



Best practices issued by the
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Concerning the

CHARITIES

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Introduction

The establishment and spreading of non-profit charitable associations and institutions have become one of the most positive phenomena in modern society. In fact, charitable associations/institutions play a significant role within the communities to which they belong by: (1) strengthening social unity and social ties between the various social classes; (2) contributing to the establishment of healthy and united communities that develop and ensure a respectable standard of living, taking care of needy people such as the poor and the orphans; and (3) supporting and spreading volunteering work, a pillar of social self-empowerment and a vital component of the national economy.

The spreading of charitable associations/institutions and their role are one of the characteristics of the MENAFATF member countries, due to specific religious, social, and economic aspects of the region where each country has to review and develop the procedures, legislation and regulations governing the work of charitable associations/institutions, in addition to the methods and criteria of controlling the legitimacy of their transactions and the origin of their funds. The purpose is to ensure that donations reach the real beneficiaries, and that charitable associations/institutions are not misused for illicit or criminal activities/transactions.

The purpose of encouraging member countries to develop their procedures, legislation and regulations concerning the work of charitable associations/institutions is undoubtedly not to undermine, diminish or impede these activities but rather to preserve their vitality and integrity, to reinforce public confidence in them through financial transparency and accurate information, and, consequently, to contribute to an increase and diversification of their noble activities.

This paper has been prepared as an advisory and technical assistance guide, with a view to acquaint MENAFATF countries with the best practices that help charities reach their goals, in conformity with AML/CFT standards. It sets a comprehensive framework that may be adapted and implemented through adequate methods by each country, in consistency with its particular legislation, regulations and circumstances.

In this paper, charitable associations/institutions mean all non-profit, public and private, charitable institutions, associations and committees that are established as legal entities and depend on benefactors' contributions. They aim at providing individuals or specific parties with charitable services in the social, religious, educational, cultural, and health fields, offered in cash (financially) or in kind by any party with humanitarian concerns.

Risk of misusing charities

In view of the unique characteristics and the nature of charity-related activities, which consist in raising funds from various sources and using, transferring or disbursing them to beneficiaries, and since these charitable associations/institutions and their staff can move freely, raise and transfer funds and carry out worldwide transactions with great flexibility, due to the wide scope of their activities on the domestic and international levels, the positive characteristics of charitable activities have recently attracted, throughout the world, criminals and terrorists - individuals and organizations – who seek to infiltrate these entities and take advantage of their

characteristics, particularly their social and humanitarian aspect. Moreover, in contrast with their noble goals, these institutions may be misused without the knowledge of their benefactors or trustees and, as a result, lose the confidence and contributions of citizens.

Thus, being aware of the significant risks stemming from such a situation, many countries and international bodies have recently adopted a number of measures to review the organization and procedures of those charitable associations/institutions, in order to overcome the weaknesses that may be exploited by criminal or terrorist individuals and organizations, and to strengthen the confidence of citizens in the institutions and their trustees.

FATF Special Recommendation VIII sets a comprehensive framework to help countries protect their non-profit institutions from being abused by:

- 1- Terrorist organizations posing as legitimate entities.
- 2- The misuse of legal entities as conduits for terrorist financing, for the purpose of, inter alia, escaping freezing measures.
- 3- Concealing or disguising, under legal cover, the real objective of fund transfers to terrorist organizations.

The FATF paper on international best practices for fighting the misuse of non-profit institutions¹ is a valuable reference that helps countries in developing and supervising the working mechanisms of these institutions, and protecting them from being misused for illicit purposes or activities.

Procedures proposed for organizing the work of charities:

If charitable associations/institutions are to achieve their goals with more transparency and confidence, regulatory and supervisory mechanisms must be developed in accordance with the legislation and regulations in force, in order to avoid any misuse. These mechanisms must be simultaneously implemented by member countries in the following domains, based on their internal procedures:

I- Legal aspects

The development of legislation and regulations regarding the party in charge of supervising the charity sector in the concerned country, the granting of licenses for establishing such institutions, and the definition of their work procedures are among the most important aspects in this field. Special attention should be given to the issuing of regulations governing the establishment, work procedures and supervision of charitable associations and institutions. They should include:

- 1- The specification of the party (governmental or civil) in charge of monitoring and supervising the charity sector, and of its duties, responsibilities and powers.

1- <http://www.fatf-gafi.org/dataoecd/39/19/34033761.pdf>

- 2- The verification of procedures and conditions to be met before licensing any charitable association/institution, including the following issues:
 - a- A definition of the goals and activities of the institution.
 - b- A review of all candidates for membership of the Board, and their compliance with established criteria of competence and good reputation.
 - c- The resources available to the charitable association/institution, their uses, and the financial audit procedures.
 - d- Empowering the supervisory body to impose the appropriate sanctions on violating institutions, and to dismiss any incompetent trustee or staff member.

II- Supervision and Control

The designation of a competent authority (governmental or civil) to monitor and supervise the charity sector in the concerned country is a basic condition for verifying that active charities are complying with supervision standards and working in line with their explicit objectives, away from any misuse. The supervisory bodies may carry out their mission and achieve their goals through the setting of specific standards, rules and conditions that are to be observed by charities operating in their jurisdiction, such as:

- 1- **Reinforcing transparency and disclosure standards**: Charitable work is a non-profit, volunteering activity, essentially based on confidence. Charitable associations/institutions seek to raise funds from donors and benefactors, in order to use them for charitable purposes or disburse them to needy beneficiaries. Accordingly, transparency and disclosure standards are of paramount importance. They help supervisory bodies in carrying out their tasks, and contribute to buttress the confidence of citizens and benefactors concerning the strict use of donations in consistency with the primary objectives of charitable associations/institutions, consequently avoiding any misuse by trustees or any use in the interest of beneficiaries or activities other than those announced in raising funds.
- 2- **Implementing specific selection standards**: The appropriate selection of trustees is one of the most important factors of success and soundness of charitable activities, based on the confidence of the community in the selected persons. Supervisory bodies that grant licenses and supervise charity work in the various countries may set the standards to be met in selecting trustees, in order to guarantee the selection of the right people and define the basic rules of their work.
- 3- **Reinforcing control**: In order to monitor the work of charities and verify their compliance with relevant regulations and instructions, specific procedures should be implemented, particularly on-site inspection, off-site supervision, and mandatory annual financial statements to be disclosed after verification by external auditors. Moreover, charitable associations/institutions with significant activities may be compelled to establish internal regulatory units that monitor their work, submit periodical reports to the

supervisory bodies, and help them draft by-laws and accounting standards covering records, files and balance sheets. The supervisory body may also decide to support charities by bearing, in whole or in part, the cost of external auditors, and by forbidding fund investment without its approval and direct supervision.

III- The financial aspect:

Fund raising and spending are the main activities carried out by most charities. Therefore, the control of these activities is essential to prevent misuse. Supervisory bodies in the concerned country can achieve this goal by regulating these operations, mandating, for instance, the replacement of cash operations with bank accounts, which make it possible to control spending operations and related documents. On the other hand, it is possible to regulate the raising and spending of funds, and the opening and running of bank accounts, through coordination between the supervisory bodies overseeing the charity sector and those overseeing the banking sector. Following are some of the rules to be observed in this respect:

1. Non-profit, charitable associations/institutions may not open bank accounts before being authorized by the competent supervisory body, after meeting all the regulatory requirements, including approval by the banking sector supervisory body. Furthermore, these accounts should be opened in the name of the institution and not in the name of any chairman, manager or member of the Board.
2. Charitable associations/institutions should cease the raising and spending of funds in cash, using bank accounts for all their operations and activities. Moreover, disbursements should be made only by checks, to be exclusively paid to first beneficiaries through bank account deposits.
3. The bank accounts of a charitable association/institution should be consolidated in a single account, through which spending operations are executed, in order to facilitate follow-up and supervision, with the possibility of opening subsidiary accounts, when necessary, for the sole purpose of receiving donations.
4. External transfer operations from the accounts of charitable associations/institutions must be approved by the competent supervisory body.
5. Bank accounts of charitable associations/institutions may be used only with joint signatures by two authorized persons, after ascertaining their identity and personal information, and those of the members of the Board.
6. When deposits or withdrawals are made to and from the accounts of charitable associations/institutions, the identity of donors and beneficiaries must be ascertained.
7. Banks should be directed to apply the “Know Your Customer” rule, and to follow adopted supervisory policies and measures in dealing with the accounts of charitable associations/institutions concerning donations and disbursements, in addition to implementing policies and measures about the control of operations, the notification of suspicious operations, and the implementation of standards governing high-risk accounts.

External charity operations:

In addition to their local activities, some charitable associations/institutions carry out similar activities outside their home country, but such activities may be dangerous and must be subjected to special regulations. In fact, it is difficult to monitor these activities and make sure that donations are received by qualified beneficiaries, as stated by the charitable association/institution itself. Following are some of the most important measures to be adopted for controlling such operations:

1. External transfer operations from the accounts of charitable associations/institutions must be approved by the competent supervisory body in the home country.
2. Aids sent abroad must be restricted to charitable associations/institutions that are officially authorized in their respective countries, in coordination with each government. Aids should not be directly sent to individuals, institutions or small foreign charities that are not subjected to regulations and supervision by their own countries, due to inherent risks and to the difficulties of supervising them.
3. To make sure, before allowing aids to external parties, that all licenses granted to the beneficiary parties are effective, including: (1) the licenses to carry out their activities; (2) the licenses to execute the projects for which the aid is provided; and (3) the license to raise donations or aid from abroad, issued by the competent authorities of the foreign country.
4. The provision of aid should be focused on the implementation of specific projects, programs and activities that are under the supervision of competent authorities in the beneficiary countries, or the supervision of an international organization or institution.
5. The disbursement of aid in cash should be completely abandoned. Disbursements should be restricted to checks made exclusively to the order of first beneficiaries, and deposited in their bank accounts at home through correspondent banks.
