



**Financial Intelligence Centre
Republic of Namibia**

PO Box 2882
Windhoek
Namibia

Phone: + 264 61 283 5286
Fax: + 264 61 283 5918
Helpdesk@fic.na

GUIDANCE NOTE NO. 18 OF 2023

RISK MANAGEMENT GUIDANCE FOR FINANCIAL INSTITUTIONS, DONORS, AND ALL STAKEHOLDERS DEALING WITH NON-PROFIT ORGANISATIONS

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TABLE OF CONTENTS

A. KEY DEFINITIONS AND ABBREVIATIONS 3

1. BACKGROUND..... 4

2. HIGH RISK NPOs 5

3. PART A: VARIOUS MEANS OF POTENTIAL NPO ABUSE 6

4. PART B: NPO RISK MANAGEMENT FRAMEWORKS..... 7

5. GENERAL 9



A. KEY DEFINITIONS AND ABBREVIATIONS

“Beneficiary” a person, group, association (or other entity) who is designated to receive the benefits of services, assets, funds or any other type of benefit from a NPO;

“NPO” refers to any type of Non-Profit Organisation. Note however that in terms of the FIA, only some NPOs are highly exposed to TF risks and thus, only such are required to comply with the FIA. This Guidance Note is only addressed to such NPOs, which are religious or faith based organisations and those involved in charitable activities/services;

“Terrorist entity” In the context of this guidance, a terrorist entity refers to a terrorist and/or terrorist organisation identified as a supporter of terrorism by national or international sanctions lists, or assessed by a jurisdiction as active in terrorist activity; and

“Terrorism financing (TF)” The financing of terrorist acts, and of terrorists and terrorist organisations. Includes when a person wilfully provides or collects funds or other assets by any means, directly or indirectly, with the unlawful intention that they should be used, or in the knowledge that they are to be used, in full or in part: (a) to carry out a terrorist act(s); or (b) by a terrorist organisation or by an individual terrorist (even in the absence of a link to a specific terrorist act or acts). TF includes financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. TF as a concept is broad and extends to any funds or other assets whether from a legitimate or illegitimate source.

1. BACKGROUND

This guidance is issued as per Section 9, 35(A) and (B) of the Financial Intelligence Act, 2012, as amended (The FIA).

The vital humanitarian and often lifesaving roles played by the NPO sector in its service to humanity, often under difficult circumstances remains paramount in the care that regulatory bodies such as the FIC takes in its supervision of this sector. The need to ensure regulatory and supervisory activities do not undermine legitimate NPO activities is a guiding principle in all FIC operations relating to NPOs. In furtherance of such, the regulatory activities in this regard are measured and targeted towards higher risk areas and vulnerabilities.

The essential role of donors in the NPO sector is one area that needs appropriate guidance if sectoral risk management is to succeed. Most, if not all NPO activities are often donor funded. Donors therefore play a critical role as enablers of NPO operations, services and activities. On the other hand, financial service providers, especially banks, provide essential services which enable financial transactions of NPOs. There are other stakeholders that provide different services to NPOs in various ways. This guidance is issued to help all stakeholders appreciate vulnerabilities within NPOs in an effort to contribute to safeguarding legitimate NPO operations from abuse, in particular, abuse aimed at advancing terrorist financing (TF) activities.

On 29 August 2023, at the Bank of Namibia's Sam Nujoma Auditorium, the FIC held a meeting with donors, with some joining the meeting virtually. The FIC made presentations on NPO good practices and effective risk management measures as contained in various FIC publications were discussed. The idea was to help donors understand where to find NPO risk management guidance on the FIC website and how to use same in assessing a NPO's risk exposure. The meeting further agreed that a concise summary of primary expectations be published. The publication of this guidance note is in response to same.

The guidance herein comprises two parts. Part A summarizes various ways in which NPOs can be abused to advance terrorism financing (TF) while Part B refers financial institutions, donors

and all stakeholders to FIC guidance on considerations around due diligence to mitigate against such risks.

2. HIGH RISK NPOs

Note that there are no cases of domestic NPOs' involvement in advancing terrorism or TF activities in Namibia, to date. The cases in which domestic NPOs have been abused primarily suggest money laundering or predicate offences such as fraud, tax evasion and theft. This does not mean local NPOs are immune to abuse for TF. If anything, it should be a concern that vulnerabilities exploited for financial crimes exist because such can be equally exploited to advance TF.

FIC Guidance Note 12 of 2012, based on international case studies, presents a correlation between the types of activities a NPO is engaged in and the risk of TF abuse. A consideration of case studies internationally in which NPOs may have been abused is essential in understanding how same can unfold with domestic NPOs. The majority of international case studies at hand suggests that NPOs engaged in '**service activities**' such as housing, social services, education, or health care were most prevalent in cases of potential TF abuse. No case studies found NPOs engaged in '**expressive activities**' such as programmes focused on sports and recreation, arts and culture, interest representation or advocacy such as political parties, think tanks and advocacy groups.

The 2020 National Risk Assessment (NRA) found religious and Faith Based Organisations (FBOs) as highly exposed to risks of TF while the 2023 NRA update has additionally identified the broader category of 'service charities' as equally vulnerable to TF abuse. Therefore, the specific NPOs to which the FIA applies are religious or FBOs and those involved in charitable activities. If financial institutions, donors or any stakeholders consider engaging or assisting such NPOs, they are required to satisfy themselves that NPOs of this nature are not unduly exposed to risks of financing terrorism.

3. PART A: VARIOUS MEANS OF POTENTIAL NPO ABUSE

Generally, five categories of NPO abuse or risk can be established, which are generally applicable across all NPOs. These are not mutually exclusive categories but in the main, can be summarised as follows:

- a. The **diversion of funds** is a significant method that focuses on the substantial financial resources within the NPO. Actors inside a NPO, or external actors such as foreign partners, can engineer the diversion of funds from legitimate NPO activities. The corrupt use of NPO resources or theft and fraud related thereto presents a generally higher risk in terms of diversion as per case studies highlighted in the 2020 NRA;
- b. In other cases of abuse, **NPOs or directing officials who maintain an affiliation with a terrorist entity**, either knowingly or unknowingly, is a cause for concern. In these instances, a NPO could be abused for multiple purposes, including general logistical support to the terrorist entity or radicalisation of people associated with the NPO;
- c. In some cases, **NPOs are abused to provide support to recruitment efforts** by terrorist entities. The few local cases in Namibia of potential TF suggests there may have been radicalisation of subjects, given the notable transition of subjects to radical ideologies which advocate for terrorism;
- d. NPOs are also targeted for **abuse of programming**. In these instances, the flow of resources may be legitimate but NPO programmes are abused at the point of delivery; and
- e. Some **terrorist entities abuse the NPO sector through false representation**. In these instances, terrorist entities start 'sham' NPOs or falsely represent themselves as the agents of 'good works' in order to deceive donors into providing support.

Financial institutions, donors and other stakeholders are encouraged to study the FIC's Guidance Notes on NPOs, in particular section 5 and Annexure A of Guidance Note 12 of 2023 which detail potential risks and indicators of high risks within NPOs. The guidance note is available on the FIC website under the 'Publications' folder for '2023 Guidance Notes', or via the following link: <https://www.fic.na/index.php?page=2023-guidance-notes>.

4. PART B: NPO RISK MANAGEMENT FRAMEWORKS

Financial institutions, donors and other stakeholders must have an appreciation of a NPO's risk exposure, when making decisions around supporting or availing services to NPOs. This section lists primary risk management frameworks which reduces a NPO's risk exposure.

4.1 Licensing and authorization: Proof of registration as a Welfare Organization from the National Welfare Board, in terms of the National Welfare Act, 1965 (Act 79 of 1965) and proof of registration as a Section 21 entity, amongst others. This gives some assurance that the NPO complies with certain minimum requirements to reduce risks;

4.2 FIC registration: FBOs and charitable NPOs must register with the FIC. The FIC registration entails NPOs availing information which is considered in the individual NPO's risk assessment. This enables the donor to gain assurance that such NPO has been subjected to required due diligence. The FIC, as per the FIA, requires NPOs to have the following in place, upon registration:

- a. **Governing documents** such as a charter, constitution, memorandum of association or articles or other governing documents deemed relevant by the FIC governing its organization. Such governing documents must specify, amongst others, the purpose and objectives of the NPO;
- b. **The NPO is physically present in Namibia** and must have a registered local office to which all communications and notices are sent;
- c. **Founders and governance bodies such as Board, Management Committee (MC)**, plus the mechanisms for appointing such board or MC. These are functions or persons exercising effective control of the NPO. If need be, depending on the NPO's risk profile, the FIC may require demonstration that the founders, board or MC is fit and proper;
- d. **Source of NPO funding.** This is essential in reducing abuse of NPOs;
- e. **A policy document or standard operating procedures** to manage TF risks. NPOs must implement controls to reduce risks of abuse of its services or programs,

finances and resources. The said documents or frameworks must, at a minimum, speak to the following:

- i. **create means to confirm the identity, credentials and good standing** of donors and beneficiaries, beneficial owners etc;
- ii. **managing risks of beneficiaries, including risks emanating from ties to high risk jurisdictions:** Where the NPO is involved in funding and/or resourcing other NPOs, arrangements, persons (or any other beneficiaries), the funding/donor or resourcing NPO has a responsibility to gain assurance that such funds or resources being availed are not to advance financial crimes and terrorist activities;
- iii. **transparency around founders, donors, beneficiary information:** NPOs need to ensure that identification and relevant information of all their donors, beneficial owners and beneficiaries is publicly available or can be readily accessed by the public and competent authorities such as the FIC, Law Enforcement and licensing and registration bodies such as Government Ministries. Such records should be kept for a minimum period of five years, unless instructed by competent authorities otherwise;
- iv. **mandatory sanctions screening:** ensure to screen all donors, beneficiaries, beneficial owners and relevant stakeholders against the United Nations Security Council (UNSC) sanctions lists before any services are availed, for purposes of combatting the financing of Terrorism and the funding of Proliferation activities. The updated sanctions lists can be found by accessing the following link: <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>;
- v. **accounting for all NPO resources, receipts and expenditure:** having appropriate controls in place to ensure all resources and funds are fully accounted for and used in a manner that is consistent with the legitimate services, activities, purpose and objective(s) of the NPO. Funds should only be moved or transferred via regulated systems, such as banking systems, which leave an audit trail of the transaction. Moving/transferring funds through cash or informal mechanisms is high risk and should be limited to exceptional circumstances. Controls should be built in for cash transactions when they occur; and

- vi. **basic governance and administrative controls** such as prudent approval controls, segregation of duties, etc., in the disbursing of funds.

The risk management measures listed above are essential controls financial institutions, donors and other stakeholders need to consider at all times when dealing with NPOs. All such stakeholders are further requested to read relevant FIC publications on NPO risk management frameworks including:

- a. section 4 of Revised Directive 04 of 2023, accessible via <https://www.fic.na/index.php?page=2023-directives> ; and
- b. sections 5.2 and 6 of Guidance Note 13 of 2023, accessible via <https://www.fic.na/index.php?page=2023-guidance-notes>

At present, all NPOs are directed to ensure registration with the FIC by **no later than 29 September 2023**, as per June 2023 FIA amendments. Financial Institutions, donors and any other persons dealing with NPOs are requested to help encourage NPOs to ensure such registration timely. NPOs that fail to register and remain in existence after that date will not be in compliance with the law.

5. GENERAL

This Guidance may contain statements of policy which reflect the FIC's administration of the legislation in carrying out its statutory functions. This guidance is issued without prejudice to the FIA and its complementing Regulations. The information contained herein is intended to only provide a summary on these matters and is not intended to be comprehensively exhaustive.

This document is a guide. Effective implementation is the responsibility of all stakeholders dealing or availing services to NPOs.

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ACTING DIRECTOR: FINANCIAL INTELLIGENCE CENTRE

FIC CONTACT DETAILS

All correspondence and enquiries must be directed to:

The Director, Financial Intelligence Centre

P.O. Box 2882

No. 71 Robert Mugabe Avenue, Windhoek

helpdesk@fic.na