions or provide other information periodically.

## Why KYC matters

By first verifying customers' identities and intentions and then understanding their customers' transaction patterns, banks are able to more accurately pinpoint suspicious activities.

Money-laundering and terrorist financing often relies on anonymously opened accounts, and the increased emphasis on KYC regulation has led to increased reporting of suspicious transactions—though this doesn't necessarily mean there's more

bad activity out there, just better detection of it.

In 2014, more than 1.7 million suspicious activity reports were filed with the Financial Crimes Enforcement Network, 35 percent more than in 2013.

Regulations are becoming stricter, meaning financial institutions have to spend more money to comply with them—or be subjected to steep fines. These fines are also dramatically increasing: $4.3 billion in fines were levied against financial institutions in 2013 and 2014, a sum that quadrupled the fines of the nine previous years combined.

As an example, JP Morgan and HSBC were recently each fined $2 million for a failure to report suspicious activity.

# The cost of doing business?

Concerns abound about whether the increasing costs of anti-money laundering procedures are eventually going to become—or already are—prohibitive, keeping banks from effectively going about their daily business.

What's more, many are wary of the regulations leading to greater friction with customers who don't appreciate having transactions blocked or having to constantly provide additional information. Of course, as with anything, striking a balance between what customers want and what institutions need to do to protect the system is key.

Other businesses aren't being regulated in the same way banks are, but knowing your customers is a good idea anyway. It lets you detect suspicious or potentially fraudulent customers before they get to the bank via your services,

letting you stop the fraud before it happens. After all, if fraud is detected in your business' bank account, you'll likely be required to pay a substantial fine.

## The challenge and the opportunity

The Consumer Financial Protection Bureau, which enforces high data quality among financial service providers, collected more than $80 million in fines in 2014.

What's more, if fraud costs skyrocket, they could eat into more than just your margins: you might lose the partnerships of credit card companies or banks, for example, or get a bad reputation among customers.

There's opportunity here, too: Because many KYC regulations were instituted before much of today's technology existed, the means of collecting information about customers are woefully

October 29, 2014

D. E. (Ed) Wilson, Jr. and Andrew E. Bigart

# Active Overseas? What Every Nonprofit Needs to Know and Do to Minimize the Risk of Terrorist Financing

6min

If your nonprofit operates outside the United States, you now have additional reasons to worry about your organization being associated with – and abused by – terrorists or terrorist groups. Absent additional internal controls and heightened due diligence, your nonprofit is at risk of not only government-imposed fines and penalties, but also private sector lawsuits and damages.

From the government side, the additional pressure comes from the renewed focus the Financial Action Task Force (FATF)[1] is placing on the risk to nonprofits of terrorist abuse. Earlier this year, FATF published an extensive study listing the threats to nonprofits from terrorist entities, the drivers of the threats, and the complexities facing stakeholders (nonprofits,

governments, and others). This study was a follow-up to one of FATF's original 2001 recommendations:

> Nonprofit organisations are particularly vulnerable [to abuse for the financing of terrorism], and countries should ensure that they cannot be misused: (a) by terrorist organisations posing as legitimate entities; (b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freeze measures; and (c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.[2]

Why should a non-U.S., multilateral organization's study concern U.S. nonprofits? Almost every major development in U.S. anti-money laundering (AML) and counter-financing of terrorism (CFT) in the last ten years has come from FATF recommendations and studies.

The Financial Crimes Enforcement Network (FinCEN), the arm of the U.S. Treasury that oversees and enforces U.S. AML laws, recognizes FATF as "the global standard setter for combating money laundering and the financing of terrorism and

proliferation."[3] FATF conducts independent reviews of member countries' (including the United States') AML/CFT systems and compliance with FATF recommendations, publishing its findings in FATF public compliance reports.[4]

The most recent example of FATF's influence on U.S. law is FinCEN's "beneficial ownership" rulemaking.[5] The rulemaking arose from FATF's *Customer Due Diligence* (CDD) recommendations, and subsequent FATF Reports, stating that a country's CDD measures must require:

> Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner…For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.[6]

We can, therefore, expect that the "nonprofit organization" recommendation will be incorporated into U.S. law in the near future. This will result in additional governmental oversight and, as to potential civil liability, will place heightened standards and obligations on nonprofits to police themselves to ensure they are neither supporting nor being used by terrorist organizations.

The second factor comes from the private sector and is illustrated by the September 22, 2014, U.S. district court decision that Arab Bank Plc., by doing business with Hamas leaders, is responsible for funding terrorist acts in violation of the U.S. Anti-Terrorism Act (ATA).[7] This is a private action brought by U.S. victims of attacks and, in some cases, their surviving relatives. The decision will be appealed and a separate trial held on damages.

The ATA gives a private right of action for treble damages to any U.S. national injured "in his or her person, property, or business by reason of an act of international terrorism." 18 U.S.C. § 2333(a). The theory of the case is that U.S. law prohibits persons from knowingly (defined to include "being deliberately indifferent to") providing material support to a terrorist organization.

The confluence of (1) a nonprofit's current obligations under U.S. economic sanctions laws; (2) the probable increase in internal control requirements based on the FATF recommendation; and (3) the likelihood of private lawsuits based on aid provided to any designated terrorists organization, increases the threat of liability from governmental or private action. The failure of a nonprofit to meet a potentially heightened internal control standard based on the FATF recommendation and study will make it easier for a private litigant to prove liability under the ATA.

In sum, nonprofits now face higher compliance obligations with regard to U.S. economic sanctions and, similarly, higher threats of civil and criminal fines and penalties. Nonprofits cannot, however, have tunnel vision in this field. They must remain aware of developments with regard to a number of closely related laws:

1. Anti-corruption laws of (a) the United States (such as the Foreign Corrupt Practices Act [FCPA]); (b) countries in which an organization carries out charitable activities; and (c) any other country in which an organization has a presence (such as the United Kingdom, which has a relatively new, and broad, anti-bribery act).
2. Anti-money laundering and economic sanctions laws of the countries in which a nonprofit either has a presence or carries out its mission.
3. New foreign bank account reporting rules for U.S. organizations (such as the Foreign Account Tax Compliance Act [FATCA], in addition to the more familiar Foreign Bank Account Report [FBAR] rules).
4. Anti-boycott compliance and reporting requirements administered by the U.S. Departments of Commerce and Treasury.

Carrying these standards into practice requires careful thought and planning by a nonprofit. Initial mitigation steps to reduce the risk of liability include:

1. Follow the AML/CFT rules applicable to financial institutions, particularly if your nonprofit works in unsettled parts of the world that are subject to U.S. economic sanctions.
2. Know your donors and the sources of your donors' funds.
3. Know your recipients and your recipients' projects.
4. Check all funders, staff, board members, suppliers, and recipients against the U.S. Department of Treasury Office of Foreign Assets Control (OFAC) lists.
5. Install, use, and maintain strong internal controls on people, projects, and funds.

Together, these steps can go a long way to help minimize your organization's risk when carrying out its mission abroad.

---

[1] FATF is an inter-governmental body formed to set operational measures for combating money laundering, terrorist finance, and other threats to the international financial system. It currently is composed of 34 member states, 2 regional organizations, and a number of associates and observers from around the world. Formed in 1989, the FATF Secretariat is located at the Organization for Economic Cooperation and Development (OECD) in Paris, France.

[2] FATF Report: *Risk of Terrorist Abuse in Nonprofit Organizations*, June 2014, at 1.

[3] *Customer Due Diligence Requirements for Financial Institutions*, 79 Fed. Reg. 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking) (Hereinafter, "CDD NPRM").

[4] FATF Mutual Assessments

[5] CDD NPRM.

[6] FATF Report at 14 (emphasis supplied). *See* FATF Report, *Specific Risk Factors in Laundering the*