

An Advisory Guideline
on
Preventing the Misuse of Charities for
Terrorist Financing

Narcotics Division

Security Bureau

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Chapter 1 Introduction

1.1 Charities complement the government and business sectors in the provision of essential services, comfort and hope to those in need. However, it has been unfortunately revealed that some overseas charities have been exploited by terrorists and terrorist organisations to raise and move funds, provide logistical support, encourage terrorist recruitment or otherwise support terrorist organisations and operations. Such misuses not only facilitate terrorist activities but also undermine donor confidence and jeopardise the integrity of charities.

1.2 Most charities in Hong Kong are highly localized, i.e. they only receive government grants or local donations, or only serve the local community. As a result of these characteristics, coupled with the geopolitical location of Hong Kong, the risk of them being abused for criminal or terrorist purposes is minimal. Despite the low risk, we still need to join the global fight against terrorism and be vigilant against any potential misuse to preserve the integrity of our charities sector. Under no circumstances should funds donated to help the needy be funnelled instead to support terrorist activities.

1.3 Since the September-11 Event, the international community has strengthened the global fight against terrorism. The Financial Action Task Force on Money Laundering (“FATF”)¹ has extended its mandate to counter-terrorist financing and formulated the Nine Special Recommendations against it. One of the Special Recommendations, namely Special Recommendation VIII (“SRVIII”), sets out measures to prevent Non-Profit Organisations² (“NPO”), including charities, from being misused for terrorist financing. Hong Kong, being a member of the FATF, is obliged to comply with the Recommendation.

¹ The FATF is an intergovernmental body formed in 1989. It sets international standards, develops and promotes policies to combat money laundering and terrorist financing. It currently has 34 members and more than 30 observers. Hong Kong has been a member of FATF since 1990.

² SR VIII defines “*Non-Profit Organisation* or *NPO*” as a legal entity or an 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”.

1.4 This Guideline is drawn up with reference to SR VIII and has incorporated comments and suggestions of charitable organisations received during the consultation process. It aims to assist charities to develop best practices and procedures to prevent them from being misused for terrorist financing. It is advisable for charities in Hong Kong to adopt the suggestions set out in this Guideline.

Chapter 2 Terrorist Financing

Vulnerability and Offences

2.1 In simple terms, terrorist financing is the financial support in any form, of terrorism or of those who encourage, plan, or engage in terrorism. Terrorists require funds to carry out acts of terrorism and terrorist financing provides the funds needed. Sources of terrorist financing may be legitimate or illicit. Charities are vulnerable to abuse by terrorists for a variety of reasons. Charities enjoy the public trust, have access to considerable sources of funds, and are often cash-intensive. Furthermore, some charities 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. Terrorist organisations have taken advantage of this to infiltrate the sector and misuse charities funds and operations to cover for or support terrorist activity.

2.2 Under section 7 of the United Nations (Anti-Terrorism Measures) Ordinance, Chapter 575 (“UNATMO”), a person shall not provide or collect funds with the intention or knowing that the funds will be used to commit terrorist acts.

2.3 It should be noted that terrorist financing involves amounts that are not always large and the associated transactions may not necessarily be complex given that some sources of terrorist funds may be legitimate.

FATF Special Recommendation VIII (SR VIII)

2.4 In 2001, FATF formulated SR VIII, together with seven other Special Recommendations, to combat terrorist financing³. For ease of reference, SR VIII is reproduced below:

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations (“NPO”) are particularly vulnerable, and countries should ensure that they cannot be misused:

³ The FATF promulgated Special Recommendation IX “Cash Couriers” in October 2004. For details of the SR, please visit the websites of FATF (www.fatf-gafi.org) or the Narcotics Division, Security Bureau.

by terrorist organisations posing as legitimate entities;

to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and

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

2.5 The objective of SR VIII is to ensure that NPOs, including charities, are not misused by terrorist organisations (i) to pose as legitimate entities; (ii) to exploit legitimate entities as conduits for terrorist financing, or (iii) to conceal or obscure the covert diversion of funds intended for legitimate purposes to terrorist uses.

2.6 FATF developed a best practices paper (Appendix I) in 2002 to aid member jurisdictions to protect NPOs from the misuse. In 2006, FATF further adopted the Interpretative Note on SR VIII (Appendix II). The Note sets out specific measures that member jurisdictions should put in place to ensure that their NPO sector is not being misused for terrorist financing purposes.

Chapter 3 Anti-Terrorist Financing Best Practices

3.1 An effective anti-terrorist financing framework for charities should comprise of the following components -

- (a) Good corporate governance;
- (b) Good service management; and
- (c) Financial transparency and accountability.

3.2 For best practices in respect of (a) – (c) above, the Social Welfare Department has published a series of advisory guidelines, which can be found at the NGO Corner of the Department's website at www.swd.gov.hk. Charities are strongly advised to refer to those guidelines in their management and operation to prevent misuse for terrorist financing as well as other malpractices. In particular, charities should -

Good Governance and Financial Transparency

- (a) maintain information on the purpose and objectives of their stated activities, and 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 charity or through the Companies Registry;
- (b) publish annual financial statements that provide detailed breakdowns of incomes and expenditures;
- (c) 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 its stated activities;
- (d) maintain, for a period of at least **five years**, and make available to appropriate authorities, 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 organization;

- (e) conduct transactions via regulated financial channels wherever feasible, keeping in mind the varying capacities of financial sectors in different countries and in different areas of urgent charitable and humanitarian concerns;
- (f) consider, on a risk-based approach⁴, making reference to publicly available information, to determine whether any of their own employees are suspected of being involved in activities relating to terrorism, including terrorist financing;

Know Your Donor and Beneficiary Charities

- (g) undertake best efforts to document the identity of their significant donors with due regard to donors request for anonymity and/or confidentiality of identity;
- (h) inform the donors of how and where their donations are going to be expended;
- (i) make best efforts to confirm the identity, credentials and good standing of their beneficiary charities;
- (j) conduct, on a risk-based approach⁵, a reasonable search of public information, including information available on the Internet, to determine whether the donor/beneficiary charities or their key employees, board members or other senior managerial staff are suspected of being involved in activities relating to terrorism, including terrorist financing; and

Report Suspicious Transaction

- (k) make a report to the Joint Financial Intelligence Unit when there is

⁴ Factors for risk assessment should include the seniority of the post assumed by the subject employee, known reputation, years of acquaintanceship, years of service in the charity sector, and previous experience, etc. Public information may include the terrorist lists published in the Gazette from time to time.

⁵ Charities should assess the level of risk in deciding the extensiveness and thoroughness of the search. Factors to be considered in the assessment include the nature of the activities of the donor/beneficiary charity, the target group(s) of the charity, the active place(s) of the charity, the known reputation of the charity and its staff, and years of the acquaintanceship with them, etc. The public information may include the terrorist lists published in the Gazette from time to time.

any knowledge or suspicion of terrorist property. Please see Chapter 4 for more details on reporting of suspicious transactions.

Chapter 4 Reporting Suspicious Transaction

Legal Obligation

4.1 Despite a low risk, due to the reasons described in the preceding chapters, charities in Hong Kong may still come across terrorist property. If you **know** or **suspect** any property to be terrorist property, you must report your knowledge or suspicion to the Joint Financial Intelligence Unit (“JFIU”)⁶. Such reporting is commonly referred to as suspicious transaction reporting. It is a legal obligation set out in section 12 of the UNATMO. According to section 2 of the UNATMO, “terrorist property” means the property of a terrorist or terrorist associate; or any other property consisting of funds that (i) is intended to be used to finance or otherwise assist the commission of a terrorist act; or (ii) was used to finance or otherwise assist the commission of a terrorist act.

Practices and Procedures

4.2 During the course of your charitable business, if you know or suspect any abuse, e.g. your donors or your beneficiaries charities may be involved in terrorism, etc., you should make a suspicious transaction report (“STR”). Making a STR protect you from prosecution in case you are unwittingly involved in terrorist financing. Therefore, if you have any doubt as to the legitimacy of persons or property you deal with even though you have exercised due diligence to “know” them, it is advisable for you to make a STR to the JFIU.

4.3 Whilst there is no prescribed manner of reporting, report in writing is preferred. JFIU has designed a standard form to assist individuals in making STRs. A copy of the form is at Appendix III. A STR should include the personal particulars and contact details of the individuals or entities involved, and details of the suspicious circumstances. The JFIU will acknowledge receipt of your report, analyse it and forward it to the appropriate law enforcement authority for investigation. You will be informed of the outcome of investigation in due course.

⁶ JFIU is jointly operated by the Police and the Customs and Excise Department. It is situated at the Police Headquarters. It was set up in 1989 to receive and analyse suspicious transaction reports, and to disseminate the same to investigative units for investigation.

Chapter 5 Suggestions and Enquiries

5.1 If you have any suggestions about this Guideline, please contact us at:

Narcotics Division,
Security Bureau
30/F, Queensway Government Offices
Admiralty, Hong Kong

Tel: 2366 8822

Fax: 2810 1790

Email: ndenq@sb.gov.hk

5.2 If you want to make any enquiries about suspicious transaction reporting, please contact the **Joint Financial Intelligence Unit** at:

16/F, Arsenal House West Wing,
Police Headquarters,
Wanchai, Hong Kong

Tel: 2866 3366

Fax: 2529 4013

Email: jfiu@police.gov.hk

5.3 Further details of suspicious transaction reporting can be found at www.jfiu.gov.hk.