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Common-benefit foundations and the danger of terrorist financing

1. Expanded focus on terrorist financing

STIFA emphatically points out to the foundation councils of common-benefit foundations and their audit authorities the dangers for common-benefit foundations and other non-profit organizations posed by misuse for purposes of terrorist financing. In the context of business activity and audits thereof, foundation councils, audit authorities, and their executive bodies must pay special attention also to the prevention of terrorist financing.

This fact sheet first presents the supervisory system for common-benefit foundations and then discusses the problem of terrorist financing.

2. Supervision of common-benefit foundations by the Foundation Supervisory Authority (STIFA)

General provisions

Pursuant to § 29 paragraph 1 of the Law on Foundations (article 552 §§ 1 – 41 of the Persons and Companies Act (PGR); StiftG), all common-benefit foundations are by law subject to supervision by STIFA. The comprehensively revised Law on Foundations has been in force since 1 April 2009 (Liechtenstein Law Gazette LGBl. 2008 No. 220). Since that date, STIFA has also exercised its legislative mandate as the supervisory authority.

The Foundation Supervisory Authority (STIFA) ensures that the assets of common-benefit foundations are managed and appropriated in accordance with their purposes. According to article 107, paragraph 4a PGR in conjunction with § 2 paragraph 2 StiftG, common-benefit foundations are those whose activity according to the declaration of establishment is entirely or predominantly intended to serve common-benefit purposes.

Where the law refers to common-benefit or charitable purposes, this includes such purposes the fulfilment of which is of benefit to the general public. In particular, there is deemed to be a benefit to the general public if the activity serves the common good in a charitable, religious, humanitarian, scientific, cultural, moral, social, sporting, or ecological sense, even if only a specific category of persons benefits from the activity (article 107, paragraph 4a PGR).

Role of the audit authority

Common-benefit foundations are required to appoint a qualified and independent audit authority in accordance with § 27 StiftG. According to article 191a PGR, auditors, audit companies, professional trustees, and trust companies may serve as audit authorities. The audit authority is appointed by the Court of Justice on application.

Pursuant to § 27 paragraph 4 StiftG in conjunction with article 8 of the Foundation Law Ordinance (StRV), the audit authority as an executive body of the foundation must verify once a year whether the foundation assets are being managed and appropriated in accordance with their purposes. Also each year, it must submit a report on the outcome of this audit to the Foundation Supervisory Authority. If there is no reason for objection, it is sufficient to provide confirmation that the foundation assets have been managed and appropriated in conformity with the provisions of the law and the foundation documents. If while performing its duties the audit authority ascertains circumstances which indicate that the foundation assets have been managed or appropriated contrary to their purposes or which jeopardize the existence of the foundation, the audit authority must inform STIFA in the form of a comprehensive report.

On the basis of the yearly report by the audit authority, STIFA reviews the business conduct of each common-benefit foundation. It may demand further information from the foundation and, through the audit authority, inspect the books and documents of the foundation and obtain information from other administrative authorities and the courts (§ 29 paragraph 3 StiftG).

Where needed, STIFA applies to the Court of Justice for more far-reaching measures, such as the control and dismissal of executive bodies of the foundation, carrying out of special audits, or the cancellation of resolutions of executive bodies (§ 29 paragraph 3 StiftG).

Exempt common-benefit foundations

In the case of common-benefit foundations which have made use of the option to apply for exemption from the obligation to appoint an audit authority due to their low amount of assets (less than CHF 750,000; article 5 StRV) or simple foundation activity (less than CHF 2 million; article 6 StRV) and have in fact been granted that exemption because they meet all the legal requirements, STIFA itself exercises the right of inspection. These foundations are accordingly supervised by STIFA directly.

The focus of STIFA's supervision of common-benefit foundations is in all cases on management and appropriation of foundation assets in accordance with their purposes by the executive bodies of the foundation, in conformity with the provisions of substantive foundation law and the foundation documents.

Other supervisory activities

In the course of the activities of common-benefit foundations, it may become necessary to amend the foundation documents with respect to the stipulation of the purpose, but also with respect to the organization of the foundation. Liechtenstein foundation law provides a clear legal framework in this regard, within which amendment of the foundation documents is permissible. If the foundation documents do not reserve the power of amendment to the executive bodies of the foundation, the foundation must apply to the court for such amendments. In these judicial proceedings for amending the purpose (§ 33 StiftG) or amending other contents of the foundation documents (§ 34 StiftG), STIFA by law has the status of a party. In these proceedings, STIFA represents the interests of

the common-benefit foundation with respect to management and appropriation of its assets in accordance with their purposes.

3. Common-benefit foundations and terrorist financing

In light of their framework conditions, common-benefit foundations and non-profit organizations in general may be in danger of being misused for purposes of terrorist financing. Common-benefit foundations enjoy a high level of trust by society, often have not inconsiderable financial resources, and some business models are built on soliciting as much new money as possible (also in smaller amounts or through cash transactions).

Many common-benefit organizations are represented supra-regionally or worldwide and thus offer framework conditions for national and international operations as well as transactions that could be used for potentially terrorist purposes or backgrounds. Moreover, non-profit organizations in many countries are subject to considerably less strict regulatory requirements and supervisory duties than financial intermediaries under Liechtenstein's due diligence legislation or than legal persons carrying on business run along commercial lines.

For these reasons, the Financial Action Task Force (FATF)¹, which is dedicated to the enforcement of international standards to combat money laundering and terrorist financing, concludes that *"the misuse of non-profit organisations for the financing of terrorism is coming to be recognised as a crucial weak point in the global struggle to stop such funding at its source"*.²

In light of its findings, the FATF distinguishes **three main typologies of misuse**:

1) Solicitation of new money through fraud

Example: The true use of the donations is concealed from donors. Money donated for humanitarian purposes is used fraudulently for terrorist activities. In this case, the common-benefit organization itself may in fact be legitimate. But the misuse may occur on a project basis.

2) An organization associated with terrorism purports to be a common-benefit organization.

In this case, the intended purpose of the common-benefit organization is illegitimate from the start.

Example: A common-benefit organization uses donations solely to finance terrorist activities.

3) The purported and actual purpose are identical. But implementation of that purpose is assigned to a terrorist or related organization.

Example: Representatives of a terrorist organization take care of orphans with donations made for that purpose.

¹ Additional information at <http://www.fatf-gafi.org/>

² FATF Best Practices Paper on Special Recommendation VIII, <http://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Standards%20-%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf>

Moreover, the following **financing possibilities for terrorist purposes using common-benefit organizations** are known:

- Legitimate self-financing through non-incriminated money
Example: The common-benefit organization redirects legally acquired money to third parties for the purpose of financing terrorist activities

- Financing with the help of incriminated assets
Example: The paid-in assets of the common-benefit organization were acquired illegally. The most common forms of acquisition are: (cheque) fraud, credit card fraud, arms trafficking, human trafficking, extortion, hostage taking, and drug trafficking.

STIFA hereby calls upon all executive bodies of common-benefit foundations, the foundation councils and the audit authorities, curators, and other executive bodies of common-benefit foundations to base their conduct on these findings of the FATF and, in the case of suspicious facts, to communicate these directly to the Financial Intelligence Unit (FIU) in accordance with article 17 of the Due Diligence Act (DDA). Please also refer in this regard to the relevant professional codes and obligations, which are applicable in all cases.