



# **A Guide to Non-Profit-Making Organization (Foundations and Companies Limited by Guarantee)**

**Registrar of Companies/Foundations**

Issued by

Corporate and Business Registration Department

## FATF Evaluation of Mauritius

Mauritius was evaluated in 2018, with a follow-up in 2019

The report highlighted

- The need to do an assessment of the terrorist financing risk to NPOs
- The need to do outreach to NPOs on the risk, and how to reduce it

## Recommendation 8

### **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.

## **Terrorist Financing and NPOs in Mauritius**

### **NPO Terrorist Financing Risk Assessment**

This risk assessment was completed in 2020 and meets FATF requirements to:

- Identify NPOs, which by virtue of their activity or characteristics, are likely to be 'at risk' of terrorist financing.
- Identifies the nature of the terrorist financing threat to NPOs in Mauritius.
- Assesses the effectiveness of measures to mitigate the risk to 'at risk' NPOs.

### **Scope of the Risk Assessment**

The risk assessment identified the following types of NPOs as meeting the FATF definition of NPOs.

- Associations
- Charitable Foundations
- Charitable Trusts
- Companies Limited by guarantee

**TF Risk of NPOs in Mauritius was assessed as Low-Medium.**

### **Nature of the TF Threat to NPOs in Mauritius**

- The abuse of NPOs to promote extremist ideologies.
- The abuse of NPOs to finance or facilitate foreign terrorist fighters
- The abuse of NPOs to finance terrorism overseas.

## **NPOs and NPO activities likely to be at increased risk of TF abuse**

1. Cross border movement of funds.
2. Alternative sources of funds and remittance systems.
3. Involvement in complex international transactions or structures.
4. Cash fund-raising from anonymous sources.
5. Ethnic or religious activities.

## **Foundations**

Charitable Foundations are registered under the Foundations Act 2012 and the Registrar of Companies is also the Registrar of Foundations.

## **Charitable Foundations**

### **Definition of Charitable Foundation**

A Foundation shall be a charitable Foundation, where it has as its exclusive purpose or object –

- the relief of poverty;
- the advancement of education;
- the advancement of religion;
- the protection of the environment;
- the advancement of human rights and fundamental freedoms; or
- any other purpose beneficial to the public in general.

## **Need for registration of Foundation**

A Foundation shall not have legal personality unless it is registered and has been issued with a certificate of registration by the Registrar in accordance with section 24.

## **Duties of Office Bearers (Members of the Council)**

### **Council**

1. Every Foundation shall have a Council which shall –
  - a) administer the property of the Foundation; and
  - b) carry out the objects of the Foundation.
  
2. A Council shall be set up in accordance with the charter or Articles, if any, and this Act.

### **Duties and powers of Council**

- (1) A Council shall -
  - a) conduct the affairs of its Foundation in accordance with its charter and Articles, if any, and this Act;
  - b) generally, supervise the management and conduct of its Foundation;
  - c) act honestly and in good faith with a view to promoting the best interests of the Foundation; and
  - d) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
  
- (2) (a) A Council may appoint such officers as may be necessary for the effective discharge of its duties and obligations under this Act, the charter and Articles, if any.
  - (b) An officer shall be under the supervision of the Council and shall act in accordance with the instructions of the Council.

## **Appointment and qualification of secretary**

- (1) Every Foundation shall have a secretary -
- a) which shall be a management company; or
  - b) who shall be such other person resident in Mauritius as may be authorised by the Commission.
- (2) No person shall be appointed as or remain a secretary of a Foundation where -
- a) in the case of a natural person, he is a -
    - (i) minor;
    - (ii) bankrupt;
    - (iii) person with any mental impairment; or
    - (iv) person who has been convicted of an offence involving fraud or dishonesty by a Court of law in Mauritius, or elsewhere;
  - b) in the case of a body corporate, it is the subject of any proceedings, in Mauritius or elsewhere, which may result in it being wound up or otherwise dissolved.

## **Registered office**

Every Foundation shall have a registered office in Mauritius to which all communications and notices shall be addressed and which shall constitute the address for service of legal proceedings on the Foundation.

## **Charter**

“charter” means the charter of a Foundation;

## Charter of Foundation

### **(1) The charter of a Foundation shall specify -**

- (a) the name of the Foundation;
- (b) the particulars of the founder, including –
  - (i) his name and address;
  - (ii) where the founder is a body corporate, its name and registered address and particulars of its directors and controlling members; and
  - (iii) an address for the founder in Mauritius for service of documents;
- (c) the purposes and objects of the Foundation;
- (d) the endowment of the property which shall be the initial assets of the Foundation;
- (e) the beneficiary of the Foundation or the manner in which he may be appointed and, if applicable, the manner in which he may be removed;
- (f) the period, if any, for which the Foundation is established;
- (g) the name and address of the secretary;
- (h) the address of the registered office of the Foundation; and
- (i) the procedure for the appointment of the Council or of a protector or committee of protectors and its or his powers and duties.

### **(2) The charter of a Foundation may also provide for any other matter in respect of the Foundation, including provisions –**

- a) for the reservation of rights or powers of the founder;

- b) for the appointment, removal, period of office and representative authority of officers of the Foundation, including the number and description of such persons;
- c) for the appointment, removal and period of office of the auditor, if any, of the Foundation;
- d) for the appointment and removal of a protector or committee of protectors of the Foundation, as well as –
  - i. the duties, functions, powers and remuneration of the protector or committee of protectors; and
  - ii. their relationship with the Council whilst in office;
  - iii. for the appointment, removal and period of office of the members of the Council and the holding of its meetings;
  - iv. for the circumstances in which amendments to the charter may be made and the procedure to be complied with for such amendments;
  - v. requiring or permitting the drafting of Articles;
  - vi. providing for the endowment of property to the Foundation in addition to the initial assets;
  - vii. for the appointment of additional beneficiaries; and



viii. for the circumstances, if any, in which the Foundation may be redomiciled and the conditions to be satisfied in respect of such redomiciliation.

(3) The charter of a Foundation shall be in writing and shall –

where the founder is a natural person, be signed by him; or where the founder is a body corporate, be signed on behalf of the founder, by the person or persons authorised for that purpose.

### **Records to be kept**

(1) A Foundation shall keep proper records of –

- a) all sums of money received, expended and distributed, specifying the purpose of any such receipt, expense and distribution;
- b) all sales and purchases made by the Foundation; and
- c) the assets and liabilities of the Foundation;
- d) the name of the beneficial owner, if any; and
- e) where the beneficiary is a nominee, the name of the beneficial owner or ultimate beneficial owner.

(2) A Foundation shall keep accounting records which shall –

- a) be sufficient to show and explain the transactions of the Foundation;
- b) disclose with reasonable accuracy, at any time, the financial position of the Foundation; and

c) allow financial statements to be prepared.

### **Documents to be kept at registered office**

- (1) Every Foundation shall keep at its registered office –
  - a) a file containing accurate records and a copy of all documents filed with the Registrar, including accurate copies of its charter and Articles, if any;
  - b) the minutes of proceedings of any meeting of the Council; and
  - c) a register showing the names and addresses of the members of its Council, any founder and any person who may have endowed assets to the Foundation.
- (2) The records and copy of documents required to be kept by a Foundation under this section shall be open for inspection by any founder, officer, supervisory person, the Registrar or the Commission during business hours.

## **Companies Limited by Guarantee**

Companies Limited by Guarantee are registered under the Companies Act 2001 and it is administered by the Registrar of Companies.

“Company limited by guarantee” means a company formed on the principle of having the liability of its members limited by its constitution to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

A company limited by guarantee is required to file statutory documents as required under the Companies Act 2001.

- Filing of changes in the company.
- Filing of annual return and financial statement/summary.
- Keeping records of Beneficial Ownership or Ultimate Beneficial Ownership information.

## **Duty of directors to act in good faith and in best interests of company**

(1) Subject to this section, the directors of a company shall –

- (a) exercise their powers in accordance with this Act and with the limits and subject to the conditions and restrictions established by the company’s constitution;

- (b) obtain the authorisation of a meeting of shareholders before doing any act or entering into any transaction for which the authorisation or consent of a meeting of shareholders is required by this Act or by the company's constitution;
- (c) exercise their powers honestly in good faith in the best interests of the company and for the respective purposes for which such powers are explicitly or impliedly conferred;
- (d) exercise the degree of care, diligence and skill required by section 160;
- (e) not agree to the company incurring any obligation unless the director believes at that time, on reasonable grounds that the company shall be able to perform the obligation when it is required to do so;
- (f) account to the company for any monetary gain, or the value of any other gain or advantage, obtained by them in connection with the exercise of their powers, or by reason of their position as directors of the company, except remuneration, pensions provisions and compensation for loss of office in respect of their directorships of any company which are dealt with in accordance with section 159;
- (g) not make use of or disclose any confidential information received by them on behalf of the company as directors otherwise than as permitted and in accordance with section 153;

- (h) not compete with the company or become a director or officer of a competing company, unless it is approved by the company under section 146;
- (i) where directors are interested in a transaction to which the company is a party, disclose such interest pursuant to sections 147 and 148;
- (j) not use any assets of the company for any illegal purpose or purpose in breach of paragraphs (a) and (c), and not do, or knowingly allow to be done, anything by which the company's assets may be damaged or lost, otherwise than in the ordinary course of carrying on its business;
- (k) transfer forthwith to the company all cash or assets acquired on its behalf, whether before or after its incorporation, or as the result of employing its cash or assets, and until such transfer is effected to hold such cash or assets on behalf of the company and to use it only for the purposes of the company;
- (l) attend meetings of the directors of the company with reasonable regularity, unless prevented from so doing by illness or other reasonable excuse; and
- (m) keep proper accounting records in accordance with sections 193 and 194 and make such records available for inspection in accordance with sections 225 and 226.
- (n) at all times act in a manner which is not oppressive, unfairly discriminatory or unfairly prejudicial to shareholders.

- (2) A director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if expressly permitted to do so by the constitution of the company, act in a manner which he believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.
- (3) A director of a company that is a subsidiary, other than a wholly-owned subsidiary, may, when exercising powers or performing duties as a director, if expressly permitted to do so by the constitution of the company and with the prior agreement of the shareholders (other than its holding company), act in a manner which he believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.
- (4) A director of a company incorporated to carry out a joint venture between the shareholders may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, if expressly permitted to do so by the constitution of the company, act in a manner which he believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company.
- (5) (a) Subject to paragraph (b), the duties imposed by this section shall be owed to the company, and not to the shareholders, debenture holders or creditors of the company.
- (b) Without prejudice to any other action with regard to the same matter that is lawfully available, including an action under

section 170, any member or debenture holder, as the case may be, may apply to the Court for –

- i. a declaration that an act or transaction, or proposed act or transaction, by the directors or any director or former director constitutes a breach of any of their duties under this Act;
- ii. an injunction to restrain the directors or any director or former director from doing any proposed act or transaction in breach of their duties under this Act.

(6) Any director who fails to comply with subsection (1), (2), (3), (4) or (5) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 12 months.

A company limited by guarantee is required to carry out its objects as described in its constitution.

## **BEST PRACTICES FOR NPOs (CHARITABLE FOUNDATIONS AND COMPANIES LIMITED BY GUARANTEE) IN THE PREVENTION OF TERRORISM FINANCING ABUSE.**

### **1) Organisational integrity**

Charitable Foundations and Companies limited by guarantee (NPOs) are established and operate in accordance with a governing document, for example, Charter and Constitution respectively, that outline purposes, structure, reporting practices, and guidelines for complying with the Legislations. Members of the governing board shall understand and act in the interest of the organisation. The governing board shall maintain oversight over the organisation by establishing strong financial and human resource policies, meeting on a regular basis, and actively monitoring activities.

### **2) Partner relationships**

To prevent the abuse of funds by partners, Charitable Foundations and Companies limited by guarantee shall carry out appropriate due diligence on those individuals and organisations that they receive donations from, give money to or work with closely before entering into relationships or agreements. NPOs verify partner reputations through the use of selection criteria and searches of publicly available information, including domestic and UN sanctions lists. Written agreements can also be used to outline the expectations and responsibilities of both parties, which include detailed information as to the application of funds and requirements for regular reporting, audits and on-site visits.



An organisation working in areas of conflict shall develop guidelines for screening donors and partners to prevent the abuse of funds. The organization shall verify that partners are not connected with terrorist organisations and that they do not receive donations, contract, partner or share services with any organisation found in violation of or accused of violating human rights.

**Some additional points are highlighted here as best practices in relation to partner relationships.**

- Keeping records of donors
- To confirm identity of donors including regular donors
- Keeping records of the mode of payment by donors whether by cheque, cash, direct credit or virtual currency.
- To keep records of the amount received from donors(domestic/overseas )whether significant or small.
- Keeping records for categories of donations received (domestic /foreign philanthropy, domestic/foreign private individuals)
- To disclose whether funds received or sent to high risk jurisdictions (country, amount and reason).
- Anonymous Donors
- Identification of beneficiaries
- To keep a list of beneficiaries whether domestic or overseas.
- Due diligence on donors, beneficiaries, Members of Council/directors of company and shareholders.

**3) Financial accountability and transparency**

NPOs prevent financial abuse and misuse of resources and funds by establishing strong financial controls and procedures. For example, the governing board approves an annual budget and has a process in place

to monitor the use of funds. NPOs keep adequate and complete financial records of income, expenses, and financial transactions throughout their operations, including the end use of the funds. NPOs clearly state programme goals when collecting funds, and ensure that funds are applied as intended. Information about the activities carried out is made publicly available. NPOs are informed as to the sources of their income and establish criteria to determine whether donations should be accepted or refused. Sources of financing, including details regarding the main contributors, both public and private, as well as the amounts contributed, should be available to the public.

NPOs shall have a documented anti-corruption policy. Organisations shall analyse and define the risks of corruption in the specific context they are working in (e.g. fraud, excessive pricing and kickbacks, double payments, cumulated salaries or exchange rate manipulation.) NPOs should have adequate systems in place like accurate project planning, transparent financial reporting.

#### **4) Programme planning and monitoring**

NPOs should :

- establish internal controls and monitoring systems to ensure that funds and services are being used as intended. For example, NPOs clearly define the purpose and scope of their activities,
- identify beneficiary groups, and consider the risks of terrorist financing and risk mitigation measures before undertaking projects.
- maintain detailed budgets for each project and generate regular reports on related purchases and expenses. NPOs establish procedures to trace funds, services, and equipment, and carry out transactions through the banking system when possible to

maintain transparency of funds and mitigate the risk of terrorist financing.

- monitor Project performance on a regular basis by verifying the existence of beneficiaries and ensuring the receipt of funds.
- take appropriate measures, based on the risks, to account for funds and services delivered.
- verify and screen potential beneficiaries and local partners connected to “prohibited parties” in accordance with United Nations Sanctions Act 2019.

### **SOME OF THE RISK INDICATORS FOR TERRORISM FINANCING.**

- NPO funds are transferred to entities not associated with declared programmes or activities.
- NPO expenditures are not consistent with its programmes and activities.
- NPO is unable to account for the final use of all of its resources.
- NPO is unable to account for the origin of its income.
- NPO facilities conceal criminal activities.



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