

To Donate or Not to Donate, That is the Question: Fundraising Practices and Combating Terrorist Financing in the UAE

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The UAE has a long-standing established culture of generosity and giving and this latest drive for philanthropy has provoked a surge in charitable initiatives aimed at helping the less fortunate and those in need. Whilst such initiatives can only be encouraged, there needs to be a corresponding awareness of the relevant applicable laws that regulate fundraising activity and the legal implications involved should they be breached.

Global Efforts in Combating Terrorist Financing

Restricting fundraising in a country with a prolific aid donation record may seem paradoxical but the measures are well justified in the context of the global agenda for counter terrorist financing (CTF). The primary purpose of controlling charitable giving is to prevent donated funds from being abused or diverted to terrorist organisations. Despite the semblance of good intentions, charities and non-profit organisations (NPOs) face a high risk of being co-opted by terrorist organisations as a means for disguising their fundraising efforts through seemingly legitimate fronts. The flow of cash and anonymous donations through such organisations represents a critical weakness in defences against terrorist funding, since it is often difficult to determine the source of funds or monitor all beneficiaries of donations. This creates a plethora of opportunities for terrorist groups or financiers to abuse the philanthropic system, whether it is by fraudulent fundraising methods or commandeering donations at a later point in the operations chain. Often, organisations are themselves unaware of instances of abuse. Particularly where their work involves high levels of contact with third parties or is based in an area of conflict, the flow of money is harder to track and is increasingly likely to leak into the pockets of unintended beneficiaries linked to terrorist organisations.

Layers of opacity in tracking the movement of money through non-profit organisations present a unique challenge to CTF regimes and have been identified as a key risk in the defensive framework of jurisdictions around the world. The Financial Action Task Force (FATF), an inter-governmental body dedicated to implementing best practice for defence against money laundering and terrorist financing, has been active in raising awareness of the risks involved and implementing appropriate protective measures.

Various reports published by the FATF and other CTF organisations consistently highlight the link between charitable fundraising and terrorist financing. These conclusions have contributed to forming a consensus that stringent measures are required to combat instances of abuse across the board.

Controlling the Risk in the UAE

The UAE's concern over the link between CTF and charitable organisations has been reflected both in its legislation and in its cabinet-approved list of terrorist organisations, which includes a number of NPOs.

Laws issued at both Federal and local levels regulate fundraising practices and provide a number of steps that must be followed before donations are sought, or else parties leave themselves exposed to legal liability. The measures are intended not only to prevent illicit channels of terrorist financing, but also to offer a degree of protection to charities that may otherwise have unwittingly fallen victim to instances of abuse.

Regulation of charity work is spread across a myriad of laws at the Federal level. Law No. 2 of 2008 concerning Public Welfare Associations and Organisations (the Federal Charity Law) criminalises the collection of any donations through associations that are not properly licensed by the Ministry of Social Affairs. Additionally, Law No. 7 of 2014 On Combating Terrorism Offences (the Counterterrorism Law) prohibits any person or entity from facilitating the obtainment of funds for a terrorist organisation, and carries a stiff penalty of imprisonment from at least 10 years up to a life span. Whilst the provisions concerning terrorist financing are not solely aimed at NPOs, the scope of their application is left sufficiently broad to criminalise any activity that could aid a terrorist group in obtaining finances, including fundraising initiatives.

On a more local level, Dubai in particular has created an advanced framework of laws to regulate fundraising initiatives. Dubai Decree No. 9 of 2015 provides a comprehensive set of provisions to restrict all fundraising in the Emirate, applying to all donations broadly defined as;

'The sum of money voluntarily given by a donor as a beneficence, kindness, assistance, and charity, including Zakat and alms.'

Donations are prohibited in any instance where they are made to an unlicensed charity or the fundraising event has not received express written approval from the Department of Islamic Affairs and Charitable Activities (IACAD). The Department has sole authority to grant licenses to charities seeking to operate in the UAE and is responsible for overseeing every application for approval on fundraising initiatives. Even where ventures are approved, IACAD has powers to audit any donations and review the proposed recipients and spending methods. This provides the overseeing body with a turnkey view of how donations are sought, collected and redistributed between legitimate parties, minimising the opportunity for funds to be misappropriated or diverted.

Any infringement of the fundraising law can incur a fine of between 5,000 – 100,000 dirhams or a term in prison of between 1 month – 1 year, or both. Legislation is more concerned with individuals soliciting donations than with the donors themselves, but there is still a responsibility for each individual to ensure that recipients of any donations are legally licensed before proceeding to give money. By exerting such strong restrictions on fundraising enterprises the Government of Dubai is providing a greater level of protection to the donations given by its residents, ensuring that they are put to good use rather than falling into the hands of terrorist financiers.

The Dangers of Social Media

With the advance of modern technology and its rapidly proliferating uses, social media has risen to become a powerful tool for social engagement. Given its unprecedented access to millions of users and an unparalleled ease of use, networking sites are increasingly utilised as a means to canvass for donations and endorse charitable efforts.

A growing reliance of NPOs on outreach through social media is fast becoming a defining feature of the global giving landscape, particularly where supporters are encouraged to share promotional information about an organisation or its fundraising campaign on networking pages. The real problem in this respect is that its seemingly innocuous nature belies the severity of the legal implications attached to such conduct. Under the provisions of Law No. 5 of 2012 On Combating Cybercrimes, using social media to share content relating to charity work becomes a punishable offence. Article 27 states that any person using information technology to solicit or promote donations to an unlicensed organisation is guilty of an offence punishable by imprisonment and a fine of between 200,000 – 500,000 dirhams. This definition is broad enough to

encompass social media usage and assigns a much higher fine than other fundraising infringements. This law specifically targets those responsible for coordinating and encouraging donations rather than the donors themselves, but it has profound implications for NPOs and individuals alike in light of the growing utilisation of social media as a means to accrue support and donations.

The UAE has a proven record of doubling down on social media fundraising, with a growing list of individuals arrested and detained for infringements, and yet there remains a troubling lack of awareness amongst well-meaning parties of their legal vulnerability. UAE residents should exercise particular caution before sharing any content online that contains specific mention of fundraising efforts or the work of unlicensed charities, which is against the law.

The controls on donating and fundraising should not discourage philanthropic efforts but individuals should ensure that they are properly informed before they commence with any related activity. There are a number of licensed organisations in the UAE that offer a multitude of opportunities to donate, volunteer or become involved in charitable efforts, all of which are permissible under the law. If the necessary steps have been taken to legalise the charity work, then fundraisers are free to tap into the generosity of the UAE community with impunity.

For any query or follow up related to fundraising practices, please feel free to contact Ibtissem Lassoued, Partner, Financial Crime, at i.lassoued@tamimi.com.