



An Rialálaí
Carthanas

Charities
Regulator

Guidance on Anti-Money Laundering and Counter-Terrorist Financing for Charities



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Introduction

1.1 About the Guidance on Anti-Money Laundering and Counter-Terrorist Financing for Charities

The Charities Regulator expects charity trustees to have appropriate systems and processes in place to prevent the loss of charity funds. These systems and processes should be designed to prevent and/or detect fraud and error. However, charity trustees should also consider, where relevant, the potential for loss through terrorist financing activities or money laundering. This includes putting in place systems and processes to ensure that the charity is not used to launder money or finance terrorist activities.

1.2 What is the Guidance on Anti-Money Laundering and Counter-Terrorist Financing for Charities?

The Guidance on Anti-Money Laundering and Counter-Terrorist Financing for Charities:

- > explains what constitutes money laundering and terrorist financing;
- > sets out the criminal offences of money laundering and the financing of terrorism;
- > describes the measures that “designated persons” such as banks, investment firms and other financial institutions must take to help prevent and identify instances of money laundering and terrorist financing;
- > describes how charities could potentially be used for money laundering and/or terrorist financing purposes; and

- > explains some of the steps that charities can take to reduce their risks of being used for such purposes.

In this document, we refer to this Guidance on Anti-Money Laundering and Counter-Terrorist Financing for Charities as the ‘Guidance’.

1.3 Who is the Guidance for?

The Guidance is relevant for every charity operating in Ireland. It is aimed at charity trustees and key people within the charity including senior management, employees and volunteers. The term “charity trustee” can include:

- > committee members;
- > council members;
- > board members; or
- > directors of a charity.

1.4 How should you use the Guidance?

You should read the Guidance and be familiar with the concepts of money laundering and terrorist financing and how they relate to charities. You must then comply with the Guidance by deciding what actions you will take to ensure that your charity is not used for money laundering or terrorist financing purposes. The Charities Regulator expects charity trustees to be able to explain and justify their actions where there is any departure from the good practice set out in this Guidance.

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About Anti-Money Laundering and Counter-Terrorist Financing

2.1 What is money laundering and terrorist financing?

Broadly, money laundering is the process of concealing the illegal origin of proceeds derived from crime.

Terrorist financing is the provision, collection or receipt of funds intending or knowing that those funds will be used to support or carry out an act of terrorism.

In the case of money laundering, the funds always come from one or more illegal sources or activities, whereas in the case of terrorist financing, funds can come from both legal and illegal sources.

2.2 What's wrong with Money Laundering and Terrorist Financing?

Money laundering allows criminals to profit from crime and, by doing so, both incentivises certain people to commit crimes and helps to finance crime. Terrorism involves the use or threat of intentional violence, generally against civilians, for political purposes. Terrorist financing helps terrorists to recruit members and otherwise finance such violence. Money laundering and terrorist financing both pose serious threats to society, including endangering life and property, loss of tax revenue and fuelling other criminal activity. Charities that are used for money laundering and/or terrorist financing purposes may suffer significant loss of charitable funds, assets or other property. They may also suffer reputational damage and damage public trust and confidence in the charities sector more generally.

2.3 What measures have been taken to stop money laundering and terrorist financing?

Money laundering and terrorist financing are widely criminalised. In addition certain types of entities are required to put in place specified anti-money laundering/counter financing of terrorism (“AML/CFT”) measures to help prevent and detect money laundering and/or terrorist financing. Under Irish law, these types of entities are called “designated persons”, and include banks, insurers, investment firms, funds and fund managers, entities engaged in certain financial activities, (such as lending), as well as lawyers and accountants. While a charity is unlikely to be a designated person for AML/CFT purposes, it could be subject to AML/CFT measures when engaging with a designated person.

2.4 What is the offence of Money Laundering?

Money Laundering involves the intentional or reckless conversion of property, generated directly or indirectly from “criminal conduct”, so that the criminal origin of the property is difficult to trace. It is a serious criminal offence under section 7 the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the “**CJA 2010**”) and may result in a sentence of up to 14 years in prison and/or a fine of an unlimited amount.

Criminal conduct includes conduct that constitutes an offence under Irish law. It also includes conduct occurring in a place outside of Ireland that:

- > constitutes an offence in the place in which it occurred and which would constitute an offence under Irish Law if it occurred in Ireland;
- > would constitute corruption or trading in influence for the purpose of the Criminal Justice (Corruption Offences) Act 2018 if it occurred in Ireland and the person or official concerned in doing the act or making the omission is a foreign official.

2.5 What is the Offence of Financing of Terrorism?

The offence of financing of terrorism consists of the provision, collection or receipt of funds with the intent or knowledge that the funds will be used to carry out an act of terrorism or any act intended to cause death or serious bodily injury.

Terrorist Financing is an offence under Section 13 of the Criminal Justice (Terrorist Offences) Act 2005 (the “**CJA 2005**”) and may result in a sentence of up to 20 years in prison and/or an unlimited fine.

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Charities and their exposure to Money Laundering and Terrorist Financing

3.1 Why are money laundering and terrorist financing relevant to charities?

Charities may be used for money laundering and/or terrorist financing purposes. For example:

- > a charity may be infiltrated by criminal or terrorist organisations and used to transfer the proceeds of criminal activity;
- > funds raised by a charity for charitable purposes may be diverted away from the charity and used for criminal and terrorism purposes;
- > individuals within a charity, or an individual pretending to be associated with a charity may use the charity to raise funds for a terrorist cause;
- > recipients of charitable donations may misuse those donations for terrorist purposes.

While the money laundering and terrorist financing risk in the non-profit organisation sector generally is judged to be medium-low, some charities, particularly those operating internationally in crisis regions, may be exposed to greater risks. Moreover, the risks of a charity being used for money laundering and/or terrorist financing purposes increase if the charity's financial, due diligence and/or monitoring controls are weak.

The impact of even one proven case will corrode public confidence in the affected charity and the entire sector. It could also lead to charities experiencing transaction delays or denials or account closures by their banks due to concerns around money laundering and terrorist financing risks.

3.2 Are there any AML/CFT measures that directly reference charities?

Following the 9/11 terrorist attacks, the Financial Action Task Force (FATF), which is an international body set up to develop measures to combat money laundering and terrorist financing, created Recommendation 8 ("R8") on laws relating to Non-Profit Organisations (NPO's) including legal persons, organisations or arrangements that primarily engage in raising or disbursing funds for charitable purposes.

The main purpose of R8 is to prevent NPO's from being abused for money laundering or terrorist financing purposes both as a critical component of the global fight against terrorism and as a necessary step to preserve the integrity of NPO's and the donor community. In this regard, countries are expected to adopt an approach that combines each of the following elements:

- > sustained outreach concerning terrorist financing issues;
- > targeted, risk-based supervision or monitoring of NPO's;
- > effective information gathering and investigation; and
- > effective capacity to respond to international requests for information about an NPO of concern.

Two key documents provide guidance on how FATF expects governments to implement R8. The Interpretive Note ([here](#)) lays out objectives, principles, and the types of measures countries should take to be rated compliant with R8. The Best Practices Paper provides details on how governments should implement R8 ([here](#)).

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How can charities protect themselves

4.1 What should charities do to help ensure that they are not used for money laundering or terrorist financing purposes?

The risk that a particular charity will be used for money laundering and terrorist financing will vary according to its profile and charity trustees must assess the nature of the risks the charity faces, their potential impact and their likelihood of occurring. The following factors are likely to be relevant when determining a charity's risk profile:

- > Do you know the background and affiliations of your trustees, employees, fund-raisers, volunteers and other persons working on your behalf as well as of other persons with whom you work closely?
- > Do you have some form of appropriate internal financial controls in place to ensure that all your funds are fully accounted for and are spent in a manner that is consistent with the charity's purpose?
- > Do you maintain proper and adequate financial records for both the receipt and use of all funds together with audit trails of decisions made?
- > Do you conduct financial transactions within mainstream financial channels such as bank accounts as far as is reasonably possible?
- > Do you receive donations from shell companies¹ or donors in high-risk jurisdictions and if so do you carry out due diligence on the relevant donors?
- > Does your charity carry out due diligence on its significant donors and take steps to verify their identity?
- > Does your charity operate purely on a domestic basis and, if not, does it operate in high-risk countries² from a money laundering and terrorist financing perspective?
- > Have you taken reasonable and appropriate steps to verify that your beneficiaries, donors and associates are bona fide and are not designated terrorists or subject to financial sanctions?
- > Does the charity rely on third parties when carrying out its activities, and if so, what degree of influence or control does the charity exert over those third parties, for example, is the charity able to carry out adequate monitoring?

4.2 What measures should a charity put in place to combat its risk of being used for money laundering or terrorist financing purposes?

Generally, the measures a charity should take to combat money laundering or terrorist financing risks will depend on its individual risk assessment. However, at a minimum, each charity should:

- > have proper and adequate financial records for both the receipt and use of all funds together with audit trails of decisions made; and

1. A shell company is an incorporated company that possesses no significant assets and does not perform any significant operations.

2. You can find a link to a list of these countries in Commission Delegated Regulation 2016/1675 of 14 July 2016 ([here](#))

- > take reasonable steps to ensure that the charity knows who its beneficiaries are, at least in broad terms, carry out appropriate checks in high risk situations and consistently apply clear beneficiary selection criteria.

Depending on the charity's individual risk profile, it may decide to take additional steps which could include carrying out due diligence on:

- > **donors of large donations** – for example if a charity receives a large donation from a donor who lives abroad who has no apparent connection with the charity, it should consider taking steps to verify the donor's identity. If there is a significant donor which is an organisation, the charity should know what its business is and ensure that it is an appropriate business for the charity to be associated with;
- > **third parties used by the charity in the course of carrying out its activities** – this will be particularly important when the charity is carrying out activities in third countries³, particularly countries in which there is conflict or which are known to be high-risk from a money laundering or terrorist perspective.

Note: The Charities Regulator has published separate Guidelines on Internal Financial Controls for charities ([here](#)). The Guidelines give practical guidance in relation to the main areas of financial control for charities: income; expenditure; banking (including payments and loans); assets and investments and monitoring arrangements. They contain a number of useful checklists for charities to ensure they have the appropriate controls in place. Charities are expected to follow the good practice set out in these Guidelines.

4.3 What should a charity do if it suspects money laundering or terrorist financing?

- > A charity should refuse to engage in transactions or with persons that it suspects of being associated with money laundering or terrorist financing.
- > A charity should also be aware that it is required to disclose information to An Garda Síochána which it believes might be of material assistance in:
 - preventing the commission of a money laundering or terrorist financing offence, or
 - securing the apprehension, prosecution or conviction of any other person for a money laundering or terrorist financing offence.

Specifically, it is an offence under Section 19 of the Criminal Justice Act 2011 for a person to fail, without reasonable excuse, to disclose such information as soon as practicable to a member of An Garda Síochána.

3. You can find a link to a list of these countries in Commission Delegated Regulation 2016/1675 of 14 July 2016 ([here](#))

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What are the indicators of Money Laundering and Terrorist Financing

5.1 What are the types of transactions that could indicate money laundering?

The types of transactions which may indicate money laundering, depending on a charity's individual risk profile, include:

- > a donor makes a large contribution which does not seem to be commensurate with the donor's known background or income;
- > unusual or substantial one-off donations or a series of small donations or interest-free loans from sources that the charity cannot identify or check;
- > a donation appears to be funded by someone other than the donor (eg a donation is made by a cheque drawn on an account in the name of someone who is not the donor);
- > conditions are attached to a donation which would mean that the charity is being used as a vehicle for transferring funds from one individual or organisation to another without the trustees being able to verify that the donation is being put to an appropriate use;
- > corporate donations are made using a personal account;
- > a beneficiary that is a shell company or that is established as a trust is unwilling to provide additional information about its beneficial owners or underlying beneficiaries in response to a request for such information;
- > goods or services purchased by the charity do not match the charity's operational needs or stated activities;
- > payments for goods or services are made by cheques drawn on an account that does not belong to the charity; or
- > a donation is conditional on particular individuals or organisations being used to do work for the charity where the charity has concerns about those individuals or organisations.

5.2 What are the types of transactions that could indicate terrorist financing?

The types of transactions that may indicate terrorist financing include:

- > financial transactions occur for which there appears to be no logical purpose or for which there appears to be no link with the charity's stated activity;
- > a large number of fund transfers are arranged in small amounts on behalf of donors or beneficiaries in an apparent effort to avoid triggering identification or reporting requirements or requirements relating to foreign exchange transactions;
- > fund transfers are made to locations that have no apparent connection with the charity's activities;

- > the use of multiple accounts to collect and channel funds to a small number of beneficiaries, particularly in high risk areas or transactions involving foreign currency which are subsequently transferred to high risk areas within a short time frame;
- > a donation is conditional on particular individuals or organisations being used to do work for the charity where the charity has concerns about those individuals or organisations.

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Do charities need to do anything else with a view to combatting money laundering and/or terrorist financing?

Any charity incorporated as a company in Ireland must obtain and hold adequate, accurate and current information on its beneficial ownership, in a 'beneficial ownership register'. An incorporated charitable organisation must also file its beneficial ownership information with the Central Register of Beneficial Ownership in the Companies Registration Office. A 'beneficial owner' of an incorporated charitable organisation is a natural person who directly or indirectly owns or controls over 25% of the voting rights of the charity, or who controls the charity through other means.

Control by other means is where a person, who does not hold more than 25% of the voting rights of a charity, still exercises significant control or influence over the charity (for example, through the exercise of dominant influence or the power to appoint senior management).

If the incorporated charitable organisation either cannot identify an individual who is a beneficial owner, or if there is any doubt as to whether an individual is a beneficial owner of the charity, the incorporated charitable organisation must instead list its 'senior managing officials' (i.e. its trustees/directors and CEO) in its Register as being its beneficial owners. A charity that is established as an express trust is subject to similar obligations. Specifically, the trustee of an express trust where the trustee is resident in Ireland or the trust is otherwise administered in Ireland, must gather information on the trust's beneficial owners and establish a beneficial ownership register. Ultimately, this information will be used to populate the central register of beneficial ownership of trusts, however, this central register is not yet in operation. A beneficial owner of a trust is all or any natural persons who fall within any of the following categories in respect of an express trust:

- > settlor of the trust, i.e. a person who created the trust;
- > trustee of the trust, i.e. a person who was appointed to manage the assets of the trust for the benefit of its beneficiaries;
- > protector of the trust, i.e. a person who was appointed to direct or restrain the trustees in relation to their administration of the trust;
- > beneficiary under the trust (or where the individuals benefiting from the trust have not yet been determined, the class of beneficiaries under the trust);
- > person exercising ultimate control over the trust by direct or indirect ownership, or by other means.

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Where can I find further information on the money laundering and terrorist financing risks for charities?

The following provide further information on the money laundering and terrorist financing risks for charities:

- [Best Practices on Combating the Abuse of Non-Profit Organisations \(FATF\);](#)
- [Risk of Terrorist Abuse in Non-Profit Organisations \(FATF\);](#)
- [National Risk Assessment for Ireland – Money Laundering and Terrorist Financing \(Department of Finance\);](#)
- [Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities.](#)

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