



Office of the Attorney-General &
Ministry of Legal Affairs

“FINANCIAL ACTION TASK FORCE
RECOMMENDATION 8
NON-PROFIT ORGANISATIONS”

TERRORIST FINANCING RISK ASSESSMENT OF
THE NPO SECTOR 3RD ORIENTATION TRAINING
WORKSHOP

5TH AND 6TH APRIL, 2022

Recommendation 8 deals specifically with combating the TERRORIST FINANCING abuse of non-profit organisations, on an international scale.



“FATF Recommendation 8
”NON-PROFIT ORGANISATIONS”

FINANCIAL ACTION TASK FORCE



HOW FATF DEFINES A NON PROFIT ORGANISATION

Prior to the review of Recommendation 8, FATF considered all NPOs as being at risk for TF. However, since its revision, Recommendation 8 now recognises that not all NPOs are at risk for TF.

Reasons:

- (I) NPO Sector and the threat environment in which it operates have evolved over the years; and
- (II) Governments are now more experienced and advanced in implementing requirements.

AS A RESULT

1. FATF specifically sought to incorporate the focus on the **subset of NPOs** that are intended to be addressed by Recommendation 8; (**only selected NPOs based on the criteria**)
2. clarify how the risk-based approach relates to the Recommendation 8 requirements; and
3. further refine the terminology to distinguish between non-profit organisations as that term is defined by FATF and the NPO sector as a whole.

FATF NEW DEFINITION OF NPO

- a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of ‘good works’.”
- This definition is based on those activities and characteristics of an organisation which put it at risk for terrorist financing abuse, rather than on the simple fact that it is operating on a non-profit basis.



With that said

- ▶ We wish to clarify that Recommendation 8 only applies to those NPOs which fall within the FATF functional definition of a non-profit organisation, and not The Bahamas' entire NPOs sector.
- ▶ We also wish to highlight the importance of understanding the domestic non-profit sector, the ability to identify which organisations meet the FATF definition, and using a targeted risk-based approach in implementing the measures called for in Recommendation 8.

What does this mean?

Simple!! If a non-profit organisation does not fall under the FATF definition then Recommendation 8 does not apply to them.





The Interpretative Note to Recommendation 8 states that:

- Non-Profit Organisations (NPOs) play a vital role in the world economy and in many national economies and social systems.
- Their efforts complement the activity of the governmental and business sectors in providing essential services, comfort and hope to those in need around the world i.e. natural disasters; most recently pandemic underscored the important role NPOs play.
- The ongoing international campaign against terrorist financing has unfortunately demonstrated, however, that terrorists and terrorist organisations exploit the NPO sector to raise and move funds, provide logistical support, encourage terrorist recruitment, or otherwise support terrorist organisations and operations. This misuse not only facilitates terrorist activity, but also undermines donor confidence and jeopardises the very integrity of NPOs.
- Therefore, protecting the NPO sector from terrorist abuse is both a critical component of the global fight against terrorism and a necessary step to preserve the integrity of NPOs.”

Why? MATHS

Why Are NPOs vulnerable to abuse by terrorists?

According to the FATF Interpretative note:

NPOs may be vulnerable to abuse by terrorists for a variety of reasons.

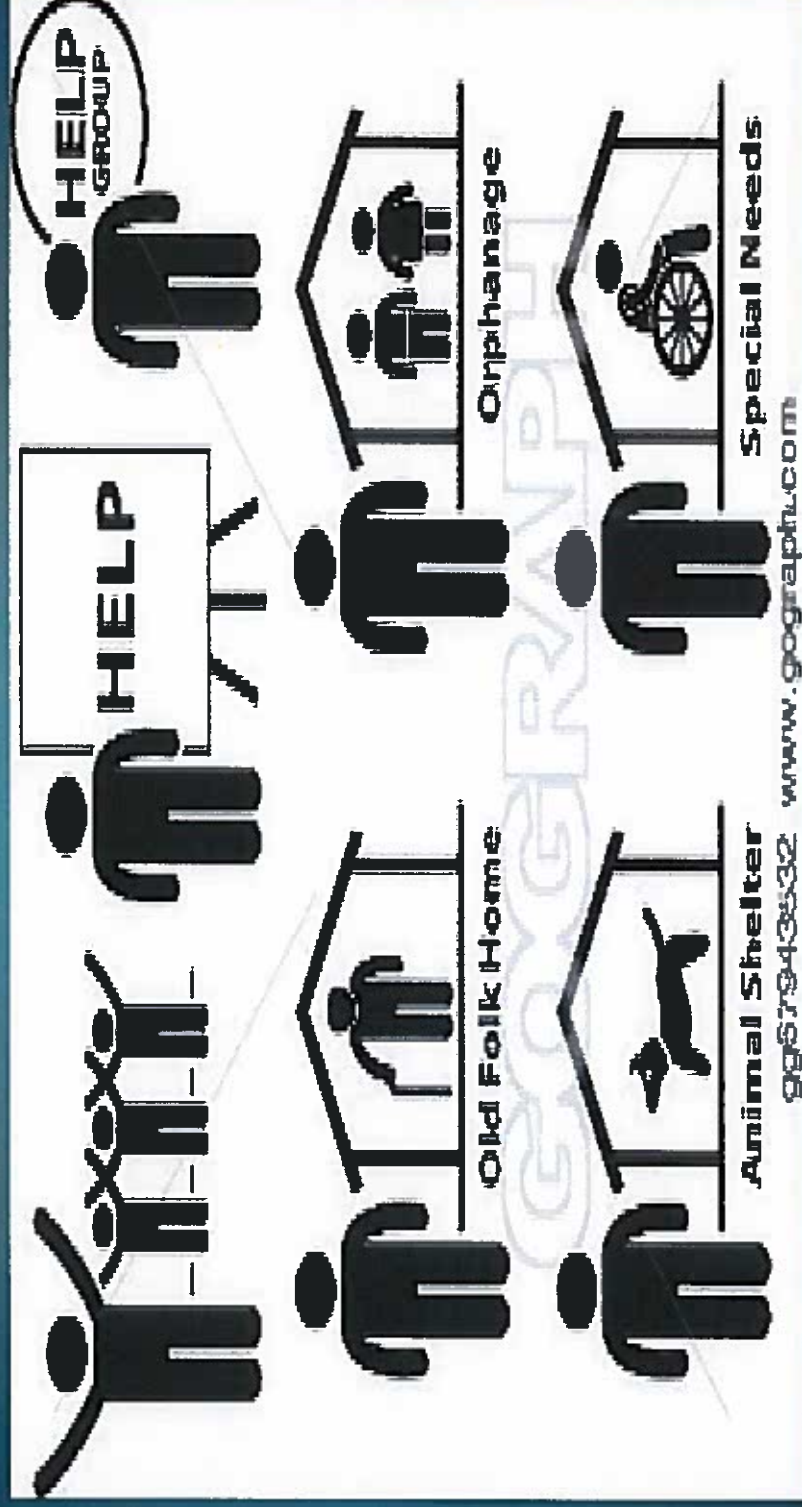
- NPOs enjoy the public trust, have access to considerable sources of funds, and are often cash-intensive.
- Some NPOs have a global presence that provides a framework for national and international operations and financial transactions, often within or near those areas that are most exposed to terrorist activity.
- Depending on the legal form of the NPO and the country, NPOs may often be subject to little or no governmental oversight (for example, registration, record keeping, reporting and monitoring), or few formalities may be required for their creation (for example, there may be no skills or starting capital required, no background checks necessary for employees).
- Terrorist organisations have taken advantage of these characteristics of NPOs to infiltrate the sector and misuse NPO funds and operations to cover for, or support, terrorist activity.



FATF Requirements

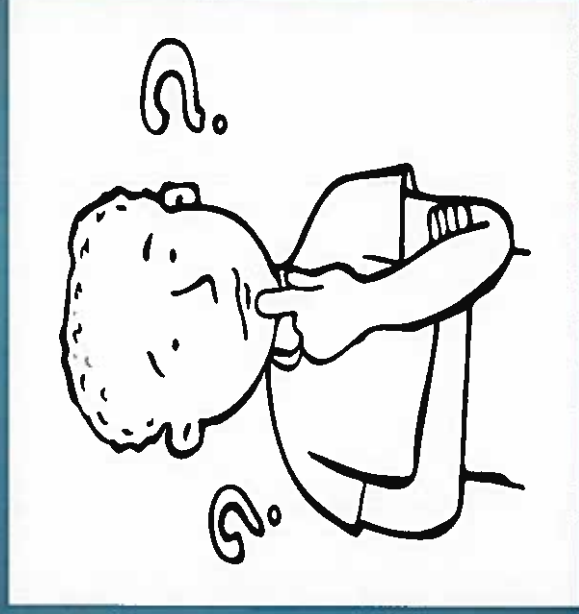
Recommendation 8 of the FATF recommendations requires that:

- Countries know the NPOs operating in the country (registration); and
- Monitor those which represent the largest portion of the industry for terrorist financing (monitoring those with \$75k or more annual turnover).



So just how do we identify which NPOs in The Bahamas are vulnerable to terrorist financing abuse?

Lets look at what is terrorism financing.





Recommendation 8 comprises six criteria which requires countries to take various steps as it relates to NPOs.

Criterion 8.1 (Taking a Risk-Based Approach)

Countries should:

(a) Since not all NPOs are inherently high risk, identify which subset of organisations fall within the FATF definition of NPO and use all relevant sources of information in order to identify the features and types of NPOs which by virtue of their activities or characteristics are likely to be at risk of terrorism financing abuse.

For example, such information could be provided by regulators, tax authorities, FIUs, donor organisations or law enforcement and intelligence authorities.

(b) Identify the nature of threats posed by terrorists entities to the NPOs which are at risk as well as how terrorist actors abuse those NPOs. **(Risk Assessment of the sector; NPO Questionnaire use to gather useful information that would assist in determining this)**

(c) review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. **(NPO Act and its amendment introduced; continued review of the legislation to ensure it meets this criterion)**

(d) Periodically reassess the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures. **(NPOs to be reassessed every 2-3 years depending on studies/typologies)**

Non-profit organisations are particularly vulnerable, 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-freezing measures; and

(c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

Criterion 8.2

Countries should:

- have clear policies to promote accountability, integrity, and public confidence in the administration and management of NPOs;
- encourage and undertake outreach and educational programmes to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse; (**today's session and similar sessions in the past are examples of outreach to the sector**)
- work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse; (**issue best practices paper**); and
- encourage NPOs to conduct transactions via regulated financial channels, wherever feasible (**helpful in keeping track of donations; gives donors confidence; encourages compliance with these requirements**).

Criterion 8.3

Targeted risk-based supervision or monitoring of NPOs

Countries should: take steps to promote effective supervision or monitoring such that they are able to demonstrate that risk based measures apply to NPOs at risk of terrorist financing abuse.

What does this mean in practice? countries should be able to demonstrate that the following standards apply to NPOs which account for (1) a significant portion of the financial resources under control of the sector (\$75k) ; and (2) a substantial share of the sector's international activities (international nexus).

- (i) NPOs should maintain information on: (1) the purpose and objectives of their stated activities; and (2) the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information should be publicly available either directly from the NPO or through appropriate authorities. (**registration application**)
- (ii) NPOs should issue annual financial statements that provide detailed breakdowns of incomes and expenditures. (**requirement of NPO Act**)
- (iii) NPOs should be licensed or registered. This information should be available to competent authorities.

Criterion 8.3 cont'd.

- (iv) NPOs should have appropriate controls in place to ensure that all funds are fully accounted for, and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities.
- ▶ NPOs should follow a “know your beneficiaries and associate NPOs” rule, which means that the NPO should make best efforts to confirm the identity, credentials and good standing of their beneficiaries and associate NPOs. (**CU will email best practices in this regard. Check Lists**)
- ▶ NPOs should also undertake best efforts to document the identity of their significant donors and to respect donor confidentiality.
- ▶ NPOs should maintain, for a period of at least **five years (standard under the FTRA for other reporting entities; also a ROBO requirement)**, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation, and should make these available to competent authorities upon appropriate authority.
- ▶ Authorities should monitor the compliance of NPOs with the requirements of this Recommendation. Authorities should be able to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of these NPOs. **Compliance Unit will actively monitor NPOs compliance with these**

Criterion 8.4 Appropriate

Authorities should:

(a) monitor the compliance of NPOs with the requirements of **this** Recommendation, including the risk-based measures being applied to them under criterion 8.3; One of the functions of the Registrar under the NPO Act.

In this context, rules and regulations may include rules and standards applied by self-regulatory organisations and accrediting institutions.

(b) be able to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of these NPOs.

The range of such sanctions might include freezing of accounts, removal of trustees, fines, de-certification, delicensing and de-registration. This should not preclude parallel civil, administrative or criminal proceedings with respect to NPOs or persons acting on their behalf where appropriate.

E.G. FIs are mandated refuse to open an account where the NPO does not register or freeze accounts where the NPO does not renew their registration.

Criterion 8.5 Effective information gathering and investigation

Countries should:

- (a) ensure effective co-operation, co-ordination and information-sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs; (e.g. **RGD/Compliance Unit effectively shares information on NPOs. RGD provides information**).
- (b) have investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations; (**Registrar can refer NPO to the police for investigation**).
- (c) ensure that full access to information on the administration and management of particular NPOs (including financial and programmatic information) may be obtained during the course of an investigation; and
- (d) establish appropriate mechanisms to ensure that, when there is suspicion or reasonable grounds to suspect that a particular NPO:
 - is involved in terrorist financing abuse and/or is a front for fundraising by a terrorist organisation;
 - is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures, or other forms of terrorist support; or
 - is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations, that this information is promptly shared with competent authorities, in order to take preventive or investigative action.
- Effective capacity to respond to international requests for information about an NPO of

Criterion 8.6

Countries should identify appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support.

What does this mean? Have effective capacity to respond to international requests for information about an NPO of concern. The International Legal Cooperation Unit (“ILCU”) of the Office of the Attorney-General currently handles all international requests for legal assistance. If an international request is received, then the ILCU will deal with the request under the appropriate legislation in order to facilitate such request.

Brief Recap OBJECTIVES AND GENERAL PRINCIPLES

The objective of Recommendation 8 is to ensure that NPOs are not misused by terrorist organisations:

- (i) to pose as legitimate entities;
- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes.

The approach taken to achieve this objective is based on the following general principles:

(a) Past and ongoing abuse of the NPO sector by terrorists and terrorist organisations requires countries to adopt measures both:

- (i) to protect the sector against such abuse; and
- (ii) to identify and take effective action against those NPOs that either are exploited by, or actively support, terrorists or terrorist organisations.

(b) Measures adopted by countries to protect the NPO sector from terrorist abuse should not disrupt or discourage legitimate charitable activities. Rather, such measures should promote transparency and engender greater confidence in the sector, across the donor community and with the general public, that charitable funds and services reach intended legitimate beneficiaries. Systems that promote achieving a high degree of transparency, integrity and public confidence in the management and functioning of all NPOs are integral to ensuring the sector cannot be misused for terrorist financing.



Thank You ^{HIOX}

for listening my presentation



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