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## 1. INTRODUCTION

- (a) In the wake of the September 2001 terrorist attacks in the United States, the United Nations Security Council adopted Resolution 1373 (2001) imposing a series of obligations on UN Member States to combat terrorism.
- (b) Adara Development will make all reasonable efforts to ensure that funds and resources are not being used to support terrorist activity.
- (c) Adara Development acknowledges that it is essential that all Adara Development directors, staff members and volunteers are aware of their legal obligations and that Adara Development adopts strategies to avoid any associations with terrorism.
- (d) Governments in some of the jurisdictions in which we work have enacted legislation consistent with a number of international counter-terrorism treaties designed to combat terrorism. For example, in Australia, there are two separate legislative mechanisms directly prohibiting activities in relation to individuals and organisations associated with terrorism. They are:
  - (i) Part 5.3 of the *Criminal Code Act 1995* (**Criminal Code**); and
  - (ii) Part 4 of the *Charter of United Nations Act 1945* (**UN Charter Act**)
- (e) Under the Criminal Code there are stringent penalties for, amongst other things, intentionally or recklessly 'getting funds to or from a terrorist organisation (section 102.6), 'providing support to a terrorist organisation' (section 102.7) and 'financing terrorism' (section 103.1). A list of 'terrorist organisations' for the purposes of the Criminal Code is available on the National Security Australia website <http://www.nationalsecurity.gov.au/Listedterroristorganisations>. As of July 2020 there were 26 organisations listed as 'terrorist organisations' for the purposes of the Criminal Code.
- (f) Under the UN Charter Act, it is an offence to "directly or indirectly make any asset available to a proscribed person or entity". An asset is very broadly defined as "asset of any kind, or property of any kind, whether tangible or intangible, movable or immovable". While the UN Charter Act applies less stringent penalties, it has a much broader application in the aid context due to its very wide definition of asset. A list of proscribed persons and entities is available from DFAT at <http://dfat.gov.au/international-relations/security/sanctions/pages/consolidated-list.aspx>. As of July 2020 there were over 5000 proscribed persons or entities (including aliases) for the purposes of the UN Charter Act.

## 2. ADARA DEVELOPMENT OBLIGATIONS

- (a) Adara Development will use its best endeavours to ensure that all activities (including those carried out by a partner or affiliate organisation delivering aid) comply with relevant laws and regulations by which we are bound (and those of the country in which the aid is being delivered), including but not limited to:
  - (i) Those in relation to the proscription against providing direct or indirect support or resources to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the Criminal Code and listed in regulations

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under the Criminal Code, regulations made under the UN Charter Act and sanction regulations in other jurisdictions in which we operate; and

- (ii) Those in relation to corrupt practices, in particular the bribery of public and foreign officials.
- (b) If, at any time a partner organisation discovers any link whatsoever with any organisation or individual listed by a Government with jurisdiction over Adara Development as associated with terrorism, it will inform Adara Development immediately. All reports must be immediately notified to the AML/ATF Compliance Officer.
- (c) Further information on anti-terrorist laws, listed terrorist organisations and individuals is available from <http://dfat.gov.au/international-relations/security/counter-terrorism/Pages/dealings-with-terrorists-information-for-australians-and-australian-businesses.aspx>, <http://www.nationalsecurity.gov.au>, <https://www.gov.bm/international-sanctions-measures> and <https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>.
- (d) Using its “best endeavours” means that Adara Development has a positive obligation to act. In particular it will ensure that it:
  - (i) knows the persons/organisations that it is directly assisting;
  - (ii) makes sure the people/organisations that it is directly assisting are not on either of the lists before assistance is provided; and
  - (iii) makes sure that directly funded persons/organisations are aware of and obliged to comply with these laws, and that they in turn are obliged to make sure that their distribution of the funds or support is made on the same basis.
- (e) A “link” between Adara Development and persons/organizations associated with terrorism is understood in its broadest terms. The obligation to notify Adara Development does not, however, confer an active intelligence-gathering responsibility. It requires that Adara Development be informed as soon as information is discovered. Adara Development will then determine, in consultation with the partner, what, if any, actions are necessary. Neither law is retrospective. If a new organisation or individual is included on the list, subsequent to funds being released, no breach of the laws will have been committed. However, if notified that an organisation or individual has been subsequently added to the list, all assistance to that organisation or individual must cease and Adara Development must be advised immediately.

### 3. DIRECT AND INDIRECT FUNDING

- (a) Complying with the UN Charter Act is more complex in practice because of the large number of proscribed persons and entities, the broad definition of asset, and the prohibition against both direct and indirect support.
- (b) Direct funding is easily understood. Appropriate checking of the lists by Adara Development at design and during implementation stages is a simple way to avoid providing direct funding, support or resources.
- (c) Guarding against indirect support is more difficult but the risk of indirectly providing support or resources must be adequately assessed and managed in ways that are appropriate to the operating environment in all cases. The actions required to satisfy the legal and contractual obligations may differ in each case depending on the particular circumstances. Strategies for managing the risk could include, but may not be limited to:
  - (i) Checking sanctions lists on the websites noted above and ensuring updates to the website are taken into account.
  - (ii) Before providing direct funding, support or resources, ensuring that the beneficiary is not included on either list.

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- (iii) Ensuring that organisations to whom funding, support or resources are being provided and who are themselves further distributing assets, know of, understand and comply with the legal and contractual requirements.
    - (A) providing them with the lists and updates as required; and
    - (B) ensuring systems are in place to ensure compliance and immediate notification if necessary.
  - (d) Conducting spot checks or regular monitoring visits to ensure organisations to which funding, support or resources are being provided downstream are not on either list.
  - (e) Informing the Partner if appropriate, the national security hotline and Australian Federal Police whether in Australia or through their liaison officers in country located in the Australian embassies, the Bermuda Financial Intelligence Agency or Bermuda Police Service or other relevant regulator immediately if any credible information becomes available suggesting any links.