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MISUSE OF NON-PROFIT ORGANIZATIONS FOR MONEY LAUNDERING

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Introduction

Pursuant to the decision of the 15th Plenary Meeting of the EAG member-states held in November 2011 the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan steered the typology project: Misuse of Non-Profit Organizations for Money Laundering

The topic of this typology exercise was proposed by the representative of the Financial Intelligence Unit of Kazakhstan at the meeting of the Working Group on Typologies (WGTYP) and was endorsed by other parties participated in the meeting.

This typology exercise is aimed at:

- Identifying vulnerabilities in the activities non-profit organizations are engaged in;
- Identifying the most common offences committed in the NPO sector;
- Determining criteria of suspicious activities of non-profit organizations;
- Developing recommendations aimed at preventing misuse of non-profit organizations for money laundering purposes.

In course of the research the questionnaire drafted by the FIU of Kazakhstan was distributed among all EAG-member states and EAG observers.

The research was conducted with the use of information contained in the responses to the aforementioned questionnaire received from the following countries (as of October 22, 2012):

- The Republic of Armenia (the EAG observer);
- Ukraine (the EAG observer);
- The USA (the EAG observer);
- The Republic of Belarus (the EAG-member state);
- The Russian Federation (the EAG-member state);
- The Republic of Kazakhstan (the EAG-member state);
- The Republic of Uzbekistan (the EAG-member state).

The information and materials provided by the parties participated in the survey vary in terms of completeness. The most detailed responses to the questionnaire with the description of a number of examples (case studies) of investigations of misuse of non-profit organizations were provided by the Unites States of America and Ukraine.

In general, the provided materials allow for obtaining important information pertaining to the research topic and also for making comparative assessment of the efforts undertaken by the surveyed countries to combat money laundering through NPOs.

1. Non-Profit Organization Concept: International and National Legislation

Although operations of **non-profit organizations** in various countries have common features, there are also differences due to the specificities of the national legislation that regulate legal relationships in this sector.

The legislation of all surveyed countries contains legal definition of the “non-profit organization”.

In the **USA**, the designation of non-profit or for-profit is typically a state corporate law distinction. There is no federal regulation of non-profit organizations solely because they are non-profit. However, at the federal level there is a system of tax exemption with specific requirements and oversight. Organizations described in section 501(c)(3) of the Internal Revenue Code, commonly referred to as "charities," are the most common form of tax-exempt organization and are roughly analogous to the generally understood definition of “nonprofit organization”. Nonprofit status is generally a necessary but not sufficient condition of tax-exempt status.

Section 501(c)(3) organizations must be organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes or to foster national or international amateur sports competition or for the prevention of cruelty to children or animals. Section 170(c) sets out those organizations eligible to receive tax deductible donations. A list of these organizations is publicly available on the IRS website at www.irs.gov/eo.

In **Ukraine**, paragraph 34 of Article 1 of the Law on Preventing and Combating Legalization (Laundering) of Criminal Proceeds or Financing of Terrorism (the AML/CFT Law) defines non-profit organizations as follows:

Non-profit organizations are legal entities established for scientific, educational, cultural, health, environmental, religious, charitable, social and other activities to meet the needs and interests of citizens within the scope defined by the Ukrainian legislation and without receiving of profit.

Section 14.1.121 of the Tax Code stipulates that non-profit companies, institutions and organizations are such companies, institutions and organizations the main purpose of activities of which is not to obtain profit but to carry out charitable activities and patronage and other activities as envisaged by the law.

Pursuant to section 157.1 of the Tax Code non-profit institutions and organizations include those institutions that are:

- The Ukrainian government authorities, local authorities and institutions and organizations established by them that are funded from the relevant budgets;
- Charitable foundations and charitable organizations established in a manner prescribed by the law for carrying out charitable activities; civil society organizations established in order to deliver rehabilitation, social and sports services to persons (children) with disabilities, provide legal aid, engage in environmental, recreation, amateur sports, cultural, educational and research activities; associations of creative professions, political parties, disabled people civil society organizations, associations of disabled people organizations and their local groups set up pursuant to the respective law; research institutions and accredited universities (levels 3 and 4) that are registered in the State Register of Government-Supported Scientific Institutions, preserves, museums and memorial estates;
- Credit unions and pension funds established in a manner prescribed by the relevant laws;

- Legal persons other than those referred to in paragraph “b” of this section, whose activities are not aimed at gaining profit in line with the provisions of the respective laws;
- Unions, associations and other groups of legal entities established for representing interests of their founders (members) that rely solely on contributions of such founders (members) and are not engaged in any business, except for receiving passive income;
- Religious faith-based organizations established in a manner prescribed by the law;
- Housing co-operatives, groups of co-owners of blocks of flats;
- Professional unions, their associations and trade unions established in a manner prescribed by the law.

In the **Republic of Armenia**, pursuant to Article 51 of the RA Civil Code legal entities having the non-profit organization status can be established in form of civil society organizations, foundations, unions of legal entities and also in other forms as provided by the law, in particular in form of political parties and religious organizations.

As for the definition of civil society organizations, foundations, unions of legal entities, Article 122 of the Civil Code stipulates that civil society unions are voluntary unions of individuals who have united in a manner prescribed by the law driven by the common interests for meeting their spiritual or other non-material needs.

Article 123 of the Civil Code states that a foundation is an organization that has no formal membership and is established by individuals and (or) legal entities based on their voluntary asset contributions for pursuing social, charitable, cultural, educational or other socially beneficial goals.

Paragraph 1 of Article 125 of the Civil Code defines the concept of unions of legal entities and stipulates that business entities are entitled to establish unions for coordinating their business activities as well as for representing and protecting their common business interests. Paragraph 2 of Article 125 specifies the grounds for establishing unions of non-profit organizations.

Article 4 of the RA Law on Freedom of Conscience and Religious Organizations defines a religious organization as an association of individuals established for professing common faith and meeting other religious needs. The religious organizations include church and religious communities, episcopates, monasteries, religious congregations and educational and publishing institutions affiliated with these organizations and also other church and religious institutions.

Article 3 of the RA Law on Political Parties defines a political party as a public union formed on the basis of individual membership of citizens of the Republic of Armenia, the aim of the activity of which is to participate in the political life of the society and the state.

In the **Republic of Belarus**, paragraph 1 of Article 46 of the RB Civil Code defines non-profit organizations as organizations the main purpose of the activities of which is not profit-making and that do not distribute the received profit among their members.

Paragraph 3 of Article 46 of the Civil Code stipulates that legal entities with the non-profit organization status may be established in form of consumer co-operatives, civil society or religious organizations (associations), institutions funded by their owners, charitable and other foundations and also in other forms provided for by the legislation.

Non-profit organizations may be established for pursuing social, environmental, charitable, cultural, educational, research and administrative goals, developing amateur and

professional sport activities, meeting spiritual and other non-material needs of individuals, protecting rights and legitimate interests of individuals and legal entities, settling disputes and conflicts, rendering legal assistance in compliance with the legislation and also for pursuing other socially beneficial goals.

Non-profit organizations may be established for meeting material needs of individuals and (or) legal entities in the situations specified in the Civil Code and other laws.

Non-profit organizations may be engaged in business activities only insofar as such activities are needed for pursuing their statutory goals for which such organizations have been established, correspond to such goals and to the scope of their activities, or insofar as such activities are required for accomplishing the tasks that are important to the State and specified in their constituent documents and correspond to such tasks and to the scope of their activities. Specific requirements may be established by the laws for certain types of non-profit organizations pursuant to which such NPOs may be engaged in business activities only by establishing business entities and (or) having interest (shares) in such business entities.

In the **Republic of Kazakhstan**, Article 2 of RK Law on Non-Profit Organizations dated January 16, 2001 defines a non-profit organization as a legal entity the main purpose of the activity of which is not gaining income and that does not distribute the net income among its members.

Non-profit organizations may be established in form of an institution, civil society association, joint-stock company, consumer co-operative, foundation, religious association, association (union) of legal entities and in other forms provided for by the law.

Non-profit organizations may be established for pursuing social, cultural, scientific, educational, charitable and administrative purposes; protecting the rights and legal interests of individuals and organizations; settling disputes and conflicts; meeting spiritual and other needs of individuals; protecting health of individuals; ensuring environmental protection; developing amateur and professional sport activities; rendering legal assistance, and for pursuing other goals that are beneficial to the society and their members.

In the **Russian Federation**, Article 50 of the RF Civil Code defines non-profit organizations as those the main purpose of the activities of which is not gaining profit and that do not distribute the derived profit among their members.

Legal entities having the non-profit organization status may be established in form of consumer co-operatives, civil society or religious organizations (associations), institutions, charitable or other foundations and also in other forms provided for by the law.

Non-profit organizations are entitled to be engaged in business activities only insofar as such activities are needed for pursuing their statutory goals for which such organizations have been established and correspond to such goals.

The legal status, the procedures of creation, operation, reorganization and liquidation of non-profit organizations that are legal entities, the formation and use of the assets of non-profit organizations, the rights and responsibilities of their founders (members), the basic principles of NPO management and possible ways of support provided to them by the government and local authorities are regulated by Federal Law No.7-FZ ob Non-Profit Organizations dated 12.01.1996 (the Federal Law on Non-Profit Organizations).

Paragraph 2 of Article 2 of the Federal Law on Non-Profit Organizations stipulates that NPOs are established for pursuing social, charitable, cultural, educational, health, research and administrative goals, developing amateur and professional sport activities, meeting spiritual and

other non-material needs of individuals, protecting rights and legitimate interests of individuals and organizations, settling disputes and conflicts, rendering legal assistance and for pursuing other socially beneficial goals.

The legal framework for operation of NPOs in the Russian Federation is established in Chapter 5 of Part I of the RF Civil Code.

Non-profit organizations may be established in form of civil society or religious organizations (associations), communities of the RF native minorities, Cossack communities, non-profit partnerships, institutions, standalone non-profit organizations, social, charitable and other foundations, associations and unions, and also in other forms provided for by the RF legislation.

Besides that, operating in Russia are socially-oriented non-profit organizations. Such organizations are the NPOs established in forms provided for by the Federal Law (except for government corporations, government-owned companies and public associations that are political parties) and engaged in the activities aimed at mitigating social problems and developing civil society in the Russian Federation.

In the **Republic of Uzbekistan**, Article 2 of Law No.763-I on Non-Government Non-Profit Organizations dated 14.04.1999 stipulates that a non-government non-profit organization is a self-governing organization established by individuals and (or) legal entities on a voluntary basis the main purpose of activity of which is not to derive income (profit) and that does not distribute the derived income (profit) among its members.

Non-government non-profit organizations are established for protecting rights and legitimate interests of individuals and legal entities and other democratic values, pursuing social, cultural and educational goals, meeting spiritual and other non-material needs, carrying out charitable activities and also for pursuing other socially beneficial goals.

Thus, the main distinctive feature of a non-profit organization as it is defined in all surveyed countries is pursuing social, charitable, cultural, educational and other goals.

2. Regulation of NPO Sector in Surveyed Countries

It should be noted that each surveyed country has the independent government authorities or departments with the ministries and agencies that oversee or supervise the NPO sector.

These authorities' departments, as indicated in the responses of the surveyed countries, are presented in **Table 1** below:

Table 1

Country	Government Authority
Armenia	Ministry of Justice of the Republic of Armenia
USA	Tax Exempt and Government Entities Division of the Internal Revenue Service
Ukraine	State Customs Service of Ukraine
Kazakhstan	Ministry of Justice of the Republic of Kazakhstan
Russia	Ministry of Justice of the Russian Federation and its local offices
Uzbekistan	Ministry of Justice of the Republic of Uzbekistan

Table 2 presents statistics on number of entities registered as non-profit organizations in the surveyed countries.

Table 2. Number of Registered Non-Profit Organizations
(thousand)

Country	Note	Year			
		2008	2009	2010	2011
USA	Total number of NGOs (Tax-exempt organizations, non-exempt charitable trusts and other entities)	1,855.0	1,912.7	1,960.2	1,629.1
	Number of 501(c)(3) religious, charitable and similar organizations ¹	1,186.9	1,238.2	1,280.7	1,080.1
Ukraine		13.9	19.3	15.0	13.6
Republic of Armenia		4.5	4.7	4.9	5.2
Russian Federation		219.7	222.7	223.0	Over 220,000 Russian NPOs, about 250 representative offices of foreign

¹ The number of 501(c)(3) organizations that have received recognition of their tax-exempt status from the IRS. *Some 501(c)(3) organizations are not required to apply for recognition of tax exemption, including churches, integrated auxiliaries, subordinate units, and conventions or associations of churches.*

					NGOs
Republic of Kazakhstan		48.3	49.3	47.9	49.1
Republic of Belarus		27.9	29.8	35.0	36.8
Republic of Uzbekistan		7.1	7.3	7.5	8.0

3. Offences in the NPO sector and Criteria of NPO Suspicious Activities

3.1. Types of Offences in the NPO Sector

The surveyed countries have identified the following main offences (crimes) committed in the NPO sector:

Republic of Armenia:

- Non-compliance with the reporting requirements;
- Use of funds/assets for purposes other than statutory ones, etc.

USA:

- Embezzlement by some officers of the NPO funds for personal use;
- Non-profit being set up as a shell or front company through which to launder taxable or illegal fund.

In 2009, there were 29 cases and in 2010 there were 41 cases that were initiated relating to NPOs. In addition, in 2009 there was one U.S.-based charity designated for supporting terrorism.

Republic of Kazakhstan:

- Breaches of the tax legislation.

In 2009, the tax authorities conducted 609 on-site comprehensive targeted audits of NPOs; in 287 cases breaches/non-compliances were revealed; and 114,254.9 thousand tenge were charged as additional taxes and payments into the budget.

In 2010, 526 audits were conducted; in 279 cases breaches/con-compliances were revealed; and 312,967.3 thousand tenge were charged as additional taxes and payments into the budget.

Republic of Belarus:

- Breaches of internal operation rules/requirements of civil society associations;
- Breaches of the customs and tax legislation.

The Belarusian justice agencies issued written warnings to NPOs for breaches of the legislation and non-compliance with the provisions of the statutory documents: in 2009 – 103 warnings, in 2010 – 33 warnings and in 2011 – 60 warnings.

3.2. Combating crimes and offences in the NPO sector

According to the information provided by the **USA** the primary goal of the U.S. Government is to identify, coordinate, apply and improve the assets that we have to protect against terrorist abuse of the charitable sector. These assets include federal, state and local oversight and investigative authorities; law enforcement, judicial and administrative powers; inter-agency coordination mechanisms and private sector outreach initiatives and relationships.

Terrorist abuse of charities within the U.S. is evident from the designation, prosecution and investigation of several charitable organizations either based in the U.S. or conducting operations within the U.S. Between October 2001 and 2011, the United States has:

- Designated 8 U.S.-based charities and over 50 non-U.S. charities as terrorist financiers or supporters, under the authority of the International Emergency Economic Powers Act, 50 U.S.C. § 1701, *et seq.* (IEEPA);
- Convicted the leader of one U.S.-based charity for racketeering and fraud owing to terrorist financing activity, and convicted the leaders of another U.S.-based charity for supporting terrorism;
- Investigated numerous other charities operating in the U.S. and suspected of terrorist financing activity.

An analysis of these cases confirms the vulnerability of the charitable sector to terrorist abuse, and the difficulty of investigating such abuse. This analysis also confirms the importance of combining information from various sources (*e.g.*, law enforcement investigations, intelligence, tips from the donor community, and tax-based oversight authorities) to develop evidence and take effective action against corrupted charities and culpable individuals within those charities.

In **Ukraine**, in order to combat offences in the NPO sector all incoming financial transactions of non-profit organizations are subject to monitoring. The applied method involves analysis of incoming financial transaction of NPOs with due consideration for information contained in the databases of other government authorities and in other publicly available sources.

In the **Republic of Armenia**, pursuant to the Regulation on Minimum AML/CFT Requirements for Financial Institutions adopted by the Board of the RA Central Bank charitable and non-profit organizations fall into the high risk category and financial institutions shall take measures adequate to ML/FT risks posed by them.

There have been no actual cases of deterring misuse of NPOs for money laundering and terrorism financing purposes.

In the **Republic of Belarus**, in order to combat money laundering and terrorism financing the Financial Monitoring Department regularly analyzes reports on financial transactions that are subject to special control, including those carried out by non-profit organizations.

The Financial Monitoring Department has no information on actual cases when NPOs have been misused for ML/FT purposes.

According to the information provided by the **Republic of Uzbekistan**, the standard traditional methods are used for combating offences in the NPO sector. Proactive investigations are launched when there is intelligence that gives grounds to suspect any individual or legal entity of being associated with ML or FT.

No actual cases of misuse of non-profit organizations for the ML or FT purposes have been detected.

In the **Republic of Kazakhstan**, analysis of transactions that are subject to financial monitoring involves detection of suspicious transactions carried out by NPOs. Such transactions are subject to operational and tactical analysis.

Operational analysis involves initial collection information on transactions and parties thereto: identification of types of activities performed by NPOs and their managers (founders) and examination of transactions (purpose, amount, reasons for carrying out transactions).

Tactical analysis involves in-depth analysis of NPOs which includes search for information in all registers and databases of both FIU and other RK government authorities (including law enforcement agencies). Relevant requests are forwarded to foreign financial intelligence units, if necessary.

The RK financial intelligence unit has revealed suspicious transactions with involvement of NPOs and filed the relevant information with the RK law enforcement and special government agencies. However, no actual cases of money laundering and terrorism financing through non-profit organizations have been detected.

In general, it should be noted that in almost all FIUs combating offences in the NPO sector is not a separate line of activity and there are no special tools and methods in place for detecting such offences. This work is performed as part of the general efforts to combat money laundering and terrorism financing, including ML/FT resulted from offences committed in the NPO sector. Typically, FIUs get engaged in these efforts in the process of cooperation with the law enforcement and oversight authorities.

Nevertheless, all surveyed countries recognize the importance and need to combat offences in the NPO sector and identify a number of indicators of suspicious activity of non-profit organizations.

3.3. Criteria of Suspicious Activities of NPOs

Country	Suspicious Activity Criteria
Russian Federation	<ul style="list-style-type: none"> - Transactions are inconsistent with the statutory goals of NPO activity
Republic of Kazakhstan	<ul style="list-style-type: none"> - Funding from abroad; - Further distribution of funds among various entities, including individual entrepreneurs, natural and legal persons which activities are not associated with non-profit activities; - Lack of information on NPOs activities in publicly available sources; - Abnormally intensive activities of NPOs, in terms of both frequency and amounts of transactions; - NPOs founders and (or) managers are young people; - NPOs founders are foreign nationals.
Ukraine	<ul style="list-style-type: none"> - Financial transactions are inconsistent with nature and patterns of NPOs activities; - One-off purchase of a large package of non publicly traded securities in a situation where the purchaser is not a securities market professional player and securities are not sold to such purchaser by a counterparty for repaying an overdue debt.
USA	<ul style="list-style-type: none"> - Individuals holding multiple positions within the organization; - Use of numerous bank accounts for no logical purpose; - Use of multiple accounts to collect funds that are transferred to the same foreign beneficiaries; - Bank deposits that do not resemble “typical” charitable donations and/or expenditures that do not have a logical business purpose, such as large checks/wires to individuals; - Financial transactions with designated entities/individuals; - Repetitive money movement between other related NPOs; - Circular movement of funds designed to convolute the paper trail; - No effort to implement effective internal controls; - No small denomination donors.

In the **Republic of Belarus**, pursuant to Article 6 of the AML/CFT Law financial transactions, irrespective of whether they have been carried out or not, are subject to special control if a financial transaction service provider suspects that a financial transaction is performed for the ML/FT purposes, including situations when a financial transaction is inconsistent with the purposes of activity specified in the statutory documents of an NPO which is the party to such transactions.

According to the information provided by the **Republic of Uzbekistan**, monitoring of suspicious financial transactions, including those performed in the NPO sector, is carried out by commercial banks in compliance with their AML/CFT internal control rules. Criteria and indicators of suspicious transactions are listed in paragraphs 39 and 40 of the internal control rules.

4. Foreign Funding of Non-Profit Organizations

In the USA, charities are permitted to receive gifts from foreign sources. Foreign charities may also apply for tax exempt status in the U.S. However, foreign charities are not eligible to receive tax-deductible charitable contributions from U.S. taxpayers except as tax treaties may allow. A U.S. charity can carry on or financially support overseas charitable programs as part or all of its activities as long as it can demonstrate that the funds are used for charitable purposes and it controls these funds. Thus, U.S. charities can make grants to foreign charities, whether those foreign charities are formally recognized as tax-exempt pursuant to the IRS requirements or not, provided that the funds are used exclusively to support the charitable endeavors of the granting U.S. charity.

When a U.S. charity carries on its charitable activities through a foreign organization that is not recognized as exempt under U.S. law, it must maintain a higher degree of oversight to insure the funds are used for the intended charitable purposes. Even if the foreign organization is recognized as exempt, the U.S. charity must maintain control and discretion over the use of its funds overseas and maintain adequate records for these funds. The U.S. charity cannot serve as a mere conduit for a foreign charity to raise tax-deductible contributions. The U.S. charity must be able to make an independent decision as to whether it will provide funds to a foreign organization. Control and discretion are determined to exist if the U.S. charity makes a pre-grant inquiry concerning the use of its grant and obtains reasonable assurance that the use of the grant is for charitable purposes and reports are provided on the use of the funds.

According to the information provided by **Ukraine**, foreign funding of NPOs is permitted on the usual terms.

The legislation of the **Republic of Armenia** does not prohibit foreign funding of civil society organizations.

The limitations are set forth in paragraphs 2, 7 and 8 of Article 25 of the RA Law on Political Parties which prohibit to receive funds from foreign countries, foreign nationals and legal entities; from legal entities with foreign interest if the foreign share or interest in the statutory capital of such legal entity exceeds 25 percent; and also from international organizations and international public movements.

Besides that, Article 13 of the RA Law on Freedom of Conscience and Religious Organizations stipulates that religious organizations which spiritual centers are located outside the Republic of Armenia cannot be funded by such centers. Religious organizations cannot be financed by political parties and cannot finance political parties.

The **Russian Federation** legislation does not directly prohibit foreign funding of NPOs.

Foreign nationals and stateless persons who legitimately stay in the Russian Federation can be the founders (members) on non-profit organizations, except for the situations specified in the international treaties/agreements signed by Russia or in the federal laws.

Pursuant to paragraph 3 of Article 32 of Federal Law No.7-FZ on Non-Profit Organizations dated 12.01.1996 NPOs are required to report in writing to the designated authority about spending funds and use of other assets, including those received from international and foreign organizations, foreign nationals and stateless persons.

At the same time, a branch or a representative office of a foreign non-government non-profit organization can be opened in Russia. The separate requirements for establishing such types of NPOs (including notification of the designated authorities) are specified in details in Article 13.2 of NPO Law No.7-FZ dated.

Such NPOs are registered by the RF Ministry of Justice.

A branch of foreign non-government non-profit organization may be denied government registration if:

- The goals of establishing a branch of a foreign non-governmental non-profit organization contravene the RF Constitution and legislation;
- The goals of establishing a branch of a foreign NPO threaten the sovereignty, political independence, territorial integrity and national interests of the Russian Federation;
- A branch of a foreign non-governmental non-profit organization earlier registered in the Russian Federation has been liquidated due to gross violations of the RF Constitution and legislation.

In the **Republic of Belarus**, pursuant to Presidential Decree No.24 on Receipt and Use of Foreign Gratuitous Aid dated November 28, 2003 Belarusian organizations and natural persons may receive foreign gratuitous aid (funds, including foreign currency, goods (property) that are provided on a gratuitous basis, by foreign countries, international organizations, foreign organizations and nationals, stateless persons and anonymous donors for the use, possession or management by Belarusian organizations and individuals).

It should be noted that foreign gratuitous aid may be received only for the purposes specified in Decree No.24.

Monitoring of the intended use of the incoming foreign gratuitous aid is governed by the Regulation on Procedure of Monitoring of Intended Use of Foreign Gratuitous Aid adopted by RB President Decree No.537 dated 28.11.2003.

In compliance with this Regulation the Ministry of Internal Affairs, the Ministry of Taxes and Duties, the State Customs Committee and their local offices and the Humanitarian Activity Department under the RB President Administration file with the RB State Control Committee monthly reports containing information on receipt and use of foreign gratuitous aid in the scope prescribed by the aforementioned Regulation.

The State Control Committee coordinates the efforts of the government authorities in charge of monitoring the intended use of foreign gratuitous aid.

The State Control Committee informs, on an annual basis, the RB President on the results of monitoring of the intended use of foreign gratuitous aid that has been forwarded to the Republic of Belarus.

The **Republic of Kazakhstan** allows for operating non-profit organizations funded through grants provided without compensation by foreign countries, international and foreign organizations, foreign nationals and stateless persons.

Paragraph 2 of Article 41 of the NPO Law stipulates that non-profit organizations which activities are funded through provision of the aforementioned grants shall report on the use of such fund to the customs authorities.

In the **Republic of Uzbekistan**, Article 5 of the Law on Non-Government Non-Profit Organizations allows such organizations to join international non-government non-profit organizations, maintain direct contacts with them and sign relevant cooperation agreements. Therefore, the non-government non-profit organizations registered in the Republic of Uzbekistan may receive funds from foreign institutions, inter alia, from foreign non-government non-profit organizations under cooperative agreements with them. Funds and other tangible assets may be provided in form of grants, humanitarian aid and technical assistance.

In order to enhance effectiveness of accounting for humanitarian aid, grants and technical assistance provided by international and foreign government and non-government organizations as well as to prevent and suppress laundering of “dirty” funds the Uzbek Cabinet of Ministers

adopted Resolution No.56 on Measures to Enhance Effectiveness of Accounting for Funds Provided in Form of Technical Assistance, Grants and Humanitarian Aid by International and Foreign Government and Non-Government Organizations dated 04.02.2004 which established the procedure of monitoring and oversight over receipt and use of humanitarian aid and technical assistance.

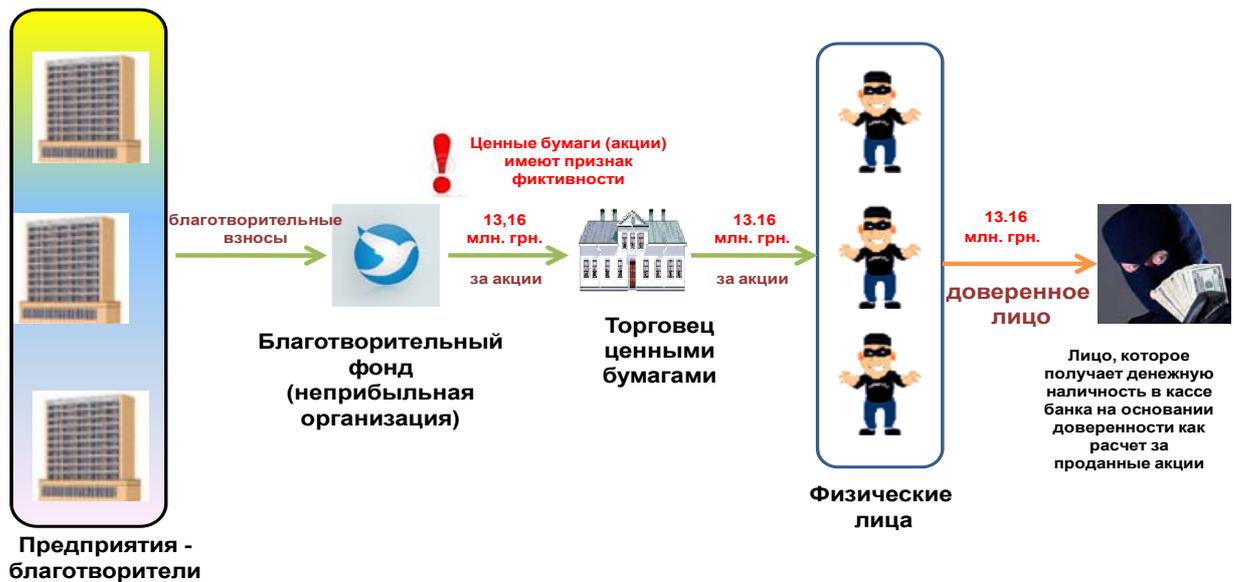
Besides that, Article 30 of the Uzbek Law on Non-Government Non-Profit Organizations prohibits branches and representative offices of international and foreign non-government non-profit organizations and their employees to engage in any political activities in the Republic of Uzbekistan or in other activities that are inconsistent with statutory purposes of such branches and representative offices. It is also prohibited for them to fund actions and events held by political parties and also to initiate and support creation of such organizations.

5. Involvement of FIUs in Combating Offences in NPO Sector

Presented below are the case studies of specific typologies of money laundering through non-profit organizations.

Case Study 1 – Ukraine: Money laundering through charitable foundations

Отмывание преступных доходов частных предприятий путем использования благотворительного фонда



Laundering of Private Company Criminal Proceeds through Charitable Foundation

Предприятия-благотворители	Donors (companies)
Благотворительные взносы	Donations
Благотворительный фонд (неприбыльная организация)	Charitable Foundation (NPO)
13,16млн. гривен за акции	13.16mln UAH for shares
Ценные бумаги (акции) имеют признак фиктивности	Securities (shares) have indicators of fictitiousness
Торговец ценными бумагами	Securities Dealer
13,16 млн. гривен за акции	13.16 mln UAH for shares
Физические лица	Natural Persons
13,16 млн. гривен доверенное лицо	13.16 mln UAH proxy holder
Лицо, которое получает денежную наличность в кассе банка на основании доверенности как расчет за проданные акции	Person who receives cash from bank using power of attorney as payment for sold shares

The group of companies transferred 3.7mln UAH donation to the charitable foundation - the civil society organization registered as NPO.

The charitable foundation used these funds as payment to the securities dealer for the 13.2 mln UAN worth shares.

After that, the securities dealer transferred those funds received for the shares to two natural persons. Later on, the funds were withdrawn as cash from the accounts of those natural persons by the proxy holder.

Case Study 2 – USA: Non-profit organizations engaged in illegal remittance business

In 2003, Bureau of Immigration and Customs Enforcement agents initiated an investigation of several non-profit organizations in the United States. These were all registered as tax-exempt organizations. The investigation revealed the organizations were operating as illegal wire remitting businesses, allegedly co-mingling drug proceeds with donations. Suspicious Activity Report documentation revealed approximately \$3 million in transactions during a three-month period.

Examination of Suspicious Activity Reports determined that most incoming funds were from “donations” and a large number of third party deposits. Funds were transferred out of the account using checks, cashier’s checks and wire transfers to a number of entities. Outgoing funds were often sent to accounts affiliated with suspected criminal organizations.

6. Most Typical Methods of Money Laundering and Examples of Successful Investigations of Offences in NPO Sector

The USA conducted the following successful investigations of offences in the NPO sector.

Example 1. Former Member of Board of Directors of the Sewerage and Water Board of New Orleans Sentenced to Over 21 Years in Prison; Brother Sentenced to 4 Years.

On July 29, 2010, in New Orleans, La., Bruce L. Edwards, Sr. was sentenced to 48 months in prison, to be followed by three years of supervised release, and ordered to pay a \$15,000 fine. Bruce Edwards is the brother of the former Sewerage and Water Board (S&WB) of New Orleans member, Benjamin L. Edwards, Sr. On June 24, 2010, Benjamin L. Edwards, Sr. was sentenced to 262 months in prison, followed by five years of supervised release, and ordered to pay approximately \$3.6 million in restitution. According to court documents, the brothers devised a scheme to defraud various businesses who performed work on behalf of the S&WB. In the aftermath of Hurricane Katrina, Benjamin Edwards spoke with representatives of Montgomery Watson Harza (MWH) regarding work that the company was to perform in assisting the S&WB and the City of New Orleans with sewer inspections and debris cleanup. Benjamin Edwards convinced MWH to hire a company called Management Construction Consultant Incorporated (MCCI) in order to perform these sewer inspections. The Edwards' concealed the fact that they controlled MCCI. MWH wired nearly \$3,000,000 to a MCCI bank account. Bruce Edwards then wrote approximately \$1,600,000 in checks from MCCI's account to a tax-exempt, non-profit Third Shiloh Missionary Baptist Church (TSMBC) account which was controlled by Benjamin Edwards. The money was then withdrawn from the TSMBC account to facilitate the purchase of vehicles, fund political campaigns, and obtain items of value for the Edwards and others. By routing the money through the TSMBC account and using cashier's checks and cash to disguise the source of the funds, the brothers attempted to conceal this income from the IRS. For tax year 2005, Benjamin Edwards failed to report nearly \$1,700,000 in income; Bruce Edwards failed to report nearly \$750,000 in income.

Example 2. Care International - United States v. Samir Al-Monla, Emadeddin Z. Muntasser, and Muhamed Mubayyid – Title 18 U.S.C. §1001(a)(1), Title 19 U.S.C. §371, Title 26 U.S.C. §7206(1), and Title 26 U.S.C. §7212(a) Charge.

Boston charity, failed to report association with Al-Kifah Refugee Center on Form 1023 and Forms 990 and other activities, such as:

- Published the “al-Hussam” newsletter which advocated for participation in violent conflict overseas
- Supported the families of “martyrs”
- Funded travel for speakers to come to the United States to advocate on behalf of al-Kifah and participation in violent conflicts overseas
- Failed to report money contributed to BIF
- Lied to FBI during post-9/11 interviews
- Failed to disclose meeting with Gulbuddin Hekmartyar

Mubayyid, Muntasser, and Al-Monla were convicted of conspiring to defraud the United States and engaging in a scheme to conceal information from the United States government. In addition, MUBAYYID was convicted of three separate counts of Making and Filing False Tax Returns on behalf of Care International, Inc. (“Care International”) for tax years 1997, 1999, and

2000. MUBAYYID was also convicted of obstructing and impeding the Internal Revenue Service.

Example 3. Holy Land Foundation for Relief & Development (HLF)

- Founded in 1988
- Largest Muslim Charity in United States
- Closed in December 2001 when declared to be Specially Designated Terrorist organization
- Indicted in July 2004 for providing material support to Hamas, including providing \$12.4 million in support to Hamas
- HLF and five leaders of the charity were convicted in November 2008 on all 108 criminal counts against them, including support of terrorism, money laundering and tax fraud.

Example 4. Islamic American Relief Agency-Title 26 U.S.C. 7212(a) Charge

- Failed to report association with ISRA/IARA
- Non-Program Activities:
- Sending donated funds to Iraq in violation of sanctions
- Sending donated funds to an Specially Designated Global Terrorist (SDGT) in violation of IEEPA and E.O. 13224
- Using donated funds to “support” Ziad Khaleel
- Using \$47,000 of donated funds to post bail for another defendant.

Example 5. State Business Development Consortium Director Charged in Fraud and Money Laundering Conspiracy <http://www.fbi.gov/birmingham/press-releases/2011/state-business-development-consortium-director-charged-in-fraud-and-money-laundering-conspiracy>

The indictment charges Campbell with conspiracy to defraud the state and a private non-profit institute he incorporated, and to make financial transactions intended to conceal the proceeds of the fraud. The indictment also charges Campbell with three counts of mail fraud, 56 counts of wire fraud, and 36 counts of money laundering. It also provides notice that the United States will seek forfeiture of \$7,326,569.

Example 6. Hogsett Announces the Indictment of Three Indianapolis-Area Individuals on Charges of Wire Fraud, Money Laundering. Trio Allegedly Used the Position of an Elected Official to Defraud Investor of \$1.7 Million.

<http://www.fbi.gov/indianapolis/press-releases/2011/hogsett-announces-the-indictment-of-three-indianapolis-area-individuals-on-charges-of-wire-fraud-money-laundering>

The Russell Foundation, an Indianapolis-based organization founded in 2003 by Michael L. Russell, was ostensibly a religiously-affiliated nonprofit intended to provide community leadership and poverty relief. It is alleged that it instead served as the vehicle for roughly \$1.7 million in fraudulent activity. The indictment charges Russell with eight counts of wire fraud and 12 counts of money laundering. Bateman was charged with eight counts of wire fraud and 10

counts of money laundering. Gonzalez was charged with three counts of wire fraud and two counts of money laundering.

Example 7. Union City-Based Real Estate Developer Indicted on 41 Counts of Money Laundering and Corruption <http://www.fbi.gov/newark/press-releases/2010/nk012810.htm>

The Indictment describes a scheme in which Altman, 39, of Monsey, N.Y., along with his coconspirators, “washed” approximately \$668,000 in dirty checks to cash for a Cooperating Witness (“CW”) through purported charitable, non-profit entities. The Indictment also alleges that purported charities, such as Gmach Shefa Chaim and Boyoner Gemilas Chesed, were used to launder the money. According to the Indictment, Gmach Shefa Chaim accepted deposits from its clients and then re-deposited such monies into accounts that it maintained in its own name at Valley National Bank in Union City. Gmach Shefa Chaim allegedly maintained books and records that tracked the financial activities of its depositors, but the financial transactions that the Gmach conducted at Valley National Bank for its depositors otherwise were not traceable to its clients. The Indictment alleges that Friedlander used an account with the Gmach to launder some of the checks that the CW provided to Altman.

New Jersey-Based Real Estate Developer Sentenced for Money Laundering and Corruption. On March 31, 2011, in Newark, N.J., Moshe Altman was sentenced to 41 months in prison, followed by two years of supervised release. Altman pleaded guilty to conspiracy to obstruct commerce by extortion under color of official right and conspiracy to launder money. According to court documents, Altman arranged for payment of a \$20,000 bribe to pay a Jersey City Housing Department property improvement field representative. The money laundering charge arose from a scheme in which Altman, along with co-conspirators, used purported charitable, non-profit entities to “wash” approximately \$668,000 in dirty checks. Altman admitted that he engaged in approximately 15 transactions between May 2007 and July 2009 in which he accepted checks and returned cash, less a fee for laundering the money, collecting approximately \$109,300 in fees over the course of the scheme.

Example 8. Former Alabama Mayor Sentenced for Filing False Tax Returns.

On July 15, 2011, in Montgomery, Ala., John Jackson, the former mayor of White Hall, Alabama, was sentenced to 24 months in prison, followed by one year of supervised release, and ordered to pay a \$25,000 fine and \$11,065 in restitution. According to court documents, Jackson filed false joint 2004, 2005 and 2006 U.S. Individual Income Tax Returns (IRS Forms 1040) that did not report all of the total income earned by Jackson and his spouse. Jackson did not report as income money he took from the city of White Hall and money he diverted from non-profit companies who handled the gaming license for White Hall.

Example 9. Kazakh NPO Сенім. Білім. Өмір (Faith, Knowledge, Life) was recognized the extremist organization by court <http://www.newskaz.ru/society/20120608/3294051.html>

On June 7, 2012, the inter-district economic court of the Eastern Kazakhstan Region satisfied the lawsuit filed by the regional prosecutor and found Сенім. Білім. Өмір NPO to be the extremist organization. Pursuant to the court’s order the activities of this organization were prohibited and the organization itself was subject to forced liquidation.

The leaders and active members of the aforementioned organization were earlier convicted by the special inter-district criminal court of Almaty city on 19.10.2011 and received sentences of various terms of imprisonment. Those sentences that took effect confirmed the

extremist activities of the members of that NPO which included stirring up religious enmity and hatred, kidnapping and illegal detention of people.

Conclusion

The information obtained in course of the research showed that NPOs activities address a wide range of social issues in the economy. In some instances, along with cash settlements the mechanisms of the credit and financial sector are used for committing offences and laundering criminal proceeds. This allows the FIUs to effectively use their capabilities for identifying suspicious transactions (inter alia, at the early stages) and to inform the law enforcement agencies on such transactions.

At the same time, the FIUs efforts aimed at combating offences in the NPO sector are limited to actions undertaken at the requests of the law enforcement agencies mainly during investigation of the committed crimes.

To enhance the role of FIUs in combating offences associated with NPOs it is expedient to recommend the following:

1. Arrange the work in this area with the application of the ML/FT risk-based approach.
2. Integrate information from the national NPO registers on those NPOs activities that pose the highest ML/FT risk into the information systems of FIUs.
3. Arrange financial monitoring of NPOs that pose high ML risk for identifying suspicious transactions.
4. Synchronize the NPOs database with the list of persons associated with extremist and terrorist activities for identifying NPOs in which such persons have interest.
5. Implement the computer-aided (automated) procedure of identifying organizations in the NPO sector which operations have the suspicious activity indicators.