Financial Intelligence Centre

DRAFT PUBLIC COMPLIANCE COMMUNICATION

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No 103 (PCC 103)

GUIDANCE ON COMBATING THE FINANCING OF TERRORISM AND ANTI-MONEY LAUNDERING MEASURES RELATING TO NON-PROFIT ORGANISATIONS

PCC SUMMARY

The Financial Intelligence Centre Act 2001 (Act No. 38 of 2001) (the FIC Act) places certain obligations on accountable institutions, reporting institutions and other persons to implement certain measures to combat terrorist financing and money laundering.

Non-profit organisations (NPOs) have been identified by the Financial Action Task Force (FATF) as entities, which are susceptible to abuse by criminals for terrorist financing and money laundering. This PCC provides guidance to the NPO sector, NPO Regulators and third parties dealing with NPOs, regarding measures that could be implemented in order to combat terrorist financing and money laundering risks within the NPO sector.

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OBJECTIVE

The objective of this PCC is to provide guidance to NPOs, NPO Regulators and third parties dealing with NPOs, regarding the measures that may be implemented to combat terrorist financing and money laundering. In addition, the PCC provides guidance on the Voluntary Disclosure Reporting, including the process of submitting Voluntary Disclosure Reports by a NPO, NPO Regulator and/or third parties to the FIC.

GLOSSARY

"The Centre" means the Financial Intelligence Centre established in terms of section 2 of the FIC Act.

"FIC Act" refers to the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) as amended by the Financial Intelligence Centre Amendment Act, (Act No. 1 of 2017).

"NPO" refers to non-profit organisation

"ML" refers to money laundering

"TF" refers to terrorist financing

"VDR" refer to a Voluntary Disclosure Report, which report is submitted to the FIC in respect of terrorist financing and/ or money laundering. VDR relates activities that may or may not involve a transaction between two or more parties or in respect of a transaction or a series of transactions about which enquiries is made, but which has not been concluded, respectively. VDR's is submitted on a voluntary basis.

1. INTRODUCTION

1.1. The Non-profit Organisation (NPO) sector in South Africa plays a vital role in community building and it is therefore important that third parties understand the importance of continued provision of funds, goods and services to NPOs that operate for legitimate purposes, in this manner ensuring financial inclusion.

1.2. Although not noted as an accountable or reporting institution in terms of Schedules 1 and 3 of the FIC Act, NPOs have been identified by the Financial Action Task Force (FATF) as being entities that are vulnerable to abuse by criminals for terrorist financing and money laundering.

1.3. NPOs face higher risks of being abused for terrorist financing and money laundering purposes, based on the nature of their structure, income generation and beneficiary payment methods.

1.4. NPOs should understand the terrorist financing and money laundering risks they face and where higher risks are identified the relevant NPOs should take measures to adequately mitigate these risks. The different measures implemented to combat terrorist financing and money laundering should be proportionate to the risks faced by the NPO.

1.5. NPOs that become aware, or suspect they are being abused for terrorist financing and or money laundering purposes are encouraged to notify the Centre of such, by submitting a VDR to the Centre.

1.6. The Department of Social Development, the Companies and Intellectual Property Commission, the Masters of the High Court and the South African Revenue Services as Regulators exercise regulatory oversight over NPOs, and therefore play a vital role in the monitoring of compliance by NPOs with measures aimed at reducing the terrorist financing and money laundering risks faced. NPOs based in South Africa that operate in South Africa and outside of South Africa face these risks. These NPO Regulators should create awareness within the NPO sector of the terrorist financing

and money laundering risks NPOs face, and implement a risk-based approach in dealing with NPOs.

1.7. In addition, third parties that have dealings with NPOs should also follow a risk based approach when transacting with NPOs, and implement adequate measures for dealing with NPOs that pose a high risk from a terrorist financing and money laundering perspective.

1.8. NPOs are not inherently all high risk and should therefore not be impacted negatively due to the mere fact that an entity is an NPO.

2. APPLICATION OF THIS PUBLIC COMPLIANCE COMMUNICATION

2.1. This PCC applies to all types of NPOs in South Africa, the relevant NPO Regulator's as set out in paragraph 4 below and third parties that deal with NPOs.

3. INTERNATIONAL STANDARDS

3.1. The Financial Action Task Force (FATF) International Standards on combating money laundering and the financing of terrorism, (the FATF Recommendations), specifically Recommendation 8 states the following:

3.1.1. "*Non-profit organisations.*

Countries should review the adequacy of laws and regulations that relate to non-profit organisations, which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk based approach, to such non-profit organisations to protect them from terrorist financing abuse, including:

(a) by terrorist organisations posing as legitimate entities;

(b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and

(c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations."

3.2. The Centre hereby endorses the principles as set out in the FATF Recommendation 8 and the interpretive note thereto, and the applicability thereof.

4. FRAMEWORK WITHIN WHICH NPOs FUNCTION IN SOUTH AFRICA

4.1. The Financial Action Task Force (FATF) defines a non-profit organisation as:

"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".

Registration models in South Africa

4.2. According to the Non-profit Organisations Act No. 71 of 1997 (NPO Act), the definition of a non-profit organisation is:

"A trust, company or associations of persons

a) Established for a public purpose; and

b) The income and property of which are not distributable to its members or office bearers except as reasonable compensation for services rendered."

4.3. Registration in terms of the NPO Act is not mandatory for NPOs; a NPO may register voluntarily with the Department of Social Development. The Department of Social Development is mandated as the NPO Regulator for purposes of the NPO Act. NPOs must register with the South African Revenue Services (SARS), which regulate these entities from a tax perspective.

4.4. According to the Companies Act No, 71 of 2008 (the Companies Act) a Non-profit Company (NPC) is:

"A company

(a) Incorporated for a public benefit or other object as required by item 1(1) of scheduled 1 of the Companies Act, and

(b) the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3) of schedule 1 of the Companies Act."

4.5. NPCs are companies registered with the Companies and Intellectual Property Commission (CIPC) as a Non-profit Company ("NPC"). NPCs operates as NPOs. NPCs are subject to the requirements as set out in the Companies Act, and are regulated by the CIPC. NPCs must register with the South African Revenue Services, which regulate these companies from a tax perspective.

4.6. NPOs can be registered as trust's with the applicable Master of the High Court. For the purposes of this PCC such NPOs are referred to as NPO trusts.

4.7. There may be instances where NPOs are not registered with the DSD, CIPC, SARS and/or the Master of the High Court, as NPO registration is done on a voluntary basis. The result is that there are fully functional operating NPOs that are not registered in terms of the NPO Act, Companies Act, nor in terms of the Trust Property Control Act 57 of 1988. The NPOs which are not formally registered are referred to voluntary associations.

Interpretation of the Centre

4.8. NPOs should implement measures as set out in this PCC in addition to current practices in order to mitigate the terrorist financing and money laundering risks.

4.9. For the purposes of this PCC, NPOs as defined above do not fall within the definition of a business. The term business is not defined in the FIC Act, the ordinary meaning of the term, within the context of the FIC Act, is that of a commercial activity or institution, as opposed to a charitable undertaking or public sector institution conducting activity not for profit.

5. COMBATING THE FINANCING OF TERRORISM AND ANTI-MONEY LAUNDERING LEGISLATION APPLICABLE TO NPOs

5.1. Although not an accountable institution, NPOs do have compliance obligations in relation to targeted financial sanctions in terms of the FIC Act and combating terrorist financing in terms of the Protection of Constitutional Democracy against Terrorist and Related Activities Act No. 33 of 2004 (POCDATARA).

Financial Sanctions

5.2. Section 26B of the FIC Act sets out the prohibition relating to persons and entities identified by the United Nations Security Council resolutions (UNSC resolutions). This section of the FIC Act applies to all persons, including NPOs. Section 26A of the FIC Act, section 26B and 26C of the FIC Act, are referred to as the Financial Sanctions provisions.

5.3. NPOs are prohibited from accepting, providing or making available economic support or any financial or other service to persons or entities listed on the UNSC resolutions. This would mean that if funds were coming from, or going to a person or entity listed in the UNSC resolutions, the NPO would not be permitted to enter into that transaction.

5.4. The Centre, in order to assist persons in accessing the UNSC resolutions, have made a list available which is referred to as the Consolidated Targeted Financial Sanctions List (TFS List), and is accessible on the Centre's website at www.fic.gov.za.

5.5. There is no reporting obligation imposed on NPOs in terms of the FIC Act in relation to Financial Sanctions, however, the Centre strongly urges NPOs to report any suspicion or knowledge of the financing of persons or entities subject to financial sanctions to the Centre by means of submitting a VDR.

Example 1

NPO A becomes aware that Mr B is listed on the TFS List. If NPO A accepts a donation from Mr B knowing that Mr B is a sanctioned person, NPO A would have contravened S26B of the FIC Act, which prohibits all persons from accepting funds from a sanctioned person.

Example 2

NPO C suspects that Mr D is listed on the TFS List. If NPO C provides funding to Mr D and thereafter receives confirmation that Mr D is listed on the TFS list, then NPO C would have contravened S26B of the FIC Act, which prohibits the funding of a sanctioned person.

5.6. A person affected by a prohibition under section 26B of the FIC Act, may request permission for the provision of financial services in instances as set out in section 26C of the FIC Act.

Terrorist Financing

5.7. Section 4 of the POCDATARA sets out the offence of financing of terrorism and indicates that any person who acquires any property, provides financing, and/or other services and/or benefits to a person or entity listed in terms of section 25 of POCDATARA pursuant to a UNSC resolution is guilty of an offence.

5.8. Persons and entities listed in terms of section 25 of POCDATARA, have been listed due to terrorism and related activities. This list is accessible on the South African Police Services website at:
https://www.saps.gov.za/resource_centre/acts/downloads/terrorism/37758_proc39.pdf; and
The UNSC website at: https://www.un.org/securitycouncil/sanctions/information.

5.9. Although there is no reporting obligation imposed on NPOs in terms of the FIC Act, a reporting obligation is imposed in terms of section 12 of POCDATARA. Should an

NPO become aware, or have a suspicion that they are being abused for purposes of terrorist financing, they must report this to the South African Police Services.

Money laundering offences

5.10. Section 4 of the Prevention of Organised Crime Act, Act No. 121 of 1998 (POCA) states that a person should not enter into a transaction if they know or ought to have known that:

- the property is part of proceeds of unlawful activity; and
- enters in to any form of transaction or act in relation to that property,
- which would cause the effect of concealing the nature, source, location or disposition of the property; and or
- which would allow the criminal to launder these funds (property).

5.11. Section 4 of POCA creates the offence of money laundering. Any person may be found guilty of this offence.

5.12. Section 5 of POCA states that assisting another to benefit from proceeds of unlawful activities is an offense. Further, in terms of section 6 of POCA any person who acquires, possesses or uses the proceeds of unlawful activities is guilty of an offence. In doing so, this person would also be charged with money laundering.

5.13. NPOs that become aware, or suspect that a transaction or activity relates to terrorist financing and or money laundering are encouraged to notify the Centre of such, by means of submitting a VDR to the Centre.

TFS and Terrorist Financing Offences

5.14. Where any person (including a NPO founder, member, employees, trustee or authorised representative) receives or provides benefits (including finances, economic benefit or use of property) to any person or entity listed on the TFS list, and or the list in terms of section 25 of POCDATARA, that person will be prosecuted in terms of section 49A of the FIC Act and/or section 4 of POCDATARA.

6. COMBATING TERRORIST FINANCING/ ANTI-MONEY LAUNDERING RISKS AND VULNERABILITIES

6.1. Certain NPOs pose a higher risk from a terrorist financing and money laundering perspective, as their specific sector may possibly be more vulnerable to abuse due to the following:

Issues relating to funding

6.1.1. Numerous NPOs solicit donations from members of the public, private businesses and government institutions. Ways in which the donations are received from the public include direct cash deposits into the NPOs bank account, or cash payments directly to the NPO members. In some instances, NPOs operate with high volumes of cash, and transacting in cash creates a level of anonymity, as cash transactions cannot be traced and there is no audit trail. Cash as choice of payment, has been misused by terrorist groups because of these reasons.

6.1.2. NPOs can raise large amounts of funding with ease from donations. In some instances, the reasons for seeking donations are fraudulently misrepresented. The funding so obtained might then be misused for terrorist related purposes.

6.1.3. Donations stem from a sense of empathy; criminals are aware of this and can manipulate others based on emotions in order to solicit funding.

Improper registration of NPOs

6.1.4. NPOs can be established with ease in South Africa as registration is voluntary, therefore even unregistered NPOs can be fully functional. This lends itself to abuse as the founders of NPOs in certain instances may be corrupt. This is evident where a criminal establishes a NPO with the main purpose of funding terrorism and/or laundering the proceeds of crime. Noting the founders, members and employees of NPOs are not subject to rigorous background and criminal checks.

6.1.5. Registration is voluntary resulting in certain NPOs who operate without any regulatory oversight, which regulatory oversight may deter wrongdoing. This also presents the

risk that NPOs are established for illegal reasons by actual terrorists, i.e. in order to recruit further terrorists and gain a greater following.

6.1.6. Illegal actors misuse NPOs names, by registering with an existing NPO's name at a different NPO Regulator, indicating different founder information. This indicates the fraudulent use of NPO name to register.

6.1.7. Certain NPOs are registered as an NPO with the intention of being exempted from paying taxes to SARS, however the NPO is misused and operated as a business for profit. The NPO then benefits from undue tax exemptions.

Irregularities in the beneficiary pay-outs by the NPO

6.1.8. Certain NPOs operate cross border, where donations are solicited within South Africa and thereafter intended to be dispersed to legitimate beneficiaries in other countries, NPO funds might be stolen abroad or through corrupt activities be given to terrorist groups as opposed to the legitimate beneficiaries initially intended for. This risk is higher with NPOs that operate cross border, however may also be present where a NPO operates domestically.

6.1.9. The use of NPOs to send funds cross border to high risk jurisdictions usually does not attract attention or seem suspicious or unusual, as the activity (including transaction references) may be seen as being in line with the NPO's profile, including the nature of the operations and intended use of funds. This may however be misrepresented as legitimate, thereafter being diverted to illegal actors.

7. RECOMMENDED MEASURES TO MITIGATE TERRORIST FINANCING AND MONEY LAUNDERING RISKS

7.1. The principle objectives of the FIC includes to assist in the identification of the proceeds of unlawful activities; combating of money laundering, terrorist financing and related activities; as well as the implementation of financial sanctions. The FIC has general powers to do anything incidental to the exercise of the FICs functions.

7.2. The following recommendations do not stem from the FIC Act, nor the Money Laundering Terrorist Financing Control Regulations. The Centre cautions the NPO sector about the terrorist financing and money laundering risks posed, and accordingly propose that the following recommendations be applied:

Recommendations specifically aimed at NPOs

7.3. Entities not registered as NPOs, however operating as NPOs are advised to register with either the Department of Social Development as an NPO, or the Companies and Intellectual Property Commission as a Non-profit Company as a mitigating measure against the misuse of the NPO.

7.4. NPOs should remain aware of the fact that the NPO sector is vulnerable to abuse from a terrorist financing and money laundering perspective, and as such should be vigilant and have a good understanding of the risks and implement measures to mitigate these risks.

7.5. NPOs are advised to document the control structures and measures of the NPO, indicating all founders and members etc. in the NPO's organogram, policies and procedures.

7.6. NPOs are advised to obtain and review major donor information with a goal of understanding whether or not the donors are legitimate. In addition, NPOs should obtain and review beneficiary information to determine whether the beneficiaries are legitimate. Information envisaged includes the:

7.6.1. donor and beneficiary identification;

7.6.2. stated nature of the beneficiary;

7.6.3. stated intended use of funds by the beneficiary; and

7.6.4. source of funds of the donor.

7.7. Where an NPO questions the legitimacy of its beneficiaries, it should not provide services or funding to illegitimate beneficiaries. NPOs may seek to verify beneficiary information against third party databases where possible.

7.8. NPOs should maintain records of all information obtained from their donor and beneficiaries, as well as transaction records. These required records should be made available to NPO Regulators for assessment purposes.

7.9. NPOs should adequately document their operational processes including fundraising and beneficiary distribution processes. Where required these operational processes should be made available to NPO Regulators for assessment purposes.

7.10. NPOs should conduct inspections on beneficiaries where reasonable to evidence whether funding has been used for the intended purposes. NPOs may also request for evidence in the form of photographs or video recordings from time to time to determine whether the funding has been used for the beneficiaries stated purposes.

Recommendations specifically aimed at NPO Regulators

7.11. NPO Regulators should provide ongoing guidance to the NPO sector on the terrorist financing and money laundering risks to which the sector is vulnerable. This ongoing guidance may take the form of training, ad hoc presentations, reading material including pamphlets and media articles.

7.12. In addition to any requirements that may be found in the legislation governing NPOs, NPO Regulators should monitor NPOs in order to detect possible abuse of the entities from a terrorist financing and money laundering perspective. Where required, NPO Regulators are encouraged to develop and implement further controls that would

assist in better regulating the NPO sector. The Centre encourages the NPO Regulators to report any suspicious activity or knowledge of wrong doing in relation the terrorist financing and money laundering to the Centre by means of submitting a VDR.

7.13. NPO Regulators should request adequate information at registration from an NPO founders, members, and authorised representatives in order to adequately risk rate the NPOs from a terrorist financing and money laundering perspective.

7.14. Adequate information as set out in paragraph 7.11 should include, but is not limited to:

7.14.1. NPO founder identification information;

7.14.2. member identification information;

7.14.3. where available beneficiary identification information; and

7.14.4. information on the NPO operations.

7.15. NPO Regulators should, upon registration of NPOs, screen the founders, trustee's members, authorised representatives and where beneficiaries are named, the named beneficiaries against the TFS list and the sanctions list in relation to section 25 POCDATARA.

7.16. The NPO Regulators should risk rate NPOs from a terrorist financing and money laundering perspective based upon various factors as set out in paragraph 9 below.

7.17. Enhanced measures to monitor activity should be implemented by NPO Regulators when dealing with higher risk NPOs.

7.18. NPO Regulators should implement inspections on higher risk rated NPO with a view of determining whether the NPO is operating legitimately in line with the stated purpose and are dispersing funds to appropriate beneficiaries.

7.19. NPO Regulators should implement measures requiring NPOs to reasonably determine who their beneficiaries are and gain an understanding of how beneficiaries make use of resources provided to them by the NPO.

7.20. NPO Regulators should review the financials of an NPO in order to determine whether the stated operations correspond to the income and expenditure of the NPOs.

7.21. NPO Regulators should maintain records of all NPO information obtain from the NPOs.

Recommendations specifically aimed at third parties dealing with NPOs

7.22. Third parties that deal with NPOs include accountable institutions, reporting institutions, donors, service providers, and partners.

7.23. When dealing with an NPO, all third parties are required to exercise care to determine whether the NPO is legitimate.

7.24. Third parties are cautioned to confirm that the NPO is actually registered with the DSD and or with the CIPC. Both the DSD as well as the CIPC could provide this information to the third parties. The CIPC issues registration certificates to registered NPCs and the DSD allocates an NPO registration number which can be validated against the NPO database on the DSD website.

7.25. Third parties should request adequate information from the NPO regarding the NPOs founders, trustees, members, employees and authorised representatives and information on the operations and beneficiary information.

7.26. Adequate information as set out in paragraph 7.23 should include but is not limited to:

7.26.1. NPO founder identification information;
7.26.2. member identification information;
7.26.3. where available beneficiary identification information: and

7.26.4. information on the NPO operations including but is not limited to, information on how funding will be spent and where the funding will be dispersed by the NPO.

7.27. Where a third party is an accountable institution in terms of schedule 1 of the FIC Act, that accountable institution would have to comply with all the requirements as set out in the FIC Act, and the accountable institutions Risk Management and Compliance Programme (RMCP).

7.28. Where a third party is a reporting institution in terms of schedule 3 of the FIC Act, that reporting institution would have to comply with all the applicable requirements as set out in the FIC Act.

8. REPORTING

Reason to submit VDR's and processes

8.1. NPO's founder, trustees, members, employees and authorised representatives who suspect or know that an NPO has or is being misused for terrorist financing and money laundering purposes, should report such facts to the Centre within a reasonable period. When reporting the NPO is to state all the facts upon which his/ her suspicion and or knowledge is based, this report is referred to as a Voluntary Disclosure Reporting (VDR).

8.1.1. Terrorist financing and money laundering purposes may include but is not limited to instances where the NPO has received or is about to receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities, and/ or;

8.1.2. Where the NPO has been used or is about to be used in any way for money laundering purposes or to facilitate the commission of an offence relating to the financing of terrorist and related activities, and/ or;

8.1.3. Where the NPO is party to a transaction or series of transactions and/or activity to which the NPO is a party, which transaction, series of transactions and/or activity:

a) facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities or property, which is connected to an offence relating to the financing of terrorist and related activities;

b) has no apparent business or lawful purpose;

c) may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Services;

d) relates to an offence relating to the financing of terrorist and related activities; or

e) relates to the contravention of a prohibition under section 26B of the FIC Act.

8.2. A VDR is similar to a section 29 suspicious and unusual activity report in terms of the FIC Act, however filing a VDR is not mandatory, and the reporter reports the VDR voluntarily.

8.3. A person who files a VDR with the centre is referred to as a Voluntary Reporter.

8.4. NPO Regulator's employees who suspect and/ or know that an NPO is being misused, or has been misused for terrorist financing and/or money laundering purposes, should within a reasonable period report that fact to the Centre, upon which his/ her suspicion and or knowledge is based.

8.5. No person who knows or suspects a VDR report has been submitted to the Centre should disclose that information and/or the contents of that report to any other person.

8.6. VDR's must be filed with the Centre electronically by making use of the internet based reporting portal provided for this purpose at http://www.fic.gov.za and then selecting the registration and reporting portal link.

8.7. The following general principles must be considered when utilising the Centre's registration and reporting platform:

- All users must be registered on the Centre's registration and reporting platform as per the guidance provided in Public Compliance Communication 05C;
- Voluntary Reporters are reminded to always save their web reports whilst moving between various sections of the report form and before the report is submitted. In the unlikely event of a time-out error the saved reports can be retrieved from the drafted reports menu on the Centre's registration and reporting platform;
- Voluntary Reporters are reminded that available attachments (e.g. copies of the client identification document, client proof of residence, transaction receipt, application form etc.) may be uploaded and submitted with the initial report submitted to the Centre;
- Voluntary Reporters are reminded to monitor the status of their submitted reports to ensure that the reports are successfully processed and that any failures / rejections are remediated accordingly;

- Voluntary Reporters are reminded to download and save copies of all submitted reports for their internal record keeping purposes; and
- Voluntary Reporters should ensure that any ICT related queries / incidents are logged with the Centre by means of the communicated channels and that they keep records thereof.

8.8. All businesses, including accountable and reporting institutions are required to comply with the reporting requirements as per section 29 of the FIC Act. Businesses, including accountable and reporting institutions must refer to Guidance Note 4B for further guidance in this regard.

8.9. All accountable institutions are required to comply with the reporting requirements as per section 28A of the FIC Act. Accountable institutions must refer to Guidance Note 6A for further guidance in this regard.

Legal consequences of submitting a VDR to the Centre

8.10. The Centre cautions NPOs against continuing with transactions in instances where the NPO knows or ought reasonably to have suspected that the transaction includes terrorist financing and or money laundering. The Centre advises all persons including NPOs that filing a VDR is not a defence against prosecution for criminal activity, including ,terrorist financing and money laundering.

Example 3

Where NPO A and its members are charged with terrorist financing in terms of POCDATARA, NPO A and its member may not raise a defence that NPO A submitted a VDR to the Centre advising the centre that NPO A provided funding to a sanctioned person.

Similarly, where NPO B is charged with money laundering in terms of POCA, NPO B may not use the defence that it reported the money laundering to the Centre by submitting a VDR.

8.11. The filing of a VDR does not protect the Voluntary Reporter from criminal and or civil action being instituted against the Voluntary Reporter.

8.12. VDR reports are different to section 29 STR reports in terms of the FIC Act, in that a person who submits a VDR is competent and compellable to give evidence in criminal proceedings arising from the VDR. Information concerning the identity of a voluntary reporter who has filed a VDR is admissible as evidence in criminal proceedings.

8.13. The Centre maintains confidentiality of these reports. Reports may be disclosed only in terms of legislation, court orders and/or for the purpose of legal proceedings, including any proceedings before a judge in chambers.

9. FACTORS TO BE CONSIDERED BY THIRD PARTIES WHEN DETERMINING TERRORIST FINANCING AND MONEY LAUNDERING RISK RATINGS OF NPOS

9.1. The Centre recommends that NPOs, NPO Regulators and third parties take steps to fully understand the terrorist financing as well as money laundering risks that NPOs face.

9.2. The Centre cautions third parties not to adopt a blanket negative approach to dealing with NPOs as this would negatively impact the combating of terrorist financing and money laundering.

9.3. The Centre recommends that NPO Regulators and third parties that deal with NPOs risk rate NPOs to determine each NPOs level of risk they present from a terrorist financing and money laundering perspective as not all NPOs present the same level of risk.

9.4. The following set of factors can be considered when risk rating NPOs:

NPO structure

- Is the NPO registered and capable of providing formal documentation evidencing the legitimacy of the NPO's founders, trustees, members, employees, authorised representatives and operations.
- Can the NPO provide comprehensive founder, trustee, member, employee and authorised representative information.
- Does the NPO's annual financial statements align to the stated operations.
- Does the NPO have a large annual turnover, and is this turnover in line with the NPO's profile.
- Does the NPO have a small annual turnover and is the turnover in line with the NPO's profile.
- Can the NPO evidence legitimate use of funding.
- Can the NPO evidence links to legitimate organisations.
- Are any of NPO founders, members, employees, authorised representatives subject to sanctions.

- Has the NPO been associated to any sanctioned persons.
- Does the NPO have an internet website and or social media presence – consider the type of information shared on these platforms, does it seem in line with the NPO stated purposes, does it seem legitimate.
- Are there any negative media reports on the NPO.

Location

- Are the beneficiaries based in high-risk countries from an anti-money laundering regime, weapons of mass destruction, sanctions, corruption and/ or, areas of conflict perspective.
- Are the founders based in high-risk countries from an anti-money laundering regime, weapons of mass destruction, sanctions, corruption and/or, areas of conflict perspective.
- What is the location of the NPO, in comparison to the NPO branches and beneficiaries.
- Does the NPO operate domestically only or internationally as well.

Goods and services provided

- What is the nature of the NPO activity; does it entail the distribution of actual funding or goods.
- What sector does the NPO operate in? Certain sectors may have a higher susceptibility to abuse from a terrorist financing and money laundering perspective.
- What services are provided to beneficiaries and by whom.
- Are intermediaries assisting the NPO in the provision of funding or goods to beneficiaries.

NPO beneficiary

- Does the NPO have formal agreements in place with donors and beneficiaries.
- Has the beneficiary of the NPO been linked to sanctioned persons, domestic prominent influential persons, foreign prominent public officials or known criminal entities in the past or present.
- Is the NPO able to provide information on its beneficiaries.

- Does the NPO know and understand its beneficiaries and use of their goods and services once received.

Transactions

- Does the NPO conduct numerous small transactions, which does not align to the NPO's stated purposes and the client profile.
- Does the NPO conduct numerous cash transactions.
- Does the NPO conduct high volume and high value transactions that does not fit the stated intended services / goods provided and the client profile.
- Does the NPO conduct numerous cross border transfers, cash deposits and withdrawals.
- Does the NPO have multiple accounts.
- Are NPO transaction references vague.
- Are there regular inter-account transfers in the NPO accounts.
- Does the NPO make large cash withdrawals
- Does the NPO issue cheques.
- Are there multiple signatories on the NPO account.
- Is the NPO transaction conduct across their accounts similar to that of a business.
- Are there large salary payments being made from the NPO accounts.
- Are there any transactions referenced as loans made to or from the NPO accounts.
- Does the NPO purchase any immovable property or luxury vehicles etc.
- Does the NPO raise funds through online crowdfunding.

9.5. The following examples are instances where NPOs may be abused for terrorist financing and money laundering purposes:

Example 4 Misrepresentation of a non-profit organisation

Terrorist group A fraudulently used the name of a widely recognised NPO, in order to raise funding from donations received. This funding was used toward planning terrorist

attacks as well as spreading propaganda. The terrorist group was able to carry out deadly attacks as a result.

Example 5 Creation of an NPO for illicit activity

Terrorist group B established an NPO, with the sole purpose of soliciting funding through the use of social media via mobile wallets and online funding etc. with the aim of sending the funds to high-risk jurisdictions to facilitate further terrorist attacks.

Example 6 NPO member criminal records

An NPO dealing in the religious sector raised funding from its followers. The NPO funds where then misused by a NPO member with a criminal history for his personal use.

Example 7 Transaction

Upon analysis of an NPO X's account the following was evident; the NPO X had multiple accounts with various banks, the credits into the accounts were referenced as food parcels and blankets, whilst some references were cryptic and vague, large amounts of cash were withdrawn from the accounts and the conduct in the bank accounts was indicative of a business account.

10. CONCLUSION

10.1. As part of its objectives, the Centre remains committed to assist the NPO sector in the fight against crime, through combating the financing of terrorism and related activity as well as money laundering.

10.2. The Centre has a dedicated Compliance Call Centre that may assist NPOs to understand the recommendations and VDR reporting process as well as legal consequences.

10.3. Should you have any queries please contact the FIC's Compliance Contact Centre on 012 641 6000, select option 1, or submit a web query by clicking on: http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx

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