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## **THE IMPLICATIONS FOR CHARITIES OF ANTI-TERRORISM INITIATIVES ON HUMANITARIAN ASSISTANCE FOR SOUTHEAST ASIA**

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### **A. INTRODUCTION**

In the wake of the recent disastrous tsunami in Southeast Asia there is tremendous need for emergency aid and humanitarian assistance. To meet these needs, Canadian citizens and charities have responded with an unprecedented outpouring of donations in support of the humanitarian relief effort. However, what may not be initially evident to Canadian charities is the application of Canadian anti-terrorism legislation to the activities undertaken to provide humanitarian aid. Active compliance with the legislation is needed at all levels of a charity's operations as it responds to the disaster. Given the complexity of the compliance issues, this article can provide only a very brief overview of some of the issues and concerns that charities should consider while assisting with the tsunami humanitarian relief effort.

Charities must comply with significant legal requirements in providing aid in response to the tsunami regardless of their size or the method of providing assistance. A charity may decide to collect and forward donations to another Canadian registered charity that, in turn, delivers the aid. In other circumstances, a charity may deliver aid through agents in the affected area in accordance with an agency agreement as

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required by the Canada Revenue Agency (“CRA”). If they have the resources and capacity to do so, charities may also provide aid directly to the disaster areas using their own facilities and employees in the affected region. In all of the above scenarios, there are important requirements imposed on charities resulting in due diligence steps that must be pursued. The responsibilities of a charity in these situations range from maintaining appropriate financial records and reporting obligations, particularly if the charity is party to an agency arrangement, to ensuring that aid does not inadvertently assist any person or organization with links to ‘terrorism,’ as defined in the applicable anti-terrorism legislation.

The body of applicable legislation and compliance regimes that have been emerging in Canada relating to anti-terrorism are significant and complex. Contravening the provisions of Canadian anti-terrorism legislation could lead to prosecution under the *Criminal Code*, expose a charity’s directors or officers to personal liability or even initiate the deregistration process under the *Charities Registration (Security Information) Act*. For an overview of Canada’s anti-terrorism legislation, and some of the resulting due diligence requirements for charities, reference can be made to *Charities and Compliance with Anti-terrorism Legislation: The Shadow of the Law* available at <http://www.carters.ca/pub/article/charity/2004/tsc1028a.pdf>.

The potential application of anti-terrorism legislation is heightened, in part, because Southeast Asia has been identified as the central operating area for several ‘terrorist organizations.’ Under Canadian anti-terrorism legislation, any form of assistance that reaches members of an organization that has been identified as an entity associated with ‘terrorism’ could be considered a “facilitation” of terrorist activities in contravention of subsection 83.19 of the *Criminal Code*, which is an indictable offence that carries a prison term of up to 14 years. In accordance with section 83.05 of the *Criminal Code*, a list of entities that knowingly facilitate terrorist activities has been compiled (available at [http://www.psepc-sppcc.gc.ca/national\\_security/counter-terrorism/Entities\\_e.asp](http://www.psepc-sppcc.gc.ca/national_security/counter-terrorism/Entities_e.asp)), several of which purportedly operate in the affected area. Canada also maintains a separate list of ‘terrorist organizations’ under the *United Nations Suppression of Terrorism Regulations* (available at [http://www.osfi-bsif.gc.ca/eng/publications/advisories/index\\_supervisory.asp](http://www.osfi-bsif.gc.ca/eng/publications/advisories/index_supervisory.asp)) which charities should be aware of. Charities -, whether they have employees in the affected region, are party to an agency

relationship to deliver aid, or have simply transferred funds to another Canadian registered charity - should be proactive in initiating their own due diligence procedures to minimize their vulnerability to potential, unintended, contravention of Canadian anti-terrorism legislation.

Prior to the tsunami disaster, several organizations believed to be operating in the affected parts of Southeast Asia were a major focus of public counter-terrorism efforts by countries such as the United States. These specific organizations include “Jemaah Islamiyyah,” which is one of Canada’s listed entities pursuant to subsection 83.05(1) of the *Criminal Code*. In addition, the “Liberation Tigers of Tamil Eelam (LTTE),” also believed to have a presence in the region, is a listed organization in the *United Nations Suppression of Terrorism Regulations*. The significance of the purported presence of these organizations could result in increased scrutiny of relief and reconstruction efforts by authorities from Canada and other jurisdictions. Implications of the United States’ policies concerning non-profits are discussed in relation to Canadian charities in *Anti-Terrorism Alert No. 5*, available at <http://www.carters.ca/pub/alert/atcla/atcla05.pdf>.

There are several key directives and publications from CRA that apply to the funding and distribution of humanitarian assistance internationally. One of the most recent initiatives is the list of several designated Canadian aid organizations for which donations received before January 11, 2005 are eligible for tax credits in the 2004 year, as well as matching grants from the federal government. Since these organizations had to meet certain government requirements, the listing of these organizations provides an important endorsement; however, it does not necessarily absolve these charities of their basic responsibilities under anti-terrorism legislation. The list of eligible registered charities can be found at <http://www.acdi-cida.gc.ca> and a fact sheet by CRA concerning the tsunami relief effort is available at [http://www.cra-arc.gc.ca/tax/charities/tsunami\\_faq-e.html](http://www.cra-arc.gc.ca/tax/charities/tsunami_faq-e.html).

Also of importance is the recent CRA publication of “Charities in the International Context,” which is available at <http://www.cra-arc.gc.ca/tax/charities/international-e.html>. In this publication, CRA points out that Canada's *Income Tax Act* rules apply no matter where a Canadian registered charity operates. CRA rules allow a charity to either make gifts to “qualified donees,” or carry on its own activities. In addition, CRA

encourages active participation and oversight of how aid is being delivered, while recognizing the increasing difficulty of this task in parts of the world where identified “terrorist groups” operate.

Finally, Canadian charities should note that as aid flows beyond Canadian borders, other countries will also be provided with access to information concerning donor and recipient charities through international information sharing and collection practices. In this regard, foreign governments may be conducting their own assessments and could launch investigations based on this information, according to their domestic anti-terrorism initiatives. Charities need to be aware that their donations and actions to provide humanitarian relief will likely be under close scrutiny by governmental agencies in Canada, as well as in other jurisdictions. For further discussion on this issue, reference can be made to *Anti-Terrorism and Charity Law Alert No.4* available at <http://www.carters.ca/pub/alert/atcla/atcla04.pdf>.

Implementing effective ongoing monitoring and due diligence procedures will become more important as the need for assistance in tsunami affected areas of Southeast Asia evolve from requiring immediate, emergency humanitarian relief, to that of a commitment to long-term reconstruction efforts. In providing assistance during this time of need, Canadian charities need to be aware of the complexity of the compliance issues under anti-terrorism legislation and regulations in Canada on both an immediate and long term basis.

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