

Risk of abuse by Liechtenstein non-profit organisations for the purpose of terrorist financing

1. Non-profit organisations and terrorist financing

This factsheet is intended to assist Liechtenstein non-profit organisations (NPOs) in identifying potential risks in the field of terrorist financing (TF) and in defining and applying measures to mitigate the associated risks.

Since the first terrorist attacks in Europe and in other countries, the importance of the fight against terrorism, including TF, has steadily increased. The UN Security Council has taken a number of measures to combat TF and has continuously adapted them to meet the threat. These include measures that NPOs must take to protect themselves from this threat. The background to this is the fact that investigations and analyses of the money flows of various terrorist attacks committed in recent years have indicated that NPOs have been misused for TF in a large number of cases.

The Financial Action Task Force (FATF) has also expanded the international standard for combating money laundering to include the issue of TF. Since then, the associated provisions¹ (Recommendations 5 to 8 and Immediate Outcome 9 to 11) have constituted an integral part of the international standard and are subject to a correspondingly stringent assessment in country evaluations.

As an internationally recognised financial centre and reliable partner, Liechtenstein implements UN resolutions and the FATF standard.

2. Definition of NPOs

2.1 FATF definition

In Recommendation 8, FATF defines NPOs on the basis of functional criteria as follows:

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”.

The definition is consequently not limited to a specific legal form. However, not all NPOs are exposed to the risk of TF to the same extent. FATF Recommendations target first and foremost NPOs that **engage primarily in the raising and/or disbursement of funds for common-benefit purposes**.

Common-benefit legal entities in which the raising/disbursement of funds for common-benefit purposes plays no role or only a minor role are therefore not in the focus of the FATF, as they are exposed to relatively low TF risks.

¹ <http://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html>

2.2 NPOs in Liechtenstein pursuant to FATF definition

The legal forms used in Liechtenstein to pursue common-benefit activities are primarily:

- **Foundation** (Art. 552 §§ 1 et seq. of the Liechtenstein Persons and Companies Act; PGR);
- **Establishment** (Art. 534 et seq. PGR);
- **Association** (Art. 246 et seq. PGR).

On account of their **exclusive** or at least **largely common-benefit activity** and the associated **raising and/or disbursement of funds**, the common-benefit foundation and the common-benefit establishment are to be subsumed under the FATF definition of NPOs. In this respect, the statements set out in this factsheet are of particular relevance for the common-benefit foundation and the common-benefit establishment.

With regard to associations, it should be noted that the Liechtenstein association sector consists **predominantly** of **associations** that do **not** fall under the FATF definition of NPOs. In general, associations are dedicated to sociable, sporting, cultural or other communal activities, where membership fees may be collected, but **no** classic raising or disbursement of funds for common-benefit purposes takes place. This typically includes the classic sports clubs, choirs, cultural associations, interest groups and counselling centres, which use the contributions collected from their members exclusively to cover their administrative expenses and to pursue a communal or social activity, i.e. within the circle of the members of the association.

Associations, that **primarily raise and/or disburse funds for common-benefit purposes**, fall under the FATF definition of NPOs. The information set out in this factsheet is therefore of particular relevance for them.

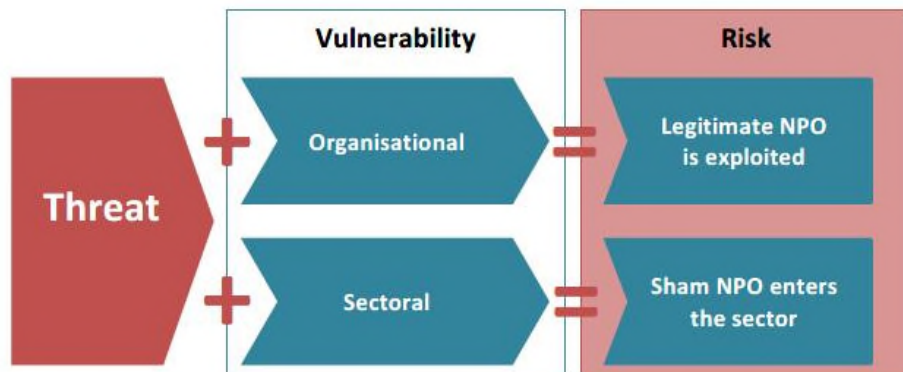
However, common-benefit Liechtenstein legal entities that **do not** fall under the FATF definition of NPOs are also strongly advised to take into account the information contained in the present factsheet.

Insofar as reference is made to “NPO” or “NPOs” in the following, this refers to those common-benefit legal entities that fall under the FATF definition (see 2.1 of this factsheet).

3. Risks of abuse in the field of TF

3.1 General

Risk can be defined as the ability of a threat to exploit a vulnerability (weakness):



Source: FATF Best Practices Paper on Combating the Abuse of Non-Profit Organisations, June 2015²

The greatest risks of abuse for TF purposes arise for NPOs in the two situations depicted in the chart:

- A legitimate NPO is, for example, misused by one of its employees, a partner organisation or a third party for terrorist purposes (**organisational vulnerability**);
- An NPO that claims to serve legitimate purposes deceives partner organisations (and to some extent its own employees as well) and third parties, and uses the assets that are made available for terrorist purposes (**sectoral vulnerability**).

While a sectoral vulnerability, specifically the incorporation and administration of a common-benefit “**sham**” foundation or “**sham**” establishment can virtually be ruled out in Liechtenstein (for further details, see 3.2 of this factsheet), **organisational vulnerabilities** and resulting abuse of NPOs for TF purposes in Liechtenstein cannot be excluded. In the present context, a “**sham**” foundation or “**sham**” establishment means a foundation or establishment that, under the guise of a legitimate common-benefit activity, solicits funds that ultimately benefit the support of terrorism.

An increased potential for TF abuse may be evident in particular in the **transfer or movement** of assets through Liechtenstein for terrorist purposes. In this respect, possible exposure to TF in Liechtenstein arises from its qualification as an International Financial Centre (IFC) and the associated typical cross-border business and the resulting financial transactions.

3.2 Possible abuse scenarios and typologies

According to the FATF, the following five categories of TF abuse risks for NPOs should be distinguished in principle:

² <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>

Methods and risk of abuse	
Diversion of funds	An NPO, or an individual acting on behalf of an NPO, diverts funds to a terrorist entity or to a partner organisation with links to a terrorist entity.
Affiliation with a terrorist entity	An NPO, or an individual acting on behalf of an NPO, knowingly or unknowingly maintains links to a terrorist entity.
Support for recruitment	NPO-funded programmes or facilities are used to create an infrastructure which supports and/or promotes terrorism recruitment-related activities.
Abuse of programming	NPO-funded programmes meant to support legitimate humanitarian purposes are manipulated to circumvent the actual purpose and to support terrorism.
False representation and sham NPOs	Under the guise of a legitimate common-benefit activity or organisation, funds are raised or other activities are carried out in support of terrorism.

Source: *FATF Best Practices Paper on Combating the Abuse of Non-Profit Organisations, June 2015* and *FATF Report on Risk of Terrorist Abuse in Non-Profit Organisations, June 2014*³

On the basis of these categories, possible abuse scenarios and typologies for NPOs in the field of TF will be illustrated below. These are based inter alia on the following characteristics of the Liechtenstein common-benefit sector:

- Collection of donations** takes place only to a very limited extent or not at all;
- Donors:** often “high-net-worth individuals” (HNWI) domiciled in European countries;
- As a general rule, **no direct activities** (e.g. financial support or provision of relief supplies) in crisis regions or conflict zones;
- Frequent support of or cooperation with **partner organisations** (in different forms);
- Occasional links to **high risk countries** (purpose/involved persons).

It is important to note that the following scenarios are only **theoretical in nature** and have so far **not** arisen in practice in Liechtenstein.

Diversion of funds
<p><u>Initial situation</u></p> <ul style="list-style-type: none"> A common-benefit Liechtenstein foundation promotes projects that serve the long-term support of children and young people in need in a war zone in the Middle East. A corresponding project is developed in collaboration with a partner organisation. During the initial phase of this project, a project member of the foundation transfers a high initial instalment to the respective partner organisation. Telephone contact was made in advance with the partner organisation and its website had been consulted. However, it was decided not to subject the partner organisation to an in-depth background check, for instance by requesting annual reports or audited accounts, or to seek

³ Also see <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/bpp-combating-abuse-npo.html> and <http://www.fatf-gafi.org/publications/methodsandtrends/documents/risk-terrorist-abuse-non-profits.html>.

personal contact.
<p>The partner organisation ultimately does not use the transferred funds for the agreed humanitarian purpose, but rather passes the funds on to an affiliated terrorist militia. The latter uses these funds to purchase weapons for terrorist acts.</p> <p>The funds dedicated for common-benefit purposes are thus ultimately “diverted” for terrorist purposes, thus preventing the funds from being used for the intended purpose.</p>

Affiliation to a terrorist entity
<p><u>Initial situation</u></p> <ul style="list-style-type: none"> • An organisation working in a conflict zone in the Middle East purports to be a legitimate and recognised common-benefit organisation. On its website it advertises that it is dedicated intensively in supporting people in need in this country. • In particular, it advertises that it has the appropriate local infrastructure and necessary network to ensure that funds are used efficiently and for the earmarked purpose. • According to its purpose, a common-benefit Liechtenstein foundation pursues the support of persons in need in conflict zones. • To this end, it carries out an internet search and discovers the organisation in question. It contacts the organisation in writing. Following an exchange of correspondence, it is agreed that considerable funds will be disbursed to this organisation for the support of people in need. • However, the foundation fails to request further background information, such as annual reports or documentation of projects and support services that have already successfully been completed. <p>It turns out that the foreign organisation ultimately pursues terrorist activities. As a consequence, the Liechtenstein foundation unknowingly maintains an affiliation with a terrorist entity.</p>

Support for recruitment
<p><u>Initial situation</u></p> <ul style="list-style-type: none"> • In accordance with its purpose, a common-benefit Liechtenstein association supports programmes or projects to promote the school education of children and young people in a country affected by civil war in Africa. • Following an on-site visit by board members, a local school is provided with corresponding financial support. • Further research by obtaining background information from local authorities or other official bodies is not undertaken. Nor is the support of local partner organisations, which have the necessary background knowledge of local conditions, considered as an alternative to direct support of the school. <p>The association is not aware that the school has been infiltrated by sympathisers of a terrorist organisation, who ultimately abuse the school to recruit children and young people as “<i>terrorist fighters</i>”.</p>

Abuse of programming

Initial situation

- In accordance with its purpose, a common-benefit Liechtenstein establishment promotes programmes or projects that are designed to support Christian minorities in the exercise of their faith in countries where they are persecuted and threatened.
- For this purpose, funds are disbursed to a common-benefit organisation in a crisis zone.
- No background information on the organisation was obtained in advance from the establishment and no personal contact was sought.

It turns out in retrospect that the common-benefit foreign organisation has been infiltrated by a terrorist organisation and that the organisation is ultimately being abused to disseminate fundamentalist beliefs.

False representation and “sham” NPOs

The incorporation and operation of sham common-benefit foundations and establishments domiciled in Liechtenstein can be virtually ruled out due to the following criteria, which must be fulfilled cumulatively:

- compulsory entry in the commercial register (constitutive effect);
- minimum capital of CHF 30'000.00;
- requirement of a qualified administrative body under Art. 180a PGR with a licence under special legislation;
- supervision of the qualified administrative body pursuant to Art. 180a PGR by the Liechtenstein Financial Market Authority (FMA) on the basis of due diligence requirements; and
- supervision of the foundation or establishment by the Liechtenstein Foundation Supervisory Authority (STIFA) on the basis of requirements under company law.

Foundations and establishments that exclusively and irrevocably pursue common-benefit purposes and have made use of the possibility of tax exemption pursuant to Art. 4 (2) Tax Act are also subject to supervision by the Fiscal Authority.

By contrast, an exclusion of this nature is not possible for **associations**, especially as the above-described criteria are applicable only to a limited extent.

Nor can it be ruled out that terrorist organisations exploit the Liechtenstein non-profit sector and, for instance, misuse the identity of an NPO domiciled there to solicit funds abroad for terrorist purposes under false pretences.

To conclude, potential TF abuse of Liechtenstein common-benefit foundations, establishments and associations **cannot be ruled out**.

On the basis of the characteristics of a typical common-benefit foundation, establishment or association, it would be conceivable in particular that these, in connection with the use of their funds, could fall into the clutches of foreign organisations that act from abroad under the **guise of a “sham” NPO** or that they could **become the victim of false representation** by terrorist organisations or by associated persons.

Also, the **appearance of new “sham” associations** within the meaning of the NPO definition of FATF in the Liechtenstein common-benefit sector cannot be excluded.

4. Risk-mitigating measures

4.1 Measures prescribed by law

The following risk mitigating measures are established in Liechtenstein law and must therefore be complied with by common-benefit legal entities in the cases described. It is important to mention that these measures need to be observed irrespective of the FATF definition as an NPO.

- **Registration** of common-benefit foundations and establishments in the **commercial register** (Art. 552 § 14 (4) PGR; Art. 537 (1) and Art. 538 (2) PGR);
- Mandatory appointment of a **qualified administrative body** pursuant to Art. 180a PGR in the case of common-benefit foundations and establishments (Art. 180a (3) PGR) and the performance of **due diligence obligations** pursuant to the Due Diligence Act (DDA) by this administrative body;
- **Duty to file suspicious activity reports** to the Financial Intelligence Unit (SFIU) by persons subject to due diligence and public authorities (Art. 17 (1) DDA);
- Supervision of qualified administrative bodies as persons subject to due diligence by **FMA** (Art. 23 (1) DDA);
- **Application of enhanced due diligence obligations** by involved financial intermediaries (in particular by banks and the qualified administrative body) in the case of business relationships and transactions with increased TF risks (see further details in List A – Increased Geographical Risks pursuant to Appendix 2 Section A Letter c DDA of the FMA)⁴;
- Supervision of common-benefit foundations and establishments in accordance with the legal provisions of PGR by **STIFA** (Art. 552 § 29 (1) PGR; Art. 551 (2) in conjunction with Art. 552 § 29 (1) PGR);
- Maintenance of adequate **records** and retention of **documents** by common-benefit foundations, establishments and associations from which the course of the business and the development of the assets can be traced (Art. 552 § 26 PGR; Art. 1045 (3) PGR; Art. 251a in conjunction with Art. 1045 (3) PGR);
- Maintenance of a **schedule of assets** by common-benefit foundations and establishments (Art. 552 § 26 PGR; Art. 551 (2) PGR in conjunction with Art. 552 § 26 PGR).

In addition, foundations, establishments and associations that exclusively and irrevocably pursue common-benefit purposes may apply to the Fiscal Authority to be granted **tax exemption** (Art. 4 (2) Tax Act). These are then **registered** with the Fiscal Authority and are required each year to submit to the Fiscal Authority the documents specified in Art. 3 Tax Ordinance.

4.2 Further measures to protect against TF abuse

In addition to the measures that are to be adhered to by law (see 4.1 above), NPOs should, on their own initiative, take further measures that serve to prevent and thus reduce a possible risk of TF abuse.

Possible further measures are listed in greater detail below. These are largely measures that should be applied by NPOs risk-based (see 4.3 for further details).

⁴ <https://www.fma-li.li/files/fma/fma-rl-2013-1-liste-a.pdf>

4.3 Risk management

Most NPOs maintain good relations with their donors, partner organisations and beneficiaries who donate or allocate funds to the NPO or cooperate with it. Irrespective of this, however, certain **risks** exist that could facilitate an abuse of NPOs in the field of TF.

The nature of the risks in the particular circumstances, the activities NPOs carry out and the manner and where these activities are carried out are reasons why it is important for NPOs to **understand** the TF risks to which they are exposed and to take suitable **measures** to reduce these risks.

Many NPOs already conduct their **own risk analysis** (inter alia on the basis of the provisions of Art. 9a (1) DDA). Such internal risk analyses can help **reduce** a variety of potential risks to which the NPO is exposed, including abuse by terrorists.

4.4 Management and controls ("*good governance*")

Organisational integrity

The members of the respective administrative bodies act in the interest of the NPO on the basis of the underlying articles. The administrative body should exercise **active monitoring** of the NPO and should ensure reasonable **internal monitoring measures** (in particular the management and use of the funds). This may also include background checks and enquiries with previous employers as well as research in public sources within the context of recruiting staff/administrative bodies.

Partner relationships

In order to prevent the abuse of funds by partner organisations, NPOs should – before entering into relationships or agreements – conduct corresponding **checks of persons and organisations** from which they receive funds, to which they provide funds or with which they work together. Insofar as due diligence obligations need to be fulfilled pursuant to the provisions of the DDA, this check is carried out as part of the identification of the beneficial owners (Art. 7 DDA) and the preparation of a business profile (Art. 8 DDA).

NPOs should ensure a high standard of integrity and the reputation of partner organisations by means of corresponding **selection criteria**. This can be done, inter alia, by searching publicly available information (e.g. Google search, public authorities), obtaining documents (e.g. annual reports, audited annual financial statements) and through personal contact. In particular, **written agreements** with the partner organisation can also serve to define the expectations and responsibilities of both parties, in order to regulate the specific use of funds, reporting requirements, audits and on-site visits in greater detail.

In addition, there are also **certifications** that can be indicative of a professional and trustworthy partner organisation (e.g. Zewo in Switzerland).

Financial transparency and documentation

NPOs prevent financial abuse and the misuse of resources and funds by establishing **rigorous checks and controls**. For example, the administrative body should approve the annual budget and establish **processes to monitor the use of the funds**. Insofar as due diligence obligations pursuant to the provisions of the DDA need to be fulfilled, the monitoring of the use of the resources is performed within the context of the on-going monitoring of the business relationship (Art. 9 DDA).

In addition, NPOs maintain **appropriate and complete records** of the income, expenditure and transactions as well as about the development of the assets. Within this context, attention is drawn to the information set out in 4.1. of this factsheet.

Project planning and monitoring

NPOs should establish appropriate **internal controls and monitoring systems** in the field of project supervision in order to ensure that funds are used as intended. For example, the purpose and scope of their activities should be clearly defined and TF risks and any risk mitigating measures should be evaluated before projects are implemented. In addition, in the case of larger projects, it is advisable to maintain **detailed budgets** and to prepare regular reports on associated expenditure or acquisitions.

Transactions should be settled **exclusively through the banking system** (insofar as possible), in order to maintain the transparency of the funds and to reduce the TF risk.

The **progress of projects** should be monitored regularly, by checking the existence of beneficiary persons or institutions and ensuring the ultimate receipt of funds.