

## FATF REPORT ON COMBATTING THE ABUSE OF NON-PROFIT ORGANISATIONS

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### A. INTRODUCTION

In June 2015, the Financial Action Task Force (“FATF”) published its revised Best Practices Paper on [“Combating the Abuse of Non-Profit Organisations \(Recommendation 8\)”](#) (“The “Report”).<sup>1</sup> The FATF is an international organization responsible for setting and monitoring international standards for combating money laundering and the financing of terrorism. The Report discusses practical strategies for implementing FATF [Recommendation 8](#),<sup>2</sup> which specifically deals with combating the abuse of non-profit organisations (“NPOs”) and outlines best practices and examples of successful implementation of anti-terrorism assessment and compliance tools. The guidelines found in the Report are influenced by the risk-based approach of FATF [Recommendation 1](#) and specific examples of best practices from various jurisdictions. The best practices set out in the Report have been produced to reflect comments from governments and the private sector, as well as the findings of the typologies report in the [“Risk of Terrorist Abuse in Non-Profit Organisations,”](#)<sup>3</sup> published in June 2014, and discussed in the [July/August 2014 Charity Law Update](#).<sup>4</sup>

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<sup>1</sup> FATF (2015), Best Practices Paper on Combating The Abuse of Non-Profit Organisations (Recommendation 8), FATF, Paris, France, online <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/bpp-combating-abuse-npo.html>>.

<sup>2</sup> FATF (2012), International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations, online <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html>>.

<sup>3</sup> FATF (2014a), Risk of Terrorist Abuse in Non-Profit Organisations, FATF, Paris, France, online <<http://www.fatf-gafi.org/topics/methodsandtrends/documents/risk-terrorist-abuse-non-profits.html>>.

<sup>4</sup> Online <<http://www.carters.ca/pub/update/charity/14/aug14.pdf>>.

Notably, the Report comes at a time when relevant and controversial Canadian anti-terrorism legislation is being implemented, such as the widely discussed Bill C-51, as discussed in the [\*Anti-Terrorism and Charity Law Bulletin No. 39\*](#).<sup>5</sup>

## **B. OVERVIEW OF FATF RECOMMENDATION 8**

Under its mandate, the FATF has developed a series of Recommendations that are recognised as the international standard for combating money laundering, financing of terrorism, and the spread of “weapons of mass destruction.” Recommendation 8, as described above, in reference to combatting the abuse of non-profit organisations, states that “Countries should review the adequacy of laws and regulations that can be abused for the financing of terrorism. 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”<sup>6</sup>

The best practices described in the Report are based on this excerpt. While the practices described in the Report do not carry the same compliance implications as FATF Recommendations, or FATF Interpretive Notes, they are nevertheless valuable to consider when a member country or an NPO is developing or assessing terrorism prevention and mitigation strategies.

## **C. BEST PRACTICES FOR IMPLEMENTING RECOMMENDATION 8**

The Report describes a series of practices and guidelines that, while not mandatory for full compliance with FATF standards, nevertheless provide useful guidance to participating countries as well as NPOs. In general, the Report advocates for the implementation of Recommendation 8 through a proportionate, risk-based approach, rather than a “one-size fits all” approach.<sup>7</sup> According to the Report, a domestic review of the NPO

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<sup>5</sup> Online <<http://www.carters.ca/pub/bulletin/charity/2015/atcylb39.pdf>>.

<sup>6</sup> *Supra* note 1 at 7.

<sup>7</sup> *Ibid* at 14.

sector is a “fundamental and necessary starting point” for understanding risk.<sup>8</sup> Because NPOs are so heterogeneous, such an approach allows governments to better appreciate domestic NPO sectors and more effectively assess which organisations are more prone to risk.

Beyond best practices for member governments, the Report also makes recommendations for NPOs themselves. This is because the Report recognizes that it can be unclear what actions NPOs can or should take in order to mitigate the risk of terrorist abuse. The Report provides a concrete example of both risk mitigation and self-regulation from an NPO operational standpoint, discussing both the processes of implementation and compliance. The Report asserts that measures will vary depending on the nature of the organisation and the services it provides, as well as the political authorities and informal power structures situated within the areas the organisation operates.

Assessment of extremist elements, beneficiary selection and aid distribution should then be taken into account to determine whether particular services are manageable in a given time and location. In addition to this risk analysis model, the Report provides practical initiatives that help to ensure accountability and compliance with relevant regulations. Such initiatives include communication with independent monitoring organisations, accreditation processes and adoption of international charter documents promoting accountability.

The Report describes a necessary “two-way, ongoing dialogue between governments and NPOs”<sup>9</sup> which, if implemented properly, could lead to freer exchange of information and more effective risk mitigation. The Report also discusses the need for governments to institute measures that facilitate effective investigation and information gathering through effective cooperation, coordination and information sharing to the extent possible among all levels of appropriate authorities (meaning competent authorities, including law enforcement, intelligence and regulatory agencies, accrediting institutions, and self-regulatory organisations), as well as organisations that hold relevant information on NPOs.

Of the more notable measures addressed in the Report are community outreach events and guidance materials that have been implemented by the United States. In particular, the United States Department of the Treasury provides an online resource for assisting the NPO sector with achieving and maintaining

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<sup>8</sup> *Ibid* at 11.

<sup>9</sup> *Ibid* at 17.

compliance. Among the materials available is a variety of guidance documents, including a risk matrix from the Office of Foreign Assets Control (“OFAC”), as well as information regarding best practices which provides “an understanding of the risks that they should consider in the course of conducting their due diligence and some examples of risk mitigation best practices.”<sup>10</sup> The Report states that these tools may be of particular utility when developing compliance schemes and exemplify the two-way dialogue recommended by the FATF.

#### **D. ANTI-TERRORISM REGULATION IN CANADA: WHAT IS CANADA DOING?**

The FATF is one of several international organisations and intergovernmental policy-making bodies of which Canada is a member. According to the 2014 [Mutual Evaluation of Canada: 6<sup>th</sup> Follow-up Report](#), Canada has made significant improvement in its compliance with FATF guidelines since its last evaluation in 2008. Furthermore, Canada is used an example in the current Best Practices Report based on several measures, such as its supervision and monitoring of NPOs, as well as its inclusion of effective mechanisms for international cooperation.

One of the important practices that FATF advocates as a primary component of Recommendation 8 is sector review. The Report asserts that “conducting a domestic review of the entire NPO sector is a fundamental and necessary starting point for the proper implementation of Recommendation 8.”<sup>11</sup> Specifically, this allows countries to determine which organisations fall within the scope of the FATF NPO definition. It also imparts a better understanding of the sector and its activities, and identifies specific risk areas with regard to terrorist financing to the government that conducts the review.

The Report profiles Canada as an example of effective sector review. Specifically, the Report discusses how, from 2009 to 2014, Canada Revenue Agency (CRA) conducted a sector review to ensure Canada was not taking an overly broad interpretation of the FATF definition of “NPO”, focusing on the NPOs that are most at risk for terrorist abuse, but at the same time not burdening organisations unduly with reporting requirements.

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<sup>10</sup> *Ibid* at 7.

<sup>11</sup> *Ibid* at 11.

This sector review was performed through an evaluation of literature related to the sector and an analysis and categorization of Canadian NPOs based on characteristics such as purpose, activities, size, and location of operations. This sector review found that among NPOs in Canada, charities are at the greatest risk for terrorist abuse, though this risk did not extend to all charities equally. The Report indicates that this information provides Canada with a more focused starting point for continuing to address anti-terrorism risk.

The Report also discusses other lauded anti-terrorist financing measures that have been implemented by CRA in Canada. One of these is a specialised division known as the “Review and Analysis Division”, which uses a risk-based approach to deal with registration and revocation of charitable status. The Report also makes reference to measures by which the CRA has been granted statutory authority to share information between various government agencies, including law enforcement and national security agencies.

#### **E. COUNTERVAILING CONCERNS AND THE NEED FOR BALANCE**

The Report is carefully nuanced in recognizing the complexity of the anti-terror/charitable regulation issue. In this regard, it emphasizes that “while it is vital to protect NPOs from terrorist abuse, it is also important that the measures taken to protect them do not disrupt or discourage legitimate charitable activities, and should not unduly or inadvertently restrict NPO’s ability to access resources, including financial resources to carry out their legitimate activities.”<sup>12</sup> The importance of balancing is also mentioned with regard to concerns for human rights. The Report specifically states that compliance with FATF standards should not impede international human rights law and/or interfere with the observance of fundamental human rights and freedoms. While compliance with the Recommendations is an important and primary objective for the FATF, the Report points out that all measures must take into account a variety of considerations.

#### **F. CONCLUSION**

The FATF Report provides an in-depth selection of best practices guidelines with examples from countries where they have been implemented. The measures that are discussed may provide NPOs with useful and accessible tools for assuring that they are compliant with various standards and international commitments. The Report repeatedly stresses the importance and effectiveness of achieving a transparency and dialogue between individual countries and their respective NPO sectors. As a recurring theme, the Report emphasizes

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<sup>12</sup> *Ibid* at 15.

a balanced rather than a “one size fits all” approach when performing risk analysis. As the FATF advocates, analysis and implementation of any measures should be accompanied by a notion of proportionality, such that all social concerns are considered and not unduly impeded upon.



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