



# Top Ten Risks Facing Nonprofits Operating Internationally

Monday, December 12, 2016, 12:30 pm – 2:00 pm ET  
Venable LLP, Washington, DC

## Moderator

**Jeffrey S. Tenenbaum, Esq.**

Partner and Chair of the Nonprofit Organizations Practice,  
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## Speakers

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**Carrie Kroll McMullan, Esq.**

Counsel, International Trade and Customs Practice,  
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**Matt Cromwell, CPA**

Assurance Partner, Nonprofit and Education, BDO



# Presentation

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To view Venable's Government Grants Resource Library, visit [www.grantslibrary.com](http://www.grantslibrary.com).

## Top Ten Risks Facing Nonprofits Operating Internationally

1. In-country without authority
2. Poor partner and contractor selection
3. Inadequate controls for corruption
4. Rogue employment approaches
5. Limited financial controls
6. Failing to meet funding partner expectations
7. Losing control of your intellectual property
8. Entering weak contracts
9. Ignoring the tax bill
10. Inadequate insurance

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## Risks Need Solutions



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## Top Ten *Solutions* for Nonprofits Operating Internationally

1. Legal presence
2. Procedures for vetting partners and contractors
3. Anti-corruption and sanctions compliance controls
4. Employ wisely
5. Financial controls including purchasing
6. Compliance with funding requirements
7. Control of intellectual property
8. Contract terms and conditions for the jurisdiction
9. Pay the tax man
10. Insurance

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## Solution #1

### Legal Presence

**YOU ARE HERE**



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## Legal Presence: Analysis

- Scope the activities (now and the future)
- Determine short- and long-term activities
- Identify human resource needs
- Clarify the revenue sources
- Determine the expenses
- Identify the experts needed to analyze conditions (legal, accounting, tax, security, insurance, government, and other organizations)



## Legal Presence: Key Questions

- When are you “doing business” in the country?
- What are the permitted legal forms in the country?
- Can your nonprofit control a local entity?
- What are the legal controls on money?
- What are the legal requirements for employees?
- What is required if you engage a contractor?
- Is there an opportunity for a phased approach?
- What does it take in money, time, and form to remain legally present?



## Legal Presence: Select a Model

- Consider phased approaches
  - Grant making to a nonprofit
  - Short-term events
  - Working through another nonprofit
  - Association management company
  - Contractor to perform
  - Joint ventures
  - Temporary activity under a federal government agreement
  - Establishing a branch
  - Forming an entity (nonprofit or for-profit)



## Legal Presence: Keep Good Counsel

- Retain U.S. counsel with experience in international operations and risks
- Retain local (in-country) counsel with experience in your activities
- Opening memo of rationale and scope
- Establish a process of legal compliance
- Maintain a strong relationship with counsel
- Annually review operations for mission change
- Annually review changes in law
- Adjust for changes

## Solution #2

### Procedures for Vetting Partners and Contractors



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## Vetting Partners and Contractors

### The Basics: Due Diligence

- Who?
  - Legal form, ownership, and controlling individuals
  - Screening of U.S. (and related foreign) “lists to check”
- Reputation?
  - References including reputable entities, other known local nonprofits, industry leaders, NGOs, multilaterals, and federal government officials
  - Public records on corruption
- What?
  - What is their expertise?
  - What is their experience doing the type and size of activities you seek?
- How?
  - How does the partner operate currently?
  - Book and records; professional advisors (such as accountants)
  - Programmatic capacity
  - Subcontractor selection and controls

Practice Tip: Ask for and retain written records.

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## Vetting Partners and Contractors

### Financial Due Diligence:

- Financial records
  - How far back? Audited?
  - Cash policy and controls
  - Tax management
  - Financial viability
- Accounting system
  - Automated? Manual?
- Labor tracking and reporting
- Experience with third-party compliance
  - Uniform Guidance, World Bank, etc.

Practice Tip: Kick the tires!  
If your potential partner is not willing to provide the info, this is a red flag.



## Vetting Partners and Contractors

### Example

*Small mother and child clinic in Angola*

*or*

*Regional hospital in Lusaka, Zambia*

- They have varying levels of risk, in different areas, and the MC clinic may be easier in some ways to “deal” with
- This work begins to overlap with the Uniform Guidance requirements for federal grants

## Solution #3

### Anti-Corruption and Sanctions Compliance Controls



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## Anti-Corruption Controls

- **U.S. Foreign Corrupt Practices Act (FCPA):** U.S. law enacted by Congress in 1977 to halt rampant bribery of foreign government officials.
- **Anti-Bribery Provisions:**
  - Prohibits paying of, offering, promising to pay (authorizing to pay or offering) money or “anything of value,”
  - With corrupt intent, directly or indirectly,
  - To a “foreign government official” or political party official,
  - For the purpose of (i) influencing an official act or decision; (ii) causing the official to fail to perform his lawful duty; or (iii) obtaining or retaining business or to secure any improper advantage.
- Certain *limited* exceptions and affirmative defenses exist.

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## Anti-Corruption Controls

- **Applicability of the FCPA:**
  - Current “red flag” countries
  - Nonprofits *not* exempt
  - Who is a “foreign official”?
  - “Agency” relationship with partners abroad → U.S.-based nonprofit or association can be held liable for the acts of partners abroad under FCPA
  - Provision of “samples” or other incentives
- **Other National and International Anti-Bribery Laws:**
  - Local (foreign) laws
  - U.K. Bribery Act
  - OECD



## U.S. Economic Sanctions Compliance Controls

- **Why do I care?**
  - U.S. export controls and economic sanctions apply to “**U.S. persons**,” which includes:
    - Any corporation, business association, partnership, society, trust, or any other entity, *organization, or group that is incorporated to do business in the United States*
    - U.S. Citizens, lawful permanent residents, refugees, or asylees
    - All persons *in* the United States (even foreign nationals)
    - Any U.S. *government entity* – federal, state, or local – operating anywhere in world
  - Nonprofit entities are *not* exempt!
- **U.S. Export Controls (U.S. Department of Commerce)**
  - Controls on “exports” (or releases) of U.S.-origin goods, technology, and services to certain destinations, entities, and end users
  - Are you exporting computers, technology, or other goods in support of your overseas venture? (Materials for a trade show, hand-carry items can be subject to controls.)
  - What is the country of ultimate destination? Who is your end user? Even if the item is not controlled, the end user might be (e.g., in Russia or Sudan).



# U.S. Economic Sanctions Compliance Controls

- **U.S. Economic Sanctions:**
  - U.S. economic sanctions bar and/or substantially restrict exports to, or the participation by, “**U.S. persons**” in commercial activities involving designated countries, individuals, and/or entities
  - Comprehensive sanctions prohibit *most* transactions with entities, persons, or government entities in those countries (“informational materials” exemption)
  - Office of Foreign Assets Control (OFAC) of the U.S. Department of Treasury: Primary role in administering and enforcing U.S. sanctions programs
- **A Few Important Principles:**
  - Each sanctions regime is **UNIQUE**
  - Sanctions are **NOT** static – can change daily
  - There may be overlap with other (UN, EU) sanctions; U.S. laws can vary significantly
  - U.S. persons and entities subject to jurisdiction prohibited from dealing – directly or indirectly – with restricted countries, persons, and entities
  - Expansive concepts of prohibited transactions: “export of services” and “facilitation”
  - Broad anti-evasion provisions



# OFAC Economic Sanctions: Country-Based Restrictions

Comprehensive embargoes

- Cuba
- Iran
- Sudan (not South Sudan)
- Syria
- Crimea Region of Ukraine

Targeted Restrictions on *persons* and *entities*

- Balkans
- Belarus
- Burundi
- Iraq
- Libya
- Lebanon
- Somalia
- Russia-related sanctions
- North Korea
- Venezuela
- Yemen
- Zimbabwe

## OFAC Risk Matrix: Sanctions and AML Considerations

- Grantees: U.S. Treasury Department's "voluntary" [Anti-Terrorist Financing Guidelines](#) and [Risk Matrix](#)
- Acknowledgment by OFAC that "**charitable sector**" has been exploited by terrorists to raise and move funds, and to provide logistical support and cover, and operational assistance
  - Nonprofits have been "put on notice" and are thus expected to have knowledge and compliance protocols in place to combat threat, including *SCREENING*.

**Risk Factors for Charities Disbursing Funds or Resources to Grantees<sup>4</sup>**

Low Risk	Medium Risk	High Risk
The grantee has explicit charitable purposes and discloses how funds are used with specificity.	The grantee has general charitable purposes and discloses how funds are used with specificity.	The grantee has general charitable purposes and does not disclose how funds are used.
The charity and the grantee have a written grant agreement that contains effective safeguards. For example, provisions addressing proper use of funds by the grantee, delineation of appropriate	The charity and the grantee have a written grant agreement with limited safeguards.	The charity and the grantee do not have a written grant agreement.

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## Effective Compliance and Controls

### What are "effective controls"?

- Senior management environment of compliance
  - A senior manager with independent decision-making authority should have direct responsibility over overseas programs
  - Specific compliance manager within the organization
- Develop policies/procedures based on risks, organizational risk tolerance, and common practices in your sector
- Employ a due diligence "checklist"
- Regular training...and re-training
- Obtain certifications from grantees or contractors
- Recordkeeping (five years)
- Auditing (internal and your partners, subcontractors)

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## Solution #4

### Employ Wisely



## Employ Wisely

- Day 1: Employee policies controlling for bribery, corruption, and money laundering
- Visas and travel security controls
- Worker registration/permits
- Insurance coverage
- Local nationals, expats, and third-country nationals
- Employees v. independent contractors
- Employment rights and policies
- Customs and culture
- Background and due diligence
- Data security
- Payroll and benefits
- Taxes
- Exit strategy



## Employ Wisely: Taxes

- Liability to local government, U.S., and/or employee's home country
- Employer location: Local, U.S., or third country
- Employee is U.S. national resident or third-party national
- Independent contractor
- Assignment length (contract in place or a long-term "visit")
- Social taxes



## Treaties and Bilateral Agreements

60+ tax treaties or protocols with U.S.

The triggers for classifying an individual as an "employee" for tax purposes vary widely and create obligations on employee, employer, and in multiple jurisdictions.

## Solution #5

### Financial Controls



## Financial Controls

- The organization provides the employees opportunities to commit fraud by having ineffective (or no) internal controls.
- The organization's employee creates the pressure/rationalization to commit fraud.
- Regardless of the size of the local office, DO NOT think that your employees would never commit fraud against the organization.
- Regardless of the size of the organization, a segregation of financial duties can exist, to some level.
- Regardless of the size of the organization, fraud can occur. Trust, but verify.
- Don't tolerate an opportunity to commit fraud against the organization.



## Financial Controls

It begins and ends with cash...

- Ability to pay vendors/procurement
- Ability to pay personnel salaries
- Ability to provide subgrantees funding



## Financial Controls

It begins and ends with cash...

- Ability to pay vendors/procurement:
  - Validate vendors (not just one time!)
  - Strong procurement policy/vendor selection/"too good to be true" concept
  - Validate pricing of good for the region where you purchased
  - Are the procured goods of the quality you bid on?
  - Is one vendor selected repeatedly? Why?
  - Did the activity happen? Hotel stays, transport, trainings, etc.



## Financial Controls

It begins and ends with cash...

- Ability to pay personnel salaries:
  - Simple question: does the employee exist?
  - Time records, accurate, timely, and reviewed/approved?
  - Involvement of senior executives in HR process?
  - Salary change approvals?



## Financial Controls

It begins and ends with cash...

- Ability to provide subgrantees funding:
  - How did you, as the prime recipient, validate the subgrantee financial report?
  - Did the personnel really work on the project? What verifiable evidence have you reviewed?
  - Did the trainings/events/outreach really occur? How did you validate?
  - Were the number of patients processed real?



## Financial Controls

- Low-hanging fruit for any organization anywhere in the world:
  - Performance of bank reconciliations timely and accurately by persons not involved in the cash disbursement process.
  - IT controls work if you let them work. Password changes often...
  - Perform vendor checks on a regular basis.
  - Organization's name on a bank account instead of member of staff.
  - How do you keep data records (backup and recovery)? Do they leave an audit trail?
  - Altered documents should be challenged.
  - Photoshop is incredible; consider validating invoices through other means rather than just the piece of paper.
  - Challenge your whistleblower policy.



## Financial Controls

### U.S. Treasury Interests

- Financial Crimes Enforcement Network (FinCEN) Form 114: Report on Foreign Bank and Financial Accounts
- IRS Form 8938: Statement of Specified Foreign Financial Assets
- IRS Form 926: Return by a U.S. Transferor of Property to a Foreign Corporation



## Solution #6

### Compliance with Funder Requirements

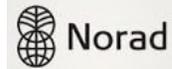


## Compliance with Funder Requirements

- Funding sources vary:
  - Institutional and government
  - Personal in-country donors
  - Membership
  - Events
  - Sales of products, such as publications
  - Sale of services, such as certifications

## Donor Activities

The Donor Oversight World Is a Changing Place...



## Donor Activities

Donors are demanding more...

- Transparency
- Access to books and records
- Focus on "their" dollar, euro, krona, West African franc, pound, etc.
- Focus on "their" piece of the program
- Responsiveness by receiving organization



## Donor Activities

Significant increase in the past four years related to:

- Performing audits of specific grant activity at grant materiality level
- Performing “agreed-upon procedures” on activity specific to their grant
- More increased scrutiny surrounding matters noted and attempts to claw back funds in question
- Focus on international accounting standards (not just U.S. GAAP)



## Donor Activities

Significant increase in the past four years related to:

- “Letter of the law”
- Far more focus on negotiating terms of reference
- Focus on subgrant monitoring and oversight of subgrants:
  - Monitoring of use of funds
  - Performance criteria



## Donor Activities

Things to consider:

- Upfront negotiation
- Understand the cost (negotiate who pays the costs incurred)
- Far more focus on negotiating terms of reference
- Negotiate terms of the audit/AUP or timing
  - Does it need to be done annually?
  - Only once?
  - AUP *or* Audit?
  - Local or international firms?
- Some money is not good money



## Solution #7

### Control Intellectual Property and Data



## Control Intellectual Property

- Protecting your Intellectual Property (IP):
  - Registered IP: Logos, trademarks, certification marks, and patents
  - Copyrighted material, such as standards
  - Depending on target country, IP rights and protection may be a high-risk issue
  - Is target country signatory to any international IP conventions?
- Is your IP registered and recorded in the U.S.?
  - Consider registration of IP (or “international” version of IP) under local laws in target country
  - Differentiating between IP and “confidential information,” i.e., business proprietary info (also requires contractual protections)

## Solution #8

### Contract Terms and Conditions



## Contract Terms and Conditions

Essential provisions for protecting your interests:

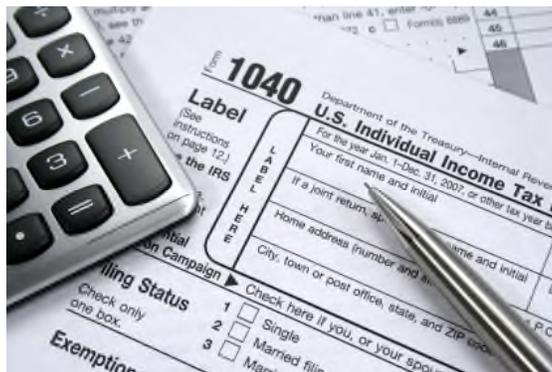
- Careful review of any agreement or contract between your U.S.-based nonprofit and a foreign entity is *key*.

A few “sticky” provisions:

- ✓ Dispute resolution: Forum, place, and type (e.g., mediation, arbitration, and litigation)
- ✓ Governing law: *Excluding a “conflicts of law provision”*
- ✓ Language
- ✓ Agency v. “independent contractor”
- ✓ IP: Firm IP and copyright language
- ✓ Performance-based measurable outcomes
- ✓ Flow-down provisions from funders
- ✓ Termination provisions (always *in writing*)
- ***Always a country- and fact-specific analysis.***

## Solution #9

### Pay the Tax Man



## Pay the Tax Man

- All country and local taxes:
  - Income
  - VAT and other sales taxes
  - Social taxes
  - Property taxes
- U.S. Reporting Requirements:
  - IRS Form 5471 for nonprofit's foreign corporation
  - IRS Form 8858 for disregarded entity
  - IRS Form 8865 for partnership entity

## Solution #10

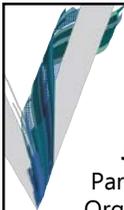
### Insurance





## Insurance

- Determine if your existing policy covers international operations.
- Get legal advice on mandatory or advisability of in-country policies.
- Evaluate the risks associated with the activities.
- *Regularly* consult with authorities and experts for political, cultural, financial, and physical security risks in countries.
- Consider persons exposed to the risk (employees, volunteers, contractors, etc.).
- Determine what protocols and policies reduce risk and increase chance of coverage.



## Questions?

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# Speaker Biographies

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 Tax Policy  
 Tax-Exempt Organizations  
 Regulatory

### INDUSTRIES

Nonprofit Organizations

### GOVERNMENT EXPERIENCE

Legislative Aide, United States House of Representatives

### BAR ADMISSIONS

District of Columbia

### EDUCATION

J.D., Catholic University of America, Columbus School of Law, 1996

B.A., Political Science, University of Pennsylvania, 1990

### MEMBERSHIPS

Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. He is one of the nation's leading nonprofit attorneys, and also is a highly accomplished author, lecturer, and commentator on nonprofit legal matters. Based in the firm's Washington, DC office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting charities, foundations, trade and professional associations, think tanks, advocacy groups, and other nonprofit organizations, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, litigation, and in dealing with the media. He also has served as an expert witness in several court cases on nonprofit legal issues.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association's Outstanding Nonprofit Lawyer of the Year Award, and was an inaugural (2004) recipient of the *Washington Business Journal's* Top Washington Lawyers Award. He was only a handful of "Leading Lawyers" in the Not-for-Profit category in the prestigious *Legal 500* rankings for the last five years (2012-16). Mr. Tenenbaum was recognized in 2013 as a Top Rated Lawyer in Tax Law by *The American Lawyer* and *Corporate Counsel*. He was the 2015 recipient of the New York Society of Association Executives' Outstanding Associate Member Award, the 2004 recipient of The Center for Association Leadership's Chairman's Award, and the 1997 recipient of the Greater Washington Society of Association Executives' Chairman's Award. Mr. Tenenbaum was listed in the 2012-17 editions of *The Best Lawyers in America* for Non-Profit/Charities Law, and was selected for inclusion in the 2014-16 editions of *Washington DC Super Lawyers* in the Nonprofit Organizations category. In 2011, he was named as one of Washington, DC's "Legal Elite" by *SmartCEO Magazine*. He was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by *Martindale-Hubbell*. Mr. Tenenbaum started his career in the nonprofit community by serving as Legal Section manager at the American Society of Association Executives, following several years working on Capitol Hill as a legislative assistant.

### REPRESENTATIVE CLIENTS

AARP  
 Academy of Television Arts & Sciences  
 Air Conditioning Contractors of America  
 Air Force Association  
 Airlines for America  
 American Academy of Physician Assistants  
 American Alliance of Museums  
 American Association for the Advancement of Science  
 American Bar Association  
 American Cancer Society  
 American College of Cardiology  
 American College of Radiology

American Society of Association  
Executives

American Council of Education  
American Institute of Architects  
American Nurses Association  
American Red Cross  
American Society for Microbiology  
American Society of Anesthesiologists  
American Society of Association Executives  
America's Health Insurance Plans  
Anti-Defamation League  
Association for Healthcare Philanthropy  
Association for Talent Development  
Association of Clinical Research Professionals  
Association of Corporate Counsel  
Association of Fundraising Professionals  
Association of Global Automakers  
Association of Private Sector Colleges and Universities  
Auto Care Association  
Better Business Bureau Institute for Marketplace Trust  
Biotechnology Innovation Organization  
Brookings Institution  
Carbon War Room  
Catholic Relief Services  
CFA Institute  
The College Board  
ComPTIA  
Council on Foundations  
CropLife America  
Cruise Lines International Association  
Cystic Fibrosis Foundation  
Democratic Attorneys General Association  
Design-Build Institute of America  
Entertainment Industry Foundation  
Erin Brockovich Foundation  
Ethics Resource Center  
Foundation for the Malcolm Baldrige National Quality Award  
Gerontological Society of America  
Global Impact  
Good360  
Goodwill Industries International  
Graduate Management Admission Council  
Habitat for Humanity International  
Homeownership Preservation Foundation  
Human Rights Campaign  
Independent Insurance Agents and Brokers of America  
InsideNGO  
Institute of International Education  
International Association of Fire Chiefs  
International Rescue Committee  
International Sleep Products Association  
Jazz at Lincoln Center  
LeadingAge  
The Leukemia & Lymphoma Society  
Lincoln Center for the Performing Arts  
Lions Club International  
March of Dimes  
ment'or BKB Foundation  
National Air Traffic Controllers Association  
National Association for the Education of Young Children  
National Association of Chain Drug Stores  
National Association of College and University Attorneys  
National Association of College Auxiliary Services  
National Association of County and City Health Officials  
National Association of Manufacturers  
National Association of Music Merchants  
National Athletic Trainers' Association

National Board of Medical Examiners  
National Coalition for Cancer Survivorship  
National Coffee Association  
National Council of Architectural Registration Boards  
National Council of La Raza  
National Defense Industrial Association  
National Fallen Firefighters Foundation  
National Fish and Wildlife Foundation  
National Propane Gas Association  
National Quality Forum  
National Retail Federation  
National Student Clearinghouse  
The Nature Conservancy  
NeighborWorks America  
New Venture Fund  
NTCA - The Rural Broadband Association  
Nuclear Energy Institute  
Peterson Institute for International Economics  
Professional Liability Underwriting Society  
Project Management Institute  
Public Health Accreditation Board  
Public Relations Society of America  
Romance Writers of America  
Telecommunications Industry Association  
The Tyra Banks TZONE Foundation  
U.S. Chamber of Commerce  
United States Tennis Association  
Volunteers of America  
Water Environment Federation  
Water For People  
WestEd  
Whitman-Walker Health

## HONORS

Recipient, New York Society of Association Executives' Outstanding Associate Member Award, 2015

Recognized as "Leading Lawyer" in *Legal 500*, Not-For-Profit, 2012-16

Listed in *The Best Lawyers in America* for Non-Profit/Charities Law (Woodward/White, Inc.), 2012-17

Selected for inclusion in *Washington DC Super Lawyers*, Nonprofit Organizations, 2014-16

Served as member of the selection panel for the *CEO Update* Association Leadership Awards, 2014-16

Recognized as a Top Rated Lawyer in Taxation Law in *The American Lawyer* and *Corporate Counsel*, 2013

Washington DC's Legal Elite, *SmartCEO Magazine*, 2011

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Recipient, The Center for Association Leadership Chairman's Award, 2004

Recipient, Greater Washington Society of Association Executives Chairman's Award, 1997

Legal Section Manager / Government Affairs Issues Analyst, American Society of Association Executives, 1993-95

AV® Peer-Review Rated by *Martindale-Hubbell*

Listed in *Who's Who in American Law* and *Who's Who in America*, 2005-present editions

## ACTIVITIES

Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter and on the American Society of Association Executives' Public Policy Committee. He previously served as Chairman and as a member of the ASAE *Association Law & Policy* Editorial Advisory Board and has served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government and Public Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of Aspen's *Nonprofit Tax & Financial Strategies* newsletter.

## PUBLICATIONS

Mr. Tenenbaum is the author of the book, *Association Tax Compliance Guide*, now in its second edition, published by the American Society of Association Executives. He also is a contributor to numerous ASAE books, including *Professional Practices in Association Management*, *Association Law Compendium*, *The Power of Partnership*, *Essentials of the Profession Learning System*, *Generating and Managing Nondues Revenue in Associations*, and several Information Background Kits. In addition, he is a contributor to *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. Mr. Tenenbaum is a frequent author on nonprofit legal topics, having written or co-written more than 700 articles.

## SPEAKING ENGAGEMENTS

Mr. Tenenbaum is a frequent lecturer on nonprofit legal topics, having delivered over 700 speaking presentations. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit legal issues for *NBC News*, *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *Los Angeles Times*, *The Washington Times*, *The Baltimore Sun*, *ESPN.com*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *CEO Update*, *Forbes Magazine*, *The Chronicle of Philanthropy*, *The NonProfit Times* and other periodicals. He also has been interviewed on nonprofit legal topics on Fox 5 television's (Washington, DC) morning news program, Voice of America Business Radio, Nonprofit Spark Radio, and The Inner Loop Radio.



## Anita K. Drummond

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### AREAS OF PRACTICE

Regulatory

Tax-Exempt Organizations

### INDUSTRIES

Nonprofit Organizations

### GOVERNMENT EXPERIENCE

Advocate and Assistant Chief Counsel, Small Business Administration

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Virginia

Not admitted in the District of Columbia

### EDUCATION

J.D., George Mason University, 2000

Chief Justice, Moot Court

President, George Mason American Inn of Court

Dean Scholar

B.A., University of Central Florida, 1988

Anita Drummond is a member of Venable's nonprofit organizations practice group. She has significant experience working in-house for nonprofit organizations and for the federal government, as well as in private practice. She is well versed in the broad range of legal issues facing nonprofits, and is very focused on using the law to help nonprofits further their mission and achieve their goals.

Prior to joining Venable, Ms. Drummond spent nearly a decade at The Nature Conservancy, an international NGO, most recently as associate general counsel. In this role, she managed the organization's internal and external legal counsel on federal tax exemption and charity regulation, private and public funding, government relations, finance and taxes, human resources, insurance, conservation services, marketing, intellectual property, and technology. She also led the development and implementation of a focused internal legal practice for innovative programs, such as social impact investment, and for the specialized legal needs of domestic and international clients.

Ms. Drummond's other in-house nonprofit experience includes stints as Director of Legal and Regulatory Affairs for the Associated Builders and Contractors, Director of Government Relations for the American Subcontractors Association, and Manager of Public Affairs for the American Council of Independent Labs. She also worked for the U.S. Small Business Administration as an advocate and assistant chief counsel. In private practice, Ms. Drummond represented corporate and individual clients in civil litigation and served as a court-appointed child advocate.

### PUBLICATIONS

- November 29, 2016, *It's Never Too Late: Enhancing Charity Fundraising Transparency and Legal Compliance at Year-End*, Nonprofit Alert
- November 10, 2016, *Federal and State Regulators and Watchdog Groups Are Bearing Down on Charities and Their Professional Fundraisers: How to Prepare for the Regulatory Storm*
- September 22, 2016, *Global Business: Partners out of the US*
- September 21, 2016, *Are You Ready to Work with Corporate Partners?*
- September 21, 2016, *Setting the Stage for Corporate Partners*
- August 15, 2016, *Nonprofit Fundraising and Revenue Generation through a Legal Lens: Everything Non-Attorneys Need to Know*
- August 2016, *Overview of State Regulation of Charitable Organizations*
- August 2016, *When the Convention Parties Are Over: How Public Charities Can Be Involved in the 2016 Elections and Talk about the Issues*, Nonprofit and Political Law Alert

- July 11, 2016, Working Effectively with Outside Counsel: What Every Nonprofit Should Know
- June 2016, Federal Grants and Contract News for Nonprofits - June 2016
- June 2016, How to Scope, Select and Use Outside Counsel
- June 2016, Nonprofit Considerations for Legal Counsel

## SPEAKING ENGAGEMENTS

- November 10, 2016, Federal and State Regulators and Watchdog Groups Are Bearing Down on Charities and Their Professional Fundraisers: How to Prepare for the Regulatory Storm
- October 17, 2016, "Operating Abroad: A Primer for US Nonprofit Operations Overseas" at the 2016 ACC Annual Meeting (Nonprofits Organizations Committee)
- August 15, 2016, "Nonprofit Fundraising and Revenue Generation through a Legal Lens: Everything Non-Attorneys Need to Know" at the 2016 ASAE Annual Meeting & Expo
- July 12, 2016 - July 14, 2016, "How to Scope, Select and Use Outside Counsel," InsideNGO 2016 Annual Conference  
Anita K. Drummond
- June 16, 2016, "Non-Profit and Associations and Global Issues Forum: Taking Your Organization Global – An Overview for NFP Organization," hosted by Association Corporate Counsel  
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### AREAS OF PRACTICE

International Trade and Customs  
 Foreign Corrupt Practices Act and  
 Anti-Corruption  
 Homeland Security  
 Consumer Finance  
 Brand and Content Protection  
 Regulatory  
 Legislative and Government Affairs

### INDUSTRIES

Maritime  
 Transportation and  
 Transportation Infrastructure

### BAR ADMISSIONS

Maryland  
 District of Columbia

### COURT ADMISSIONS

U.S. Court of International Trade

### EDUCATION

J.D., *cum laude*, American  
 University, Washington College of  
 Law, 2007

Senior Staff Member, *American*

Carrie Kroll McMullan's practice focuses on a wide range of international trade issues at Venable, including advising companies on compliance with import and export control laws and regulations before numerous regulatory authorities, such as the U.S. Customs and Border Protection (CBP), International Trade Commission, Commerce Department's Bureau of Industry and Security (BIS), State Department's Directorate of Defense Trade Controls (DDTC), Treasury Department's Office of Foreign Assets Control (OFAC), and the Committee on Foreign Investment in the United States (CFIUS).

Ms. McMullan has experience counseling multinational companies on export controls compliance, including overall license authorization and registration needs. She has assisted clients in assessing and developing internal compliance programs, including compliance training on U.S. export and import laws. She has also worked on voluntary disclosures and has defended exporters facing investigations for alleged violations of U.S. export control laws.

Concerning import transactions, Ms. McMullan has worked on disclosures to U.S. Customs and has defended clients during detentions, forfeitures, seizures, investigations and related matters, such as ruling requests and protests, as well as compliance with U.S. Fish and Wildlife Service regulations (e.g. Lacey Act and CITES). She has assisted companies navigating preferential trade programs and U.S. Customs assessments (e.g. ISA and C-TPAT).

Ms. McMullan has advised multinational companies in the transportation and logistics sectors; avionic, high technology, petrochemical, pharmaceutical, food and retail industries; as well as trade associations, on international transactional matters and conducting trade activities overseas. She regularly provides guidance regarding compliance with the anti-bribery provisions of the U.S. Foreign Corrupt Practices Act.

### ACTIVITIES

Ms. McMullan maintains an active pro bono practice, including legal work to support the relief efforts undertaken by NGOs in the land tenure and anti-corruption sectors in Haiti after the 2010 earthquake. Additional pro bono experience includes handling asylum and landlord-tenant cases in DC and Maryland.

### PUBLICATIONS

- October 19, 2016, Top Five Takeaways: Wassenaar Arrangement Updates to Commerce's Encryption-Related Export Controls, *International Trade Alert*
- September 8, 2016, There's a New Sheriff in Town for AD and CVD Orders, *Law360*
- August 2016, Do You Import Goods Subject to AD and CVD Orders?, *International Trade Alert*

*University International Law  
Review*

International Human Rights Law  
Clinic

M.A., International Affairs,  
American University, School of  
International Service, 2007

B.A., University of Virginia, 2001

## MEMBERSHIPS

American Bar Association,  
International and Administrative  
Law Sections

Maryland Bar Association

## LANGUAGES

Spanish

- June 2016, Federal Grants and Contract News for Nonprofits - June 2016
- June 30, 2016, Making the New Miscellaneous Tariff Bill ("MTB") Process Work for You, International Trade Alert
- June 17, 2016, Receive a BIS-Issued Subpoena and Wonder What It's All About?, International Trade Alert
- May 9, 2016, Chinese Government Passes Landmark Law Tightening Controls on Nonprofits
- September 29, 2015, The Obama Administration Continues to Expand Opportunities in Cuba, International Trade Alert
- April 20, 2015, Closing the 100-mile Gap: Delisting Would Bring the U.S. Closer to Liberalizing Trade and Investment with Cuba, International Trade Alert
- April 10, 2015, White House Opens New Front to Combat Cyber Attacks, Cybersecurity Alert , International Trade Alert
- January 22, 2015, Advertising Law News & Analysis - January 22, 2015, Advertising Alert
- January 21, 2015, U.S. Business Looks to Cuba under New Obama Rules, International Trade Alert
- December 2014, Russian Roulette: Congress Gives President Discretion to Impose New Sanctions Against Russia, International Trade Alert
- December 18, 2014, "Overseas Operations – Managing Risks Related to International Activities" Chapter in Exposed: A Legal Field Guide for Nonprofit Executives
- October, 2014, Decoding Export Controls: Does the Latest BIS Settlement Signal a Trend in Increased Enforcement Actions Involving Encryption?, International Trade Alert
- February 20, 2014, Conducting Operations Overseas: What Every Nonprofit Should Know
- February 2014, BIS Proposes First Rewrite of Routed Export Rules in Over a Decade, International Trade Alert
- February 2014, Iran Sanctions Deal Does Not Alleviate Current U.S. Economic Sanctions: "Iran Is Not Open for Business," International Trade Alert
- December 2013, Enforcing the New Export Control Regime, International Trade Alert
- December 2013, WTO Trade Facilitation Package Will Reform Least-Advanced Customs Administrations, International Trade Alert
- October 15, 2013, Rolling Out a New Export Control Regime During a Government Shutdown, International Trade Alert
- October 2013, Closing Time: How the Government Shutdown Affects Global Trade, Client Alerts
- September 2013, License Exception Strategic Trade Authorization: Understanding How It May Work for You, International Trade Alert
- September 26, 2013, Nonprofit Executive Summit: Bringing Nonprofit Leaders Together to Discuss Legal, Finance, Tax, and Operational Issues Impacting the Sector
- September 2013, October 15th Export Control Reform Changes Are Around the Corner: Take Time Now to Understand the Impact on Your Existing Licenses & Authorizations, International Trade Alert
- September 2013, State Department Publishes Long-Awaited Interim Final Rule Amending ITAR Brokering Provisions, International Trade Alert
- July 2013, OFAC Expands General License for Export of Basic Medical Supplies to Iran; Provides Additional Guidance, International Trade Alert
- July 2013, DC Court Strikes SEC Rule Requiring Extractive Industries' Reporting of Payments to Foreign Governments, International Trade Alert
- June 2013, Executive Order Targets New Sectors of Iranian Economy for Sanctions: Are You Prepared to Comply?, International Trade Alert
- March 1, 2013, Safe Passage: Managing Legal Risks when Your Association Meets Abroad

- December 2012, Developments in Eastern Congo Highlight Need for Companies to Prepare for SEC Conflict Mineral Rule Compliance, *Law360*
- November 2012, The New Foreign Corrupt Practices Act Resource Guide: An Opportunity to Review Your Nonprofit's Compliance
- October 2012, Time to Check the Entity List: Eleven U.S. and Russian Companies and Individuals Charged in Illegal Export Scheme and 165 Added to BIS' Entity List, International Trade Alert
- July 2012, Nicaragua Falls Short Again: Tariff Preference Level Reduced by 3% for 2012, International Trade Alert
- July 2012, OFAC Issues General Licenses Authorizing Investment and Exports of Financial Services to Burma, International Trade Alert
- July 12, 2012, Advertising News & Analysis - July 12, 2012, Advertising Alert
- July 2012, After Nearly Ten Years Under Review, CBP Revises Its Policy to Allow Post-Import Pricing Adjustments for Related Party Goods, International Trade Alert
- May 2012, U.S. Suspends Restrictions on Investment and Exports of Financial Services to Burma, International Trade Alert
- May 2012, IP Buzz - May 2012, IP Buzz
- May 21, 2012, U.S. Customs Adopts New Rule to Help Brand Owners Identify Counterfeits, *MARQUES Ltd.*
- April 2012, CBP Adds a New Tool to its Anti-Counterfeit Arsenal: New Rule Brings IP Rights Holders into Pre-seizure Investigative Process, International Trade Alert
- March 2012, Korea-U.S. Free Trade Agreement Enters Into Force, *International Trade and International Arbitration Alert*
- February 22, 2012, Overseas Operations: What Every Nonprofit Should Know Before Crossing U.S. Borders
- November 8, 2011, Considering Operations Overseas?: What Every Nonprofit Should Know Before Crossing U.S. Borders
- May 18, 2011, Update: Developments in Compliance & Enforcement under the Lacey Act
- March 2011, Obama Bans Transactions with Libyan Government and its Controlled Entities, International Trade Alert
- March 2, 2011, Party Politics Versus Trade Policy
- 2011, Emerging Enforcement Target: Global Commerce – Logistics and Transport Sector Targeted by Increased U.S. Export Controls and Anti-corruption Enforcement Actions: How to Protect Your Company, *Wolters Kluwer Global Trade and Customs Journal*
- February 2011, Capitol View - February 2011
- October 2010, U.S. Trade Representative Seeks Public Comment For List of Markets Notorious for Counterfeiting, Client Alerts
- August 2010, New Financial Sanctions Regulations Target Iranian Business Activities of Non-U.S. Financial Institutions, International Trade Alert
- August 2010, DDTC Levies \$42 Million Fine for Export Control Violations, International Trade Alert
- August 2010, A Lesson in Successor Liability: GE Settles Oil for Food FCPA Allegations, FCPA and Anti-Corruption News E-lert
- August 2010, Proposed DDTC Rule Would Reform Requirements Affecting Dual- and Third-Country National Employees, International Trade Alert
- July 2010, Implementation of U.K. Bribery Act Postponed for Six Months, FCPA and Anti-Corruption News E-lert
- July 2010, Significant Changes to U.S. Export Control Regulations on Encryption: First Steps to "Mass Market" and "Ancillary" Cryptography Products, International Trade Alert
- June 2010, DoD Contractors and Subcontractors: Are You Complying with the New Flowdown Notice Requirement on U.S. Export Control Laws?, Government Contracts Update

- April 2010, FMC Issues Long-Awaited Proposed Rule on NVOCC Tariff Rules, International Trade Alert
- April 2010, If You Export, Proposed Sweeping Export Control Reforms Will Likely Affect Your Business, International Trade Alert
- March 2010, FMC Votes to Grant NVOCCs Relief from Current Tariff Publishing Requirements, International Trade Alert
- February 2010, U.S. Customs and Border Protection "10 + 2 Initiative": Enforcement Has Begun!, International Trade Alert
- January 2010, DOJ Targets Pharmaceutical & Life Sciences Companies for FCPA Enforcement, Client Alerts
- August 2009, Exporters Beware: Recent BIS Settlements Forewarn Strict Adherence to Heightened Penalties—Even with Voluntary Disclosures!, International Trade Alert
- August 13, 2009, Recent Crackdown on U.S. Export Compliance for Logistics Providers, International Trade Alert
- August 2009, Organization of Economic Cooperation and Development (OECD) Releases Firm Policy Statement on Bribery in International Business Transactions, Client Alerts
- March 2009, Consumer Product Safety Improvement Act and Issues for U.S. Importers

## SPEAKING ENGAGEMENTS

- September 20, 2016, How to Protect Nonprofits' Federally Funded Programs with Global Anti-Corruption Controls, co-sponsored by Venable LLP and InsideNGO
- June 18, 2015, The Changing Sanctions Landscape: Past, Present and Future
- February 20, 2014, Association of Corporate Counsel Webcast: "Conducting Operations Overseas: What Every Nonprofit Should Know"
- September 26, 2013, Nonprofit Executive Summit: Bringing Nonprofit Leaders Together to Discuss Legal, Finance, Tax, and Operational Issues Impacting the Sector
- September 24, 2013, "International Association Legal Issues" at GLOBALSTRAT's Global Growth Workshop, Washington, DC
- September 19, 2013, "International Association Legal Issues" at GLOBALSTRAT's Global Growth Workshop, Chicago
- February 22, 2012, Overseas Operations: What Every Nonprofit Should Know Before Crossing U.S. Borders
- November 8, 2011, Legal Quick Hit: "Considering Operations Overseas?: What Every Nonprofit Should Know Before Crossing U.S. Borders" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- May 18, 2011, "Lacey Act Compliance Update" webinar for NAMM
- April 9, 2010, Foreign Corrupt Practices Act (FCPA) Assessing Risk and Maintaining Compliance Webcast



## Matt Cromwell

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### EXECUTIVE SUMMARY

Matt Cromwell is an Assurance partner with extensive experience performing audits and providing accounting and consulting services for nonprofit organizations. Matt joined BDO in January 2009 after 15 years with Ernst & Young.

His experience includes:

- Planning, performing and supervising a wide array of financial statement audits
- Analyzing internal controls and policies, and writing accounting policies and procedure manuals
- Performing work in over 20 international locations for non-governmental organization (NGO) clients
- Interfacing regularly with audit committees, providing both governance insight and commentary on adequacy of the client's accounting function
- Compliance auditing of organizations receiving international funding in accordance with specific multisource reporting requirements
- Working with organizations with multiple nonprofit and for-profit entities
- Dealing with federal government appropriations and related accounting for federal requirements
- Analyzing and testing key audit areas, including revenue recognition, compliance with nonprofit financial statement standards, alternative investment testing and compliance, and addressing fair value considerations
- Compliance auditing for organizations receiving significant federal funding from many different agencies in accordance with Office of Management and Budget (OMB) Circular A-133
- Performing and reviewing program-specific compliance audits and agreed-upon procedures engagements
- Consulting with clients on internal control reviews, policies and procedures manuals, indirect cost analyses, A-122 and A-110 matters, and audits by federal and private grantors

### PROFESSIONAL AFFILIATIONS

American Institute of Certified Public Accountants  
District of Columbia Chamber of Commerce, Past Board Member  
George Mason University Accounting Advisory Council, Past Chairman  
Greater Washington Society of CPAs (GWSCPA), Nonprofit Curriculum Subcommittee Member  
Virginia Society of Certified Public Accountants (VSCPA)



# Additional Information

## ARTICLES

June 2016

### FEDERAL GRANT AND CONTRACT NEWS FOR NONPROFITS - JUNE 2016

This June has been memorable. Earlier this month, the U.S. Supreme Court issued an important **decision** on the federal False Claims Act (FCA) that provided a bit of a mixed bag for nonprofits. Recently unsealed pending cases may provide important guidance as federal courts begin the task of implementing *Escobar* in relation to federal funding recipients—particularly those with an international presence. Further, the Financial Action Task Force (FATF) updated its recommendations to regulating countries regarding money laundering and terrorist funding in nonprofits. The U.S. General Services Administration (GSA) also made **notable changes** to key provisions of the Federal Supply Schedule (FSS) contract that GSA FSS contractors should review.

#### Renewed Expectations for NGOs: Preventing Money Laundering and Terrorist Financing

On June 27, 2016, the FATF **revised its recommendations to include: "Recommendation 8: Non-profit Organizations."** FATF is an inter-governmental policy-making body that sets forth international standards for anti-money laundering and anti-terrorist financing by making recommendations to countries for the establishment of national policies.

Recommendation 8 specifically asks countries to review their laws and regulations governing nonprofits. Although Recommendation 8 is not itself a regulation for nonprofits to follow, it provides valuable insights for nongovernmental organizations (NGOs) and other nonprofits into the measures that may be expected by grant makers and regulators in preventing serious financial misdealing.

Importantly, FATF recommends that NGOs be required to exercise "reasonable" due diligence for parties giving to and receiving funds from nonprofits, but FATF goes on to say that NGOs should not have to meet the higher "Know Your Customer" standard of financial institutions. Given the uncertainty of a reasonable due diligence standard, funding agencies may be looking to the FATF standards as a guide. NGOs should review their current policies and practices for the prevention of money laundering and terrorist financing, including:

- Confirmation of the identity of people who control activities and funds, such as senior managers and board members;
- Confirmation of the identity and credentials of beneficiaries and those receiving funding;
- Monitoring on-the-ground activities;
- Full accounting of funds;
- Use of regulated financial systems wherever feasible;
- Documentation of the identity of significant donors while respecting their confidentiality; and
- Retention of records of transactions for at least five years, with sufficient detail to verify funds received and expended.

While not directly addressed in the FATF standards, policies should be practical, as measured by a risk matrix to determine what parties, places, and activities require respective levels of scrutiny. A policy also should include a process for evaluating and reporting suspicions of funding misuse to appropriate management and authorities.

In addition, governments are also encouraged by FATF to conduct training, require licensing and financial reporting of NGOs, and develop investigative expertise.

Along these lines, Venable will be holding a global anti-corruption controls luncheon/program and webinar for nonprofits on September 20, 2016 to discuss these and similar issues, as well as internal controls and compliance considerations. For more information and for registration, [click here](#).

#### The Importance of Developing a Compliance Process for Performing under Federal Grants and Contracts

The U.S. District Court for the Southern District of New York recently unsealed a lawsuit against a

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## RELATED PRACTICES

Government Contracts  
Government Grants and  
Contracts for Nonprofits

## RELATED INDUSTRIES

Nonprofit Organizations

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contractor accused of defrauding the U.S. Agency for International Development (USAID) for projects seeking to rebuild Pakistan's infrastructure following the 2005 earthquake ([Case No. 1:14-cv-09107](#)). In particular, the contractor is accused of not providing qualified personnel, billing for hours not performed, and failing to provide the promised project supervision, all of which resulted in substandard work at an excessive cost.

Meeting contractually agreed-upon labor qualifications, accurately recording time, and sufficiently monitoring a project may appear to be requirements that are relatively basic and, in many respects, simple to ensure. Nevertheless, nonprofits overseeing contractors, and contractors themselves, inadvertently fail to meet these requirements. Furthermore, while the recent *Escobar* decision makes clear that the FCA is *not* intended to be used to enforce basic contract terms, it is clear that the U.S. Justice Department and federal agency Inspectors General will be examining the goods and services the parties fundamentally contracted for (i.e., the reason for the contract), and whether the failure to disclose noncompliance undermines the parties' representations related to those goods and services.

For these reasons, we advise clients (or their contractors) that before starting work on any project, that a team review the applicable federal agreement (whether grant, cooperative agreement, or contract) and the associated regulatory requirements and develop a compliance matrix that lists the key requirements, as well as the person responsible for ensuring compliance with each key provision. The process itself will help to provide a defense against allegations of "reckless disregard," the standard under the FCA, and create greater internal accountability. This process will help both the nonprofit and the federal government clarify which provisions are ambiguous. For example, with the heightened standards of oversight set forth under the Uniform Guidance, nonprofits need to establish clear standards with their government customers on what level of oversight is required—particularly for work done in distant places. The process also may highlight the requirements the organization may need to seek an exception for, such as seemingly insignificant labor qualifications. Any deviation of labor qualification should be approved by your grants agreement officer in writing.

Finally, since the above-referenced matter was initiated through the *qui tam* whistleblower mechanism under the FCA, we continue to stress to nonprofits that they must develop and publicize a compliance program, educate their workforce (and their contractor's workforce) on the program, and create strong channels through which employees, vendors, and/or business partners can report their problems. This then gives the organization the ability to review and appropriately address concerns, rather than making employees feel that they must approach a federal agency to avoid their own personal liability.

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### Upcoming Nonprofit Luncheon/Program and Webinar

#### **How to Protect Nonprofits' Federally Funded Programs with Global Anti-Corruption Controls, co-sponsored by Venable LLP and InsideNGO**

Tuesday, September 20, 2016 | 12:00 - 2:00 p.m. ET

In the wake of recent headlines concerning corrupt use and handling of U.S. funds, nonprofits relying on federal grants, cooperative agreements, and contracts must take away key lessons to protect their program funds and revenue. It's more than bribery. During this program, our panelists—including a key representative from USAID's Inspector General's Office—will examine the characteristics of several recent events as well as findings regarding fraudulent payments to vendors and corrupt employment practices in the Middle East impacting the work of U.S. nongovernmental organizations (international NGOs). This program will take you beyond the four corners of the federal False Claims Act and Foreign Corrupt Practices Act to provide participants with legal and practical solutions to protect your nonprofit's program integrity and revenue.

[Click here for more information and to register.](#)

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To view our prior publications on nonprofit government grant and contract issues, please [click here](#).

## ARTICLES

May 9, 2016

### CHINESE GOVERNMENT PASSES LANDMARK LAW TIGHTENING CONTROLS ON NONPROFITS

On April 28, 2016, China's national legislature passed a sweeping, controversial new law regulating the activities of foreign (non-Chinese) nonprofit, nongovernmental organizations' (NGOs) activities in China. The "[\*Law on the Management of Foreign Nongovernmental Organization Activities inside Mainland China\*](#)" (the Law) is set to be effective January 1, 2017 and, as enacted and understood, would impose significant administrative burdens and numerous restrictions on the activities of most US- and non-Chinese-based NGOs currently operating in China and those seeking to conduct activities in China.

Foreign NGOs around the world have been following China's draft legislation of the Law for a year. While the final law is narrower in scope than a [\*prior draft released last year\*](#), implementation and enforcement of various provisions remains uncertain and are likely to be subject to administrative discretion. Of importance to any foreign NGO looking to conduct activities in China are the following elements of the Law: new State control and supervisory powers; complex registration and reporting requirements (including audited financial reports and plans on planned activities); and new restrictions on engaging in certain activities, such as recruiting, maintaining multiple offices, and funding political activities. Compliance with these requirements will require nonprofits that operate in China to make significant and, in some cases, challenging modifications to their governance and operational structures.

As adopted, the Law contains general and vague terms, resulting in national enforcement officials retaining discretion over its implementation. Before the Law takes effect, foreign NGOs should familiarize themselves with the Law, assess their current or planned activities in China, and determine whether further legal guidance may be necessary to ensure continued success of their operations under China's complex bureaucratic system.

#### Applicability and Scope of Permissible Activities and Operations

The Law broadly applies to any foreign NGO seeking to carry out activities within mainland China. The stated purpose of the Law is to "regulate and guide activities conducted by foreign NGOs within mainland China, safeguard their lawful rights and interests, and promote exchanges and cooperation."

- **NGOs Are Broadly Defined.** The Law defines "foreign NGO" as any "not-for-profit, non-governmental social organizations lawfully established outside mainland China." Mainland China does not include Hong Kong, Macau, or Taiwan.
- **Potential Exemption for Certain Academic and Research Organizations.** Additionally, the Law specifies that certain academic and research exchange programs working with Chinese counterpart institutions will follow existing regulations rather than the Law, but the identification of these exempt institutions remains unclear and will require further clarification from Chinese authorities.
- **Limited Scope of Authorized Activities.** Be aware—the Law requires NGOs to limit their activities to certain "approved" topical areas that are "beneficial to the development of the social welfare in fields such as economics, education, science, culture, health, sports, and environmental protection, and for areas such as poverty relief and disaster relief."
- **Prohibited Activities.** Unless special permission is granted, the Law generally prohibits foreign NGOs from recruiting members in China or establishing chapters, regions, or affiliates from within mainland China. Foreign NGOs also are prohibited from "engaging in or funding for-profit activities or political activities," and "illegally engaging in or funding religious activities" within mainland China.

#### Establishing Legal Domicile and Presence

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## RELATED PRACTICES

International Trade and Customs

## RELATED INDUSTRIES

Nonprofit Organizations

## ARCHIVES

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The Law tightens supervisory requirements for conducting business in China on a temporary or permanent basis.

- **Documentation and Multiple Approvals.** To complete the registration process, foreign NGOs must satisfy numerous approval and documentation requirements.
- **Registration Requirements.** Consistent with current time-consuming hurdles to entering the Chinese market, any foreign NGO conducting activities in China must either obtain approval to establish a permanent representative office (RO) or carry out temporary activities under the supervision of a (local) government-affiliated sponsor for up to one year.
- **Penalties for Failing to Register.** Foreign NGOs that have not properly registered or secured a host organization cannot conduct activities within China, and are subject to fines and detention.
- **Police Control and Oversight.** Notably, in contrast to prior practice, the Law shifts authority to register and supervise foreign NGOs from the Ministry of Civil Affairs to the national Ministry of Public Security.

### Operational Requirements

The Law imposes exacting, administratively burdensome operational requirements and requires the disclosure of sensitive personal and business information to the Chinese government.

- **No Branch Offices.** The Law specifies that foreign NGOs may have only a RO in China unless a special exception is granted. This is similar to current practice and would require foreign NGOs that already have branch-type offices in China to shut them down.
- **Restrictions and Qualifications of Foreign Officers and Staff.** The Law caps the number of employees that may work in a RO to four individuals. Each RO may have one chief representative and up to three other representatives as required for operations. Further, the Law contains hiring restrictions and qualifications on who may serve as a Foreign NGO's representative.
- **Stringent Financial Controls.** The Law contains provisions which further specify and build on pre-existing restrictions regarding the source of funds used by foreign NGOs, maintenance of funds using Chinese bank accounts, and expatriation of such funds.
- **Activity and Financial Reporting.** The Law imposes onerous reporting and auditing requirements. Foreign NGOs must submit annual reports to police authorities detailing sources of financing, spending activities, and changes in personnel for each RO in the past year.
- **Future Planning Reporting.** The Law also requires foreign NGOs to submit in writing all "planned activities" for the coming year to Chinese government sponsors and the Ministry of Public Security.
- **Audit Requirement by Chinese Firm.** Foreign NGOs must publicly disclose their financial records and have the financial records audited by certified Chinese accounting firms.

### Enforcement Authorities

As currently understood, the Law provides that Foreign NGOs will be subject to control and oversight by various governmental authorities. However, primary enforcement authority has been shifted to police authorities, who appear to have been granted increased supervisory control over Foreign NGOs. Obviously, this is a notable development for any foreign NGO.

- **Broad Supervisory Powers.** As drafted, the Law appears to grant broad discretionary powers for police to question and detain NGO workers, monitor their finances, regulate their work, shut down offices, and seize their property.
- **Vaguely Defined Offenses.** The Law generally prohibits Foreign NGOs from carrying out activities that harm China's national unity, security, or ethnic unity or endanger its national interests. It also criminalizes "inciting resistance to the implementation of laws," as well as "creating rumors" or publicizing information that damages state security or national interests. These terms are not defined and invite the possibility of selective enforcement.
- **Proceed with Caution.** Numerous critics have stated that the Law was adopted to preempt potential political threats against the ruling Communist Party as part of a broader crackdown on organizations promoting the growth of China's civil society. Regardless of the political undertones, now that the Law has been enacted, it is essential for foreign NGOs to be cautious about operations in China. This is true whether or not your NGO is involved in what may be considered politically sensitive activities because, until implemented, it is not clear what the breadth of the Law's interpretation by Chinese

authorities will be.

\* \* \* \* \*

Although details on implementation of the Law have not yet been published, additional guidance from Chinese officials is reportedly forthcoming. In reviewing your "checklist" of considerations for new or continued activity in China, even if a one-time event, it is essential to ensure that you understand if and how the Law will affect your operations. NGOs should reexamine risks and take precautions regarding establishing a presence in China, partnering with existing organizations, moving funds in furtherance of the NGO's purpose, and any employees of the NGO operating in China from a legal, insurance and security risk perspective.

We will be closely monitoring the ongoing implementation of the Law in China, and will update you as developments warrant.

## ARTICLES

October 29, 2014

### ACTIVE OVERSEAS? WHAT EVERY NONPROFIT NEEDS TO KNOW AND DO TO MINIMIZE THE RISK OF TERRORIST FINANCING

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)<sup>1</sup> 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.<sup>2</sup>

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."<sup>3</sup> 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.<sup>4</sup>

The most recent example of FATF's influence on U.S. law is FinCEN's "beneficial ownership" rulemaking.<sup>5</sup> 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.<sup>6</sup>

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).<sup>7</sup> 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

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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:

- . 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).
- . Anti-money laundering and economic sanctions laws of the countries in which a nonprofit either has a presence or carries out its mission.
- . 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).
- . 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:

- . 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.
- . Know your donors and the sources of your donors' funds.
- . Know your recipients and your recipients' projects.
- . Check all funders, staff, board members, suppliers, and recipients against the U.S. Department of Treasury Office of Foreign Assets Control (OFAC) lists.
- . 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.

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[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. [www.fatf-gafi.org](http://www.fatf-gafi.org)

[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").

[http://www.fincen.gov/statutes\\_regs/bsa/pending.html](http://www.fincen.gov/statutes_regs/bsa/pending.html)

[4] **FATF Mutual Assessments**

[5] CDD NPRM.

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

*Proceeds of Corruption* (June 2012); *FATF Report Laundering the Proceeds of Corruption* (July 2011)  
[7] *Linde v. Arab Bank Plc*, 04-cv-02799, USDC, EDNY (Sept. 22, 2014). 18 U.S.C. § 2331 *et seq.*