

Operational Instruction Ref. OI.LG.2018.07**Due Diligence****1. Authority**

- 1.1. This Operational Instruction (OI) is promulgated by the General Counsel, Legal Group, on the basis of a delegation of authority from the Executive Director.

2. Purpose

- 2.1. The purpose of this Operational Instruction (“OI”) is to establish the approach by which UNOPS shall conduct due diligence on companies, non-governmental organizations, foundations and other entities UNOPS wishes to engage with and/or enter into a commercial relationship, transaction or project/activity.
- 2.2. This OI is to be read together with Operational Directive Ref. OD.EO.2017.02 dated 13 October 2017, and UNOPS personnel may refer to the Process and Quality Management System (PQMS).
- 2.3. The goal of this OI is to create a comprehensive, clear, and systematically defined due diligence policy and procedure as an intrinsic part of UNOPS business practices. As such, this OI shall provide guidance ensuring both consistent quality in due diligence practices, and allocating responsibility to reviewing parties so as to best identify potential risk to UNOPS’ operations.

3. Effective Date

- 3.1. This OI will become effective on **immediately**.

[signature redacted]

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Operational Instruction Ref. OILG.2018.07**Due Diligence**Table of Contents

1. Introduction	2
2. Definition of Due Diligence	4
3. Where and when due diligence shall be required	5
4. Due diligence procedure overview	5
5. Initial risk assessment	7
6. Pre-engagement survey and score scale phase	9
7. Secondary risk assessment phase	10
8. Final due diligence requirements before project initiation	11
9. Exclusionary criteria	11
10. Ongoing due diligence	13
11. Establishment of a Due Diligence Register	13

1. Introduction

- 1.1. As UNOPS is engaged in the management of public resources, the Organization must consistently meet high standards of integrity, competency, and accountability.
- 1.2. Due diligence is an integral part of decision-making and risk management systems. Due diligence can best be described as a formal assessment, typically, of the potential legal, financial, operational and reputational risks and benefits that UNOPS could be exposed to or realize in engaging with a potential Partner. A due diligence process is therefore a powerful management tool that will provide UNOPS with a better understanding of both the risks and rewards of engaging with a potential Partner. Importantly, due diligence is an on-going, proactive and iterative process.
- 1.3. The aim of this due diligence policy and procedure is to ensure that UNOPS is equipped to make informed decisions concerning potential Partners and as such, establishes a minimum standard for the UNOPS due diligence assessment.
- 1.4. It is a requirement that UNOPS engages with Partners that are considered responsible. The due diligence assessments and evaluations are to determine that any potential Partner of which UNOPS would engage is affirmatively and sufficiently responsible. The areas of assessment that may influence the outcome of whether a Partner may be considered responsible is the extent to which the potential Partner can demonstrate possession of:
 - a. The necessary infrastructure of governance and internal control including, the necessary organization, experience, governance, policies and procedures of accounting, internal control, risk management, operational controls, policies to protect, investigate, and deal with issues relating to fraud, waste, abuse, bribery, corruption, and money laundering, and the appropriate technical skills, or the ability to obtain them;
 - b. The ability to deliver to international standards and of the highest quality including the requisite staff capacity and capability and appropriate programme management;
 - c. The necessary financial stability including financial viability, financial management, adequate financial resources, and demonstrated understanding of "value for money" principles; and

- d. The necessary commitment to integrity and business ethics.
- 1.5. This due diligence policy and procedure will provide UNOPS with a consistent approach to evaluating the selection of responsible, potential Partners. It is central to this policy, however, that a “one-size-fits-all” approach is not utilized in assessing an entity’s due diligence – the UNOPS personnel designated to make the relevant risk assessments will have authority to determine the required scope of due diligence on a case-by-case basis. It is also critical to this policy that the scope of the required due diligence assessment should be proportionate to the type of the potential Partner, and the value and nature of the project / activity. With these two principles in mind, this due diligence policy and procedure sets out:
- a. the due diligence procedure overview (see section 2 below);
 - b. the key considerations and principles that should be evaluated in the initial risk assessment of a potential Partner;
 - c. the stages of Due Diligence depending on the type of potential Partner; and
 - d. how that assessment fits into the engagement process and when due diligence is required.
- 1.6. This due diligence policy and procedure is not intended to be used as a tool or basis for imposing, reducing, or varying any legal or regulatory obligations of any potential Partner that may enter into an agreement with UNOPS. Each UNOPS Partner will be required to i) comply with all applicable laws and regulations to which it may be subject and ii) obtain any necessary authorizations, consents and approvals as it may require in relation to the project to be entered into with UNOPS.

2. Definition of Due Diligence

- 2.1. Due Diligence refers to a suite of analytical practices used to appraise the level and type of risk associated with a potential partnership.
- 2.2. Due diligence practices shall consider a range of issues affecting risk assessment before an Agreement may be executed with a prospective Partner. These issues, or categories, primarily include the following:
 - a. United Nations-specific due diligence comprises adherence to UN/UNOPS policies and principles such as Global Compact, prevention of sexual exploitation and the 1998 ILO declaration on Fundamental Principles and Rights at Work. Prospective

- Partners shall also demonstrate active support for, or the furthering of, UN/UNOPS principles and policies.
- b. Financial due diligence comprises analysis and review, for example, of a prospective partner's financial statements, tax returns, accounting policies, the strength of their internal control policies regarding financial management, internal controls, financial stability, risk management and financial trends.
 - c. Legal due diligence includes review of corporate documents, contracts and agreements, ongoing, pending and potential litigation, and legal and regulatory compliance.
 - d. Business due diligence includes analysis and review of a company's strategic and business plans, its governance structure and partner/stakeholder oversight, its customers and products, the markets and competition in which the entity participates, and the commitment to ethical standards and transparency in operations, including whether the entity has a Code of Conduct in place.
 - e. Operations due diligence includes analysis of operational risks and analysis and review of the company's technology, fixed assets and facilities, as well as real estate and insurance coverage.
 - f. Human resources due diligence includes analysis of an organization's structure, employee benefits, management and personnel, labour matters, and protections of whistleblowers.
 - g. Environment policies and practices.

3. Where and when due diligence shall be required

- 3.1. Broadly, due diligence, which will be undertaken by the Commercial and Institutional Law unit of the Legal Group, shall be required before engaging any new Partner and where necessary to mitigate against reputational risk incurred by UNOPS in its work with any unknown entity. The purpose of the due diligence is to ascertain the extent to which the potential Partner is sufficiently responsible.
- 3.2. A potential Partner may be a funding source for a UNOPS project or activity, a recipient of UNOPS project/activity assistance, or an entity that collaborates with UNOPS towards future or ongoing activities/projects. It is important to note that this policy does not apply to Vendors nor Grantees. See the Operational Directive Ref. OD.EO.2017.02 on Management of UNOPS Partners and Resulting Agreements for more information on relationships with partners.

- 3.3. Due Diligence for potential partners is required prior to the formation of the following agreements: framework agreements, engagement agreements, collaborative agreements, teaming or joint proposal agreements, or any other form of partner agreement that may be identified and developed accordingly. Due Diligence, as required within this Operational Instruction, does not apply to the UNOPS Procurement Process.
- 3.4. The exception to this general rule regarding the requirement for due diligence is where our potential Partner is a member of the United Nations (“UN”) system organization.
- 3.5. The purpose of the due diligence assessment and its various phases during the engagement process is to ascertain the extent to which the potential Partner is sufficiently responsible to either provide funding to UNOPS or otherwise engage with UNOPS.

4. Due diligence procedure overview

- 4.1. The stages of the due diligence procedure are typically as follows:
 - a. **Identification of the type of potential Partner.** The structure and affiliations of the potential Partner will dictate the type of due diligence to be performed. This is because each type of potential Partner presents its own distinct risks, and their due diligence should be structured to reflect this. The following are the four types of entities whose structure and affiliations will determine the extent of which due diligence is required:
 - i. Member State Governments and their sub-ministries
 - ii. Regional Governments and municipalities
 - iii. International financial institutions (“IFIs”) and Multilateral Development Banks (“MDBs”)
 - iv. Non-State, Non-UN Entity (“NUNSE”)
 - b. **Execution of Due Diligence for the potential Partner.** The phases of due diligence will occur in the following timeline:
 - i. The Initial Risk Assessment Phase (or known colloquially as the “Red Flag” Review) at the Opportunity Stage of the Engagement Process and is the responsibility of the Legal Group.
 - ii. The Pre-Engagement/Pre-Award Survey and Score Scale Phase which takes place at the Pre-Engagement Stage and is the responsibility of the Business Developer or Project Manager.

- iii. The Secondary Risk Assessment Phase which takes place at the Pre-Engagement Stage prior to the completion of the Engagement Process and is the responsibility of the Legal Group.
 - iv. The Final Review Phase, which takes place prior to the completion of the Engagement process and before the execution of the Engagement Agreements and is the responsibility of the Legal Group.
- c. **Ongoing due diligence.** This requirement ensures that UNOPS is protected into the future, even where the potential Partner is recommended as responsible in the present.
- 4.2. Where appropriate, the Legal Group shall engage a third party specializing in providing due diligence analysis. The selected entity shall follow the principles and procedural requirements set out in this OI and any other UNOPS regulations and rules.
- 5. Initial risk assessment**
- 5.1. The Legal Group must undertake the prescribed risk-based assessment of every potential Partner pursuant to its status as a Member State Government, Regional Government and its Municipalities, IFI/MDB, or NUNSE partner.
- 5.2. The Initial Risk Assessment must be completed at the Opportunity Stage of the Engagement Process for a new potential Partner, and whenever it is otherwise appropriate for existing Partners (see Section 10) for more details.
- 5.3. When undertaking an Initial Risk Assessment, the Legal Group will use the guidance/template documents as necessary to ascertain the red flag risk level of each potential Partner and the types of factors that would lead to a positive or negative due diligence report.
- 5.4. The requirements and evaluative factors of the Initial Risk Assessment are dependent on the type of potential Partner that is being assessed and are outlined below:

The Initial Risk Assessment Requirements and Procedure for Member State Governments:

For the potential Member State/ Government Partner, the initial risk assessment will contain a basic evaluation of their government structures and their ability to responsibly receive funding, country-conditions that may create legal, operational, or reputational risks to UNOPS, and the extent to which mitigation measures may be put in place to safeguard the relationship. This analysis will evaluate the country conditions, their corruption index score on the Transparency International website, and the extent in which UNOPS or other UN organizations have executed host country agreements or established UN offices within the State. See the Template/Guidance materials for more information.

The Initial Risk Assessment Requirements and Procedure for Regional Governments and Municipalities:

For the potential Regional Government and Municipalities Partner, because of their relationship with the Member State Governments, the risk assessment most likely will not require the same in-depth analysis of a Non-United Nations, Non-State Entity (NUNSE), but may require additional information beyond the Member State Government assessment. Further research will be required to determine whether the local officials, local laws, and local environment (to name some risk factors) are ethical and responsible enough to engage with UNOPS. The purpose of this closer look at a Regional Government or Municipality Partner is to determine if there are any present, local conditions that may create legal, operational, or reputational risks to UNOPS, and the extent to which mitigation measures may be put in place to safeguard the relationship.

The Initial Risk Assessment Requirements and Procedure for International Financial Institutions (“IFIs”) and Multilateral Development Banks (“MDBs”):

For the potential IFIs and MDBs partner, because of their composition of member states and are constructed as International Organizations with certain privileges and immunities and status, the initial risk assessment and overall due diligence assessment will relate to their ability to self-regulate, especially when it comes to fraud, waste, corruption, and abuse. Evaluations of IFIs and MDBs may include information, where available, from the Multilateral Organisation Performance Assessment Network or “MOPAN”, the United Kingdom’s Department for International Development’s (DFID) Multilateral Aid Reviews or “MAR”, the Australian Multilateral Assessment, or any other relevant assessment as needed to evaluate the strengths and weaknesses of any IFI or MDB.

Additional information to be included in the risk assessment may be the existence or lack of an investigation, audit, and/or sanction unit, and the type of policies and procedures in place to protect financial and non-financial assets.

The Initial Risk Assessment Requirements and Procedure for Non-United Nations, Non-State Entities (“NUNSE”):

For the potential NUNSE partner, the initial risk assessment is just one of several evaluations that will take place, with each level of risk assessment building off of previous ones. The Initial Risk Assessment, which functions as a “Red Flag Review” is to determine major risk factors that would create a significant or serious risk to our engagement with the NUNSE. The red flag assessment will review the following factors:

- a. The identity of the Partner, its sector and/or market of which it participates, its affiliates, its tax filing status and documents addressing its filings, the identify of its major shareholders, the country in which it has been incorporated, and who is responsible for the entity’s decision-making;

- b. Whether there are any recent or pending criminal or civil proceedings involving the entity (and its affiliates, shareholders, founders, or acting decision-makers) which would create legal, financial, operational, and reputational risks;
 - c. Whether the partner or its affiliates, shareholders, founders, or acting decision-makers have any negative press or internet research findings allude to fraud, waste, abuse, corruption, collusion, or bad acts that should be further investigated;
 - d. Whether the potential partner has been located on the UN Sanctions Lists;
 - e. Whether the potential partner has been involved or allegedly involved in any activities that would exclude the partner pursuant to the below section 9 on Exclusionary Criteria; and/or
 - f. Any additional information that would demonstrate that the NUNSE potential Partner is not sufficiently responsible as required pursuant to section 1.4 above.
- 5.5. After the Initial Risk Assessment, where all the potential Partners are able to satisfy, at first instance, that they are sufficiently responsible and are recommended by the Legal Group, the State Government potential Partner, the Regional Government and Municipality potential Partner, and the IFI/MDB potential Partner will be permitted to move forward in the Engagement process.
- 5.6. Where the NUNSE potential Partner is able to satisfy that it is sufficiently responsible and is recommended by the Legal Group, the NUNSE potential Partner will be permitted to continue onto the next stage of the NUNSE-specific, due diligence process: the Pre-Engagement Survey and Score Scale Phase.
- 5.7. However, it is important to note that where red flags were raised pursuant to the Initial Risk Assessment and/or the NUNSE potential Partner triggered the Exclusionary Criteria at Section 9, the Legal Group may consider the input of special conditions or mitigating measures to safeguard the relationship between UNOPS and the entity as they move forward in the Engagement Process to the Pre-Engagement Stage. See Section 9 Exclusionary criteria for more information.
- 5.8. A major requirement for passing the Red Flag Review is that the potential Partner must not be listed on the Consolidated United Nations Security Council Sanctions List as noted in Section 9.1 below.

6. Pre-engagement survey and score scale phase

- 6.1. This phase of the risk assessment is only required for NUNSE partners who have demonstrated in the Initial Risk Assessment that no red flags have surfaced regarding their responsibility as a potential partner for UNOPS.

- 6.2. This phase occurs during the Pre-engagement Stage and is a two-part procedure and is the responsibility of the cognizant UNOPS Business Developer or Project Manager:
- a. A pre-engagement survey will be submitted to the NUNSE partner by the UNOPS Business Developer or Project Manager who will be required to fill out the survey with the requisite documents and information. The survey requests the submission of operational information, policies, and procedures of the potential Partner to ensure that the partner has a strong organizational and governance structure, adequate financial management and internal control systems, appropriate human resources systems including Staff Code of Conducts and Whistleblower Protections, Project Performance Management including capacity and technical expertise as needed, among other requirements as needed pursuant to the requirements of the intended Engagement. The NUNSE will have 5 days to fill out and submit the pre-engagement survey to the UNOPS Business Developer or Project Manager.
 - b. The information within the survey will be evaluated by UNOPS Business Developer or Project Manager pursuant to a 1-10 score scale which will assess the strengths and deficiencies of the NUNSE partner. A score of 7 out of 10 will enable the UNOPS Business Developer or Project Manager to recommend the NUNSE partner to continue through the Engagement Process and to the Secondary Risk Assessment Phase.
- 6.3. Where the Pre-Engagement Survey and/or Score Scale phase reveal deficiencies of the NUNSE partner, this will not lead to an automatic exclusion of the entity. Additional safeguards, special conditions, or mitigating measures may be recommended to be incorporated into the relevant Legal Agreement or Project Design documentation, especially where the Partner's expertise or resource may serve a compelling need or fulfil a significant purpose on behalf of UNOPS.

7. Secondary risk assessment phase

- 7.1. This phase of the risk assessment is only required for NUNSE partners who have demonstrated in the Initial Risk Assessment that no red flags have surfaced regarding their responsibility as a potential partner for UNOPS and where the entity has been recommended to continue through the Engagement Process and to the Secondary Risk Assessment. This phase is the responsibility of the Legal Group.
- 7.2. This phase of the risk assessment evaluates the culmination of the initial risk assessment and the pre-engagement survey and score scale phase as compared to the logistics and technical requirements of the Engagement considered.

- 7.3. This evaluation looks at not only the responsibility of the NUNSE partner but its relative fit to the Engagement as being described in the project design documentation, and the needs of UNOPS in relation to the project.
- 7.4. This review ensures that the potential Partner will be able to deliver to and/or has the technical capacity and expertise at the highest international standards as required by UNOPS, the United Nations, and the rest of the international community.
- 7.5. Where specific project risks have been indicated, the ability of the NUNSE partner to mitigate these risks will be evaluated, as well as, if any additional safeguards, mitigating measures, or special conditions may need to be incorporated by recommendation of the Legal Group into the project design and the Legal Agreement.
- 7.6. This assessment shall be the responsibility of the Legal Group and will require the evaluation of the project documentation and any risks as identified throughout the Engagement Process by the Engagement Acceptance Committee.

8. Final due diligence requirements before project initiation

- 8.1. It is important before the initiation of the Project that it is ascertained that the potential Partner is sufficiently responsible to engage with UNOPS. This will include one final review of all of the documentation to ensure no exclusionary criteria as outlined at Section 9 is present and where appropriate, the project design documentation or the Legal Agreement incorporate mitigating measures, appropriate project safeguards, and any special conditions that would ensure, from a risk mitigation standpoint, that UNOPS, its reputation, mandate, and operations are protected from working with a non-responsible partner.

9. Exclusionary criteria

- 9.1. Automatic Exclusionary Criteria: Engagement is automatically rejected if the potential partner is listed on the Consolidated United Nations Security Council Sanctions List and no further checking is required against any additional exclusionary criteria. This automatic exclusionary criteria should be reviewed at the time of the Initial Risk Assessment.
- 9.2. Mandatory Exclusionary Criteria: Engagement is automatically considered high risk and will most likely lead to the recommendation that the potential Partner is not responsible if the potential Partner has been suspected or found to be involved in one or more of these areas:

- a. *Terrorism*: Has the potential partner committed acts contrary to the 1999 Convention for the Suppression of the Financing of Terrorism? If so, exclusion will be required, barring extraordinary circumstances identified in section 9.4.
 - b. *Violations of international law*: Has the potential partner been directly involved in violations of international law, including obligations regarding the protection of human rights or the environment? This should be verified based on judgments, decisions, reports or other authoritative documents issued by relevant United Nations bodies and mechanisms. The issues covered under this category are: violation of the prohibition of slavery and forced labor; violation of the rights of the child, including child labor; violation of obligations regarding minimum labor standards as set out in relevant ILO instruments; discriminatory practices in violation of relevant international law, including racial or gender discrimination. If so, exclusion will be required, barring extraordinary circumstances identified in section 9.4.
 - c. *Arms and munitions*: Is the potential partner involved in manufacturing weapons (including land mines and their components, weapons systems or weapons components)? This should be verified based on publicly available information issued by the potential partner (e.g. annual report on activities). If so, exclusion will be required, barring extraordinary circumstances identified in section 9.4.
 - d. *Tobacco*: Is the potential partner involved in manufacturing tobacco products? This can typically be easily verified based on publicly available information issued by the partner (e.g. annual report on activities). If so, exclusion will be required, barring extraordinary circumstances identified in section 9.4.
 - e. *Alcohol*: Is the potential partner involved in specialized manufacturing/distributing or retailing of alcoholic beverages? This can typically be easily verified based on publicly available information issued by the partner (e.g. annual report on activities). If so, exclusion will be required, barring extraordinary circumstances identified in section 9.4.
 - f. *Pornography*: Is the potential partner involved in pornography as a specialist in the production, content provision, or distribution of pornographic materials? This can typically be easily verified based on publicly available information issued by the potential partner (e.g. annual report on activities). If so, exclusion will be required, barring extraordinary circumstances identified in section 9.4.
- 9.3. Potential Exclusionary Criteria (reputational risk) that may impact a potential partner at any of the Risk Assessment Phases:
- a. Association with individual or entity listed on the Consolidated United Nations Security Council Sanctions List: While not listed as such, does the Partner have any association or connection with an individual or entity listed on the UN Consolidated Sanctions List?

- b. Allegations of violations of international law: Are there allegations that the partner has directly been engaged in violations of international law, including obligations regarding the protection of human rights or the environment, which have not been established by relevant UN bodies and mechanisms? This would need to be assessed based on any information available in the public domain (e.g. media, NGO reports), including information on pending administrative or judicial proceedings before local authorities.
- c. Fraud and Corruption: Has the partner been found guilty in a court of law of: unscrupulous, coercive or collusive business practices, accounting irregularities, bribery, fraud, criminal activities or corruption?
- d. Political conduct: Is the partner involved in political activities that might reflect negatively on the agency and its neutrality commitments as set out in the Neutrality Framework?
- e. Any other circumstances or considerations regarding the agency's engagement with the partner that may give rise to reputational risks.

9.4. Where a potential Partner has been involved with or has been suspected of being involved with activities that would generally lead to an automatic or mandatory exclusion of their participation pursuant to section 9.2 and section 9.3, there may be extraordinary circumstances that warrant the potential Partner's participation in the engagement. The authority to allow a potential Partner to continue to participate in an engagement, where they otherwise would be automatically excluded by the criteria in section 9.2 and section 9.3 above, will be held by the Engagement Acceptance Committee (EAC) and the Business Developer or Project Manager who may have reason to continue engaging with the potential Partner (such as, a lack of available partners, the specialized nature of the work or specialized knowledge held by the potential Partner, or other extraordinary circumstances, etc.), and where relevant safeguards and mitigating measures can be put into place into the engagement documentation that will help to limit liability associated with working with this potential Partner.

10. Ongoing due diligence

10.1. Review of Existing Partnerships. It will be the responsibility of the Legal Group to conduct a "follow-up" screening of all current partners at three-year intervals from the last date of the previous screening. The screening will follow the requirements of the initial risk assessment and will verify no new red flags have come to light that would make the partner no longer responsible to engage with UNOPS. Additionally, where public information comes to light that might compromise a partnership, regardless of the three-year interval, the UNOPS personnel will initiate follow-up screenings as appropriate to determine the lasting impact that the event might have on the responsibility of the partner in the current engagement, as well as, future engagements with UNOPS.

Where the engagement leads to the termination, suspension, refund, and/or return of the contribution, UNOPS personnel will exercise caution when communicating this decision to the partner and will clear any communication in accordance with the terms of the partnership arrangement and in close collaboration with the Legal Group.

11. Establishment of a Due Diligence Register

- 11.1. Due Diligence information obtained in relation to a Partner (or potential Partner) should be retained by UNOPS for a minimum of 5 years in the Due Diligence Register. The Legal Group will upload to the Due Diligence Register the due diligence risk assessment documentation for any potential Partner as of 1 September 2018. For existing Partners engaged prior to 1 September 2018, the Partnerships Group shall upload to the Due Diligence Register the due diligence risk assessment documentation, which may serve as the basis for future risk assessments.

Every three years or where there are material changes in the condition of the Partner (financial or otherwise), the due diligence documentation for that Partner shall reflect the updated risk assessment and/or the documentation with regards to any material change or circumstance that may affect the viability of an existing Partner to continue its relationship with UNOPS.

12. Matrix of responsibilities at each engagement stage and due diligence phase

Stage of Engagement	Phase of the Due Diligence Process	Type of Potential Partners	Responsible UNOPS Party
Opportunity Stage	Initial Risk Assessment - Red Flag Review	Member State Government Regional Government and Municipality IFI and MDBs NUNSE	Legal Group Footnote: where necessary, with input from the focal person from Partnerships Group, Communications Group, and/or Finance Group as necessary.
Pre-Engagement Stage	Pre-Engagement Survey and Score Scale Phase	NUNSE	UNOPS Business Developer or Project Manager

Pre-Engagem ent Stage	Secondary Risk Assessment	NUNSE	Legal Group Footnote: where necessary, with input from the focal person from Partnerships Group, Communications Group, and/or Finance Group as necessary..
Prior to Initiation	Final Review for any additional Exclusionary Criteria, Risk factors, Mitigation Measures, Safeguards	Member State Government Regional Government and Municipality IFI and MDBs NUNSE	Legal Group Footnote: where necessary, with input from the focal person from Partnerships Group, Communications Group, and/or Finance Gr