

SIGNIFICANT CHANGES TO FATF RECOMMENDATION 8 AND INTERPRETIVE NOTES

*By Terrance S. Carter, Nancy E. Claridge and Sean S. Carter**

A. INTRODUCTION

As reported in our [June 2016 Charity & NFP Law Update](#), the [Financial Action Task Force](#) (“FATF”) [revised FATF Recommendation 8 and its Interpretive Note](#) (“INR8”), which are now part of the FATF’s [main Recommendation Document](#).¹ The FATF is an inter-governmental body responsible for setting and monitoring international standards to combat money laundering and the financing of terrorism. Recommendation 8 deals specifically with combating the abuse of non-profit organisations, on an international scale. The revised INR8 contains many changes that have resulted from the [call for public consultation on the INR8](#) in November 2015 and the April 2016 [consultation and dialogue meetings](#) with non-profit organisations in Vienna.

B. DEFINITION OF NON-PROFIT ORGANISATION

For the purposes of the new Recommendation 8 and its interpretive note, the FATF has redefined non-profit organisations, recognising that the diversity of the international community means that each country may have its own domestic definition. The new FATF definition of a non-profit organisation is “a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes

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¹ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations*, available online: <www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf>.

such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of ‘good works’.” If a non-profit organisation does not fall under this definition, then Recommendation 8 does not apply to them. Not surprisingly, charities would fall under this definition.

C. REMOVAL OF THE WORDS “PARTICULARLY VULNERABLE”

The revised Recommendation 8 removes the identification of the non-profit organization (“NPO”) sector as being “particularly vulnerable” to terrorist abuse and money laundering concerns. Previously, Recommendation 8 required countries to “review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism” and labelled all NPOs as “particularly vulnerable” asking countries to ensure that NPOs were not misused. Now Recommendation 8 asks that countries identify which NPOs in their domestic NPO sector are vulnerable to terrorist financing abuse, and use a risk-based approach to apply focuses and proportionate measures to prevent this abuse.

Minute changes with significant weight have been made throughout INR8 to reflect this change. INR8 now explicitly acknowledges that not all non-profit organisations are inherently high risk, but most of the changes are more subtle. One example is through the addition of the word “some” when describing non-profit organisations which are exploited or vulnerable to terrorist financing abuse. Whereas before INR8 spoke of all non-profit organisations as vulnerable to terrorist financing abuse, now INR8 discusses “some cases” and “some non-profits.” The FATF also acknowledges that there have been cases where terrorist organisations create sham non-profit organisations to secure financing. There is also a shift from referring to the “non-profit sector” to referring to the “non-profit organisations”, which reflects the new focus on individual NPOs rather than grouping them all together.

D. MISUSE VS ABUSE

Unlike Recommendation 8 which has consistently used the term “abuse” to describe the relationship between NPOs and terrorist financing, INR8 used to consistently refer to the non-profit sector as vulnerable to “misuse” by terrorists. INR8 now refers to the sector as vulnerable to “terrorist financing abuse”, a term which it defines as referring to the “exploitation by terrorists and terrorist organisations of NPOs to raise or move funds, provide logistical support, encourage or facilitate terrorist recruitment, or otherwise support terrorists or terrorist organisations and operations.”²

² *Ibid* at 59.

E. RISK BASED APPROACH

The FATF's recommended approach to policy has shifted to a risk based approach. INR8 now includes descriptors like "proportionate," and "focused" when describing measures, and replaces "transparent" with "accountable" when discussing non-profit organisation reporting. INR8 suggests that countries should consider the specifics of each case when taking effective and proportionate action against non-profit organisations exploited by or knowingly supporting terrorists, minimising impact on innocent, legitimate non-profit organisations.

Whereas before INR8 had a list of policies that countries should implement in a one-size-fits-all mentality, INR8 now suggests that these policies are examples of what could be used to prevent terrorist financing abuse, acknowledging the diversity of the international community. The first two elements of FATF's effective approach have changed and are now: (a) sustained outreach, and (b) targeted risk-based supervision or monitoring. Some of the examples of potential policies have been changed slightly to place emphasis on education, accountability, identification of beneficiaries, the donor community and pre-existing regulations.

F. EXPANDED DEFINITIONS

The new INR8 also expands the definition of appropriate authorities to include regulators, tax authorities, financial intelligence units, law enforcement, and intelligence authorities.

The definition of "associate non-profit organisations" has been expanded to include non-profit organisations with which partnerships have been arranged.

G. RECOGNITION OF THE NPO SECTOR

The FATF recognises the efforts of non-profit organisations to provide important charitable services frequently in high-risk environments, and their efforts to prevent terrorist financing abuse and other forms of terrorist support.

H. GLOBAL NPO COALITION ON FATF RESPONSE

The Global NPO Coalition on FATF recently hosted a [webinar](#), saying that the goal of the NPO sector should be the uniform implementation of the new INR8, noting that it needs to be accomplished with

consideration to human rights and international humanitarian law.³ One concern raised by the participants, which the speakers on the webinar agreed with, was the potential for the marginalisation of those NPOs deemed most at risk of terrorist financing abuse, those already somewhat marginalised through their representation of minority or marginalised groups.⁴ The speakers concurred that the best starting point is for members of the NPO sector to be aware of the FATF Recommendations and of the laws and regulations that exist for them domestically.

I. CONCLUSIONS

The changes made to Recommendation 8 and INR8 reflect the input of non-profit organisations, the international community and the public. They are designed to make INR8 more relevant and coherent, allowing for the international community and non-profit organisations to more readily incorporate these recommendations into practice.

³ Charity and Security Network, “Global NPO Coalition on FATF” (12 September 2016), online: <https://youtu.be/v0JxQaM8Wsk> at 00h:34m:36s.

⁴ *Ibid* at 00h:58m:18s.